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U.S. Citizenship  
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Services

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JUN 15 2005

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
WAC-03-081-52868

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

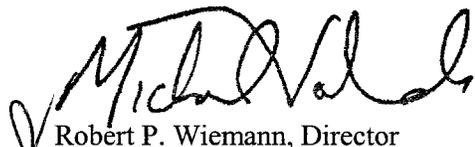
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

**DISCUSSION:** The Director of the California Service Center denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner provides painting services. It seeks to employ the beneficiary permanently in the United States as a painter. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position and denied the petition accordingly.

On appeal, the petitioner makes a brief statement and submits previously submitted evidence.

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 the granting of 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.

The issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is March 12, 2001. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of painter. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |                         |    |
|-----|-------------------------|----|
| 14. | Education               |    |
|     | Grade School            | 6  |
|     | High School             | -- |
|     | College                 | -- |
|     | College Degree Required | -- |
|     | Major Field of Study    | -- |

The applicant must also have two years of experience in the job offered in order to perform the job duties listed in Item 13 of the Form ETA 750 a, which will not be restated in this decision since it is incorporated into the record of proceeding.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked for the petitioner from 1995 to the present as a painter and from March 1991 to February 1994 as a painter for Jesus Garcia Ayala – Pintor in Aguascalientes, Mexico with a description of job duties more general than the proffered position but similar.

With the initial petition, the petitioner submitted a letter from [REDACTED] (Mr. [REDACTED] on company letterhead, in Spanish with a certified English translation. The letter states that the beneficiary worked for Mr. [REDACTED] business as a painter from March 1, 1991 to February 28, 1994.

Finding the evidence insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on March 12, 2003. The director requested a letter verifying the beneficiary's prior employment experience.

In response to the director's request for evidence, the petitioner submitted a letter from itself stating that the beneficiary "has the skills to perform all requirements needed for his employment as a painter..." The director tabbed this letter as the experience letter.

The director issued a subsequent request for evidence not pertaining to the issue of the beneficiary's qualifications. The director denied the petition on December 5, 2003, stating that the letter submitted by the petitioner in response to the request for evidence was insufficient to establish that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, the petitioner stated that the beneficiary obtained his qualifying employment experience with Mr. [REDACTED] in Mexico from March 1991 to February 1994, which was "enough experience to qualify" for the proffered position. The petitioner resubmits a copy of the employment experience submitted with the initial petition.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision.

Additionally, the regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(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.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The AAO does not concur with the director and surmises that the director failed to notice the employment experience letter from Mr. [REDACTED] since the director only tabbed and referenced the letter from the petitioner that was provided in response to the request for evidence. The director's decision was simple error. The letter from [REDACTED] conforms to the regulatory requirements at 8 C.F.R. § 204.5(l)(3) as it was written by the beneficiary's employer, was on Mr. [REDACTED] letterhead, provided the name, address, and title of the employer, and described the training and length of experience the beneficiary obtained at Mr. [REDACTED] business. Thus, the beneficiary is qualified for the proffered position as he has provided evidence of two years of experience as delineated as a requirement on the ETA 750A.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.