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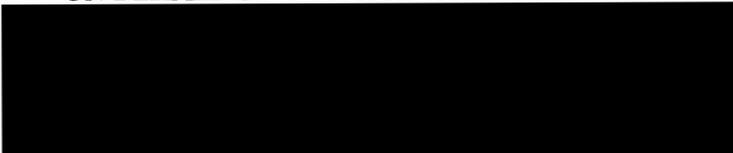
FILE: LIN 04 086 53000 Office: NEBRASKA SERVICE CENTER Date: JUL 11 2006

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:



**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 on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an automotive repair shop. It seeks to employ the beneficiary permanently in the United States as a diesel mechanic. 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, counsel submits additional 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 unavailable in the United States.

8 CFR § 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.

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 April 9, 2003. The labor certification states that the position requires two years auto mechanics experience and two years training.

With the petition counsel submitted:

- An original ETA 750;
- A certified translation of the beneficiary's August 28, 1981 graduation certificate from a Polish vocational school in studies to become an auto mechanic and driver;
- A certified translation of the beneficiary's March 25, 1988 certificate of employment stating he worked as an auto mechanic for a Polish commercial transport and service company from May 16, 1985, to March 24, 1988.

On April 19, 2004, the director requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5(l)(3)(ii), the director 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, on July 12, 2004, counsel submitted:

- A July 1, 2004 certified translation stating that the beneficiary worked at a Polish auto electro-mechanics company as a diesel mechanic from April 13, 1981 to April 26, 1983; and,
- The beneficiary's W-2 for 2003 reporting earnings of \$34,368.25.

On August 19, 2004, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary had the requisite two years of salient work training and experience. The director noted that Part B of the ETA 750 was silent as to the beneficiary's work from April 1981 to April 1983, despite the July 1, 2004 certificate stating he had started working as a diesel mechanic in April 1981. Further the director noted that the ETA 750 Part B had stated he had been a vocational school student until August 1981. Citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), the director found the lack of information about the beneficiary's activities from April 1981 to August 1981 a "discrepancy." The director also found that he could not show he possessed the minimum four years training and experience combined, because by April 1983, less than four years had elapsed from the time he began his training in September 1979.

The director also found the evidence failed to establish the petitioner's ability to pay the \$43,950 proffered wage by not submitting his 2002 income tax return.

On September 23, 2004, counsel appealed the director's decision, and submitted the following:

- A September 20, 2004 "updated" certificate of the former Polish employer of the beneficiary, confirming on March 24, 1988, that it had employed the beneficiary as a diesel mechanic from May 16, 1985 through March 24, 1988; and,
- The petitioner's Form 1040 for 2002 showing an adjusted gross income of \$97,744, with the assertion that the director's request for additional evidence had not specified the 2002 return.

On January 20, 2005, the director determined counsel's appeal, received on September 23, 2004, was untimely but instead treated it as a motion to reopen.

In deciding the motion, the director conceded the new evidence established the petitioner's ability to pay the proffered wage. However, the director found further discrepancies in the dates supplied in the updated certificate from the beneficiary's prior employer. The director noted that the new evidence uses the term "diesel mechanic" to describe the beneficiary's work experience between 1985 and 1988, while the original submission from the same employer had only used the term "auto mechanic." The director said the new submission failed to state when the beneficiary began his work as a diesel mechanic rather than as an auto mechanic. The director also noted the updated certificate was dated March 24, 1988, not March 25, 1988, as the original certificate, raising concerns for the director about the update's credibility.

On appeal, counsel submits the beneficiary's March 16, 2005 affidavit seeking to explain discrepancies in the petitioner's previous submissions.

**We find the evidence convincing despite the director's list of discrepancies.** The director noted that the beneficiary's former employer switched from using the term "auto mechanic" in the original certificate to using "diesel mechanic" in the updated version. The beneficiary's affidavit asserted that in his experience those terms could be used interchangeably. The blurring of this distinction is even evident in the ETA 750, which describes

the petitioner's business as automotive repair, and at Part 14, and lists the training needed as that for an "auto mechanic."

The director also notes the change in dating the certificates from March 25, 1988, to March 24, 1988, in translated letters from the same employer. The beneficiary does not try to defend the change but says the employer "mistakenly dated" the certificate. To conclude that the difference of a single day renders the documents unreliable, without more is hardly warranted. The beneficiary states he had asked his former employer to respond "when the INS requested additional documentation pertaining to my work experience as a diesel mechanic." The employer, [REDACTED] whose company name is [REDACTED] lists three types of work the beneficiary did. It is probable that a ~~commercial transport company would have~~ a fleet of trucks, many of which would be diesel or large-horsepower vehicles, such that the beneficiary would have worked on both diesel and large-engine trucks and buses.

The director questions why the beneficiary omitted his work experience from the ETA 750 for the period 1981 to 1983. The beneficiary only produced documentation for that work in response to the director's request for more evidence. While it would have been more prudent to have listed the beneficiary's entire work history with the petition, the petitioner's explanation is plausible when he asserts that he felt it was enough to provide evidence of a job that lasted three years, starting in 1985.

Earlier, the director had found no evidence establishing that the beneficiary had the minimum two years training as well. The record shows, however, that the beneficiary graduated from a Polish vocational school program that prepared him to become a "mechanic and driver of automobiles." By then he had turned 18, which adds to the likelihood that the coursework would have taken at least two years to complete. It is also noteworthy that the ETA 750 only called for auto mechanics training, not for diesel mechanics training.

We are satisfied, despite the noted discrepancies in the evidence, that the petitioner's evidence establishes by a preponderance of the evidence that the beneficiary met the minimum training and experience requirements specified in the ETA 750 to qualify for the proffered position as of the priority date.

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.