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U.S. Citizenship  
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FILE: LIN 03 260 50930 Office: NEBRASKA SERVICE CENTER Date: NOV 07 2005

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

PETITION: Immigrant petition for Alien Worker as a as an Other, Unskilled 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

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office. The decision of the director will be withdrawn. The matter will be remanded.

The petitioner is a lumber company that produces pallet cut stock. It seeks to employ the beneficiary permanently in the United States as a hydraulic cut-off saw operator. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite experience two years training or experience to qualify for the skilled work classification selected by the petitioner on the I-140 employment based petition,<sup>1</sup> and, the director denied the petition accordingly.

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.

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 petitioner selected box "e" of Part 2 of the I-140 petition. This item states "This petition is being filed for: ... "A skilled worker (requiring at least two years of specialized training or experience) ...."

The regulation at 8 C.F.R. § 204.5(1)(5) states in pertinent part:

Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirement of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

The certified Form ETA Part A Section 14 states in part that the job of hydraulic cut-off saw operator requires one month of experience. Therefore the certified Alien Employment application supports the "Other, Unskilled Worker" classification.

In the section reserved for the basis of the appeal, the petitioner inserted "See attached letter." In that letter the petitioner recounts his dealings with The U.S. Department of Labor. The petitioner stated that it was unable to resolve the inconsistency between the petition as submitted to CIS and the certified Alien Employment Application. The petitioner is asserting thereby that the Director erred by not recognizing that the petitioner made a clerical error by selected box "e" when it should have selected box "g" of Part 2 of the Form I-140 petition. Therefore the petition with the accompanying Alien Employment Application should be considered for the classification "Other, Unskilled Worker" pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).

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<sup>1</sup> The petitioner selected box "e" of Part 2 of the I-140 petition. This item states "This petition is being filed for: ... "A skilled worker (requiring at least two years of specialized training or experience) ...."

There is a sufficient basis for an appeal, however, the record of proceeding does not contain sufficient information that would demonstrate the beneficiary's qualifications, or, the petitioner's ability to pay the proffered wage. As the record of proceeding does not indicate that the director considered these issues, the decision of the director should be withdrawn. The petition is being returned to the director so it can be adjudicated on the merits as a petition for an "Other Worker" classification.

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