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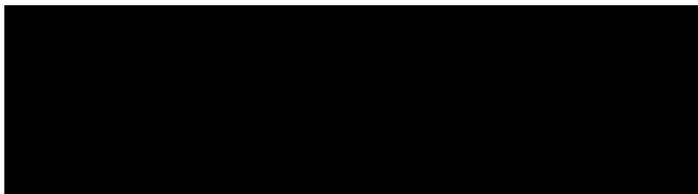


U.S. Citizenship  
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*Bob*

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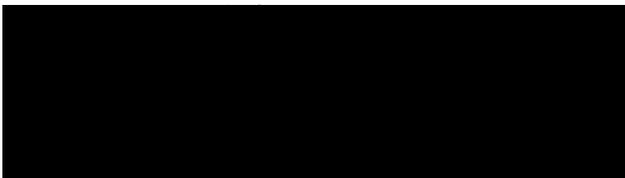


FILE: WAC 02 212 50714 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



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.

*Michael Valdes*

Robert P. Wiemann, Director  
- Administrative Appeals Office

Education	College Degree Required	
6 Yrs High School	0 Yrs	
Experience Job Offered	Related Occupation	Related Occupation
0Yr.	0 Yrs.	0 Yrs

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of electrical appliance servicer is not required to have any experience.

On October 23, 2002, the director requested that the petitioner provide an original labor certification (Form ETA 750) issued by the Department of Labor and to provide evidence of the beneficiary's prior experience as listed on the labor certification.

In response, the petitioner submitted a copy of the labor certification and a letter stating that the beneficiary did not possess prior experience.

The director determined that the evidence was insufficient to establish that the beneficiary met the requirements as listed on the labor certification and on May 28, 2003, denied the petition.

On appeal, the petitioner states, "The employer is submitting an appeal to reference case number WAC-02-212-50714, because prior evidence had been presented that Mr. Fausto Chavez possessed experience to perform the said job. Please see attached letters."

It is noted that the director could have explained his finding that the beneficiary did not meet the requirements of the Form ETA-750 in a more accurate and clearer manner. In fact, it is the position that does not meet the classification sought. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner, under Part 2, marked "e", a skilled worker (requiring at least two years of specialized training or experience) or professional. The determination of whether a worker is a skilled worker or other worker is based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. See 8 C.F.R. § 204.5(l)(4). Furthermore, 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 *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In the instant case, the position does not meet the requirements of a skilled worker requiring two years of training or experience as marked on the Form I-140. The director could have requested that the petitioner clarify its intention of filing for a skilled worker or unskilled worker, but chose not to do so. However, in light of the absence of any evidence in the record prior to the appeal reflecting an intent to seek a lesser classification, we cannot conclude that the director committed reversible error by considering the petition under the classification checked on the petition. Where the director determines that the petitioner has not established a beneficiary's eligibility under the classification sought, the director need not inquire as to whether the beneficiary might be eligible for a lesser classification. There are no provisions

permitting the petitioner to amend the petition on appeal in order to establish eligibility under a lesser classification.

Beyond the decision of the director, it is noted that the Form I-140, Immigrant Petition for Alien Worker, was signed by the beneficiary, not the petitioner. The petition should have been rejected for lack of proper signature by the California Service Center.

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 and the appeal must be dismissed. This dismissal is without prejudice to the filing of a new petition with the appropriate fees, signatures, and classification sought.

**ORDER:** The appeal is dismissed.