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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

MAY 27 2004

IN RE:

Petitioner:
Beneficiary

[Redacted]

PETITION: Immigrant Petition for Other Worker pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3).

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded.

The petitioner is a tool and die foundry. It seeks to employ the beneficiary permanently in the United States as an administrative assistant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered position, and denied the petition accordingly.

On appeal, counsel submits a statement.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

The Form ETA 750 submitted with the petition states that the proffered position requires four months of experience in the proffered position or in the related occupation of bookkeeper.

On the petition, counsel or the petitioner checked box "e" in Part 2, indicating that the petition is for a skilled worker, pursuant to section 203(b)(3)(A)(i) of the Act. As is noted above, a skilled worker petition is one which requires at least two years of experience. As such, the petition purports to show that the proffered position is for a skilled worker, and the Form ETA 750 purports to show that the position is for an unskilled worker pursuant to section 203(b)(3)(A)(iii) of the Act.

Because of this discrepancy, the Director, Nebraska Service Center, on October 16, 2002, sent the petitioner a Request for Evidence. The director requested evidence demonstrating that the proffered position requires a minimum of two years experience.

In response, counsel submitted a letter, dated January 7, 2003, in which he stated that box "e" was checked in error, and that box "g" Other Worker, should have been checked. Counsel requested that the petition be corrected to reflect that it is a petition for an Other Worker pursuant to section 203(b)(3)(A)(iii) of the Act.

On February 11, 2003, the director denied the petition, finding that the petitioner had failed to demonstrate that the proffered position is a position for a skilled worker, requiring at least two years of experience. The director noted that no provision in statute, regulations, or administrative case law . . . permits a petitioner to change the classification sought once a petition has been filed.

On appeal, counsel stated, "The I-140 was denied without reference made to the Request for Evidence response."

The director is correct that a petition may not be amended for the purpose of rendering it approvable. In this case, however, no evidence contradicts counsel's assertion that the wrong box was checked on the petition. In fact, that the Form ETA 750 indicates that the proffered position requires only four months of experience implies, at least, that the petitioner always intended to file for an unskilled "Other Worker" pursuant to section 203(b)(3)(A)(iii) of the Act.

The matter will be remanded so that the petition may be considered as a petition for an "Other Worker" pursuant to section 203(b)(3)(A)(iii) of the Act.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration.