



U.S. Citizenship
and Immigration
Services



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

SEP 24 2004

IN RE:

Petitioner:

Beneficiary:



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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

The petitioner is a home for the elderly. It seeks to employ the beneficiary permanently in the United States as a nurse 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 has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, the petitioner submits a statement and additional evidence.

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 the granting of 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

* * *

(D) *Other workers.* If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on October 4, 2000. The labor certification states that the position requires three months of experience.

With the petition the petitioner submitted no evidence that the beneficiary has the required three months of experience. Because the evidence submitted did not demonstrate that the beneficiary has the requisite experience, the California Service Center, on May 14, 2003, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien. In response, the petitioner

submitted a letter from the beneficiary in which he stated that he had been unable to contact his alleged previous employer.

On August 18, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite three months of salient work experience.

On appeal, the petitioner states, "[e]nclosed please find alien's proof of his good faith efforts to obtain employment certification from his former employer." With the appeal, counsel submits a letter, dated September 8, 2003, from the beneficiary. That letter states that despite repeated attempts, the beneficiary has been unable to obtain employment verification from his alleged previous employer. No evidence of the beneficiary's prior employment was provided.

The regulations require the petitioner to demonstrate that the beneficiary is qualified for the proffered position. The regulations contain no good faith exception to that requirement. The evidence submitted does not demonstrate credibly that the beneficiary has the requisite three months of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position, and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.