

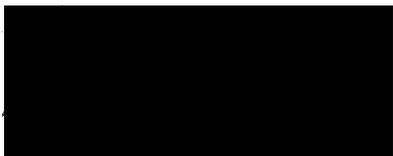
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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**U.S. Citizenship
and Immigration
Services**

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FILE 
EAC 02 289 51484

Office: VERMONT SERVICE CENTER

Date: **MAY 20 2005**

IN RE: Petitioner: 
 Beneficiary:

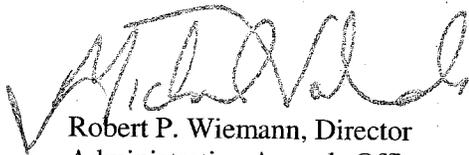
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

* The attorney, whom filed the appeal for the petitioner, appears on the "List of Disciplined Practitioners" promulgated by the U.S. Department of Justice, Executive Office for Immigration Review. He is noted as "expelled."

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) affirmed the director's decision. The matter is now before the AAO on a motion to reopen. The motion will be denied.

The petitioner operates a gas and auto service station. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and, it seeks to employ the beneficiary permanently in the United States as a manager, auto service station. The director determined that the evidence submitted does not demonstrate that the beneficiary had the requisite two years of experience as required by the certified Alien Employment Application and denied the petition accordingly. The AAO affirmed that decision, dismissing petitioner's appeal of the director's decision.

Petitioner has filed a motion to reopen but submits no additional evidence.

The regulation at 8 C.F.R. § 103.5(A)(2) states in pertinent part:

Requirements for motion to reopen. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

To support the motion to reopen, it is petitioner's sole contention that:

"Further, the ETA 750 that would establish a priority date of April 19, 2001 is not in the name of the beneficiary. The petitioner substituted the [original] beneficiary in the ETA 750 ... Therefore, since this is a substitution [substitution] it does not matter if the beneficiary did not possess the experience as of the filing date¹...."

The regulation 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.

(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 assertions of petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

There is no factual dispute that the substituted beneficiary only possessed 16 months experience on the priority date. Whether as the original beneficiary or a substituted beneficiary in this preference classification, the beneficiary must have the requisite two years experience on the priority date of the certified Application for Alien Employment Certification. "To be eligible for approval, a beneficiary must have the education and experience

¹ The beneficiary had 16 months of the necessary experience on the filing date according to the undisputed facts in this case.

specified on the labor certification as of the petition's filing date...." See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Petitioner has the burden in these proceedings of coming forward to present evidence. The evidence must be responsive to the question of whether or not, on the priority date of the alien labor application, the beneficiary had the requisite two years of experience as required by the certified Alien Employment Application.

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. Since petitioner is not stating new facts to support his motion to reopen, the petitioner has not satisfied the requirements of regulation 8 C.F.R. § 103.5(A)(2). The petitioner did not establish that the substituted beneficiary had two years experience on the priority date. Accordingly, the motion will be denied, the decision of the director will be affirmed, and, the petition will remain denied.

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 motion to reopen is denied.