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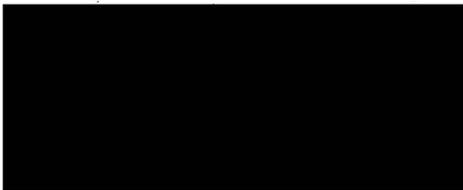
FILE: EAC-04-086-51836 Office: VERMONT SERVICE CENTER

Date: **JUL 27 2006**

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

PETITION: 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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a finisher/surfacers. 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 had the work experience required on the Form ETA 750, and 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 or seasonal nature, for which qualified workers are not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 26, 2001.

On the Form ETA 750B, signed by the beneficiary on March 6, 2001; the beneficiary claimed to have worked for the petitioner beginning in June 1999 and continuing through the date of the ETA 750B. The ETA 750 was certified by the Department of Labor on April 26, 2001.

The I-140 petition was submitted on February 2, 2004. On the petition, the petitioner left blank the items for the date on which it was established, its current number of employees, its gross annual income and its net annual income. With the petition, the petitioner submitted supporting evidence.

In a decision, dated August 31, 2004 the director determined that the evidence failed to establish that the beneficiary had the work experience required on the ETA 750, since the employment verification form in the record lacked the name of the employee. The director found that copies of Form W-2 Wage and Tax Statements of the beneficiary in the record were not relevant to establish the beneficiary's experience because they covered periods after the petition was filed. The director therefore denied the petition.

On appeal, counsel submits no brief and submits additional evidence. Counsel also submits additional copies of evidence previously submitted for the record.

Relevant evidence submitted prior to the director's decision includes copies of Form W-2 Wage and Tax Statements of the beneficiary for 2001 and 2002, and a verification of employment form dated March 5, 2001 for a unnamed employee at [REDACTED] of Catonsville, Maryland. Relevant evidence submitted on appeal includes copies of Form W-2 wage and Tax Statements of the beneficiary for 1999, 2000 and 2003 and a letter dated September 22, 2004 from the president of [REDACTED] stating work experience of the beneficiary from August 1995 until May 1998 with [REDACTED]

Counsel states on appeal that the corrected employment verification letter submitted on appeal establishes the beneficiary's experience. Counsel also states that the Form W-2's for 2001 and 2002 submitted prior to the

director's decision were relevant evidence. Counsel also states that Form W-2's for 1999, 2000 and 2003 submitted on appeal clarify the relevance of the Form W-2's submitted previously.

The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, form ETA-750A, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of finisher/surfacers. On the ETA 750A submitted with the instant petition, block 14 requires two years of experience in the offered position. No other requirements are stated in either block 14 or block 15.

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 15, the beneficiary states the following work experience:

Name and Address of Employer	Name of Job	From	To	Kind of Business
[the petitioner]	[REDACTED]	Jun 1999	Present	Construction
[REDACTED] Beltsville, MD	[REDACTED]	May 1998	Nov. 1998	Construction
[REDACTED] [street address] Catonsville, MD	[REDACTED]	Aug 1995	May 1998	Construction

The Form W-2's in the record show compensation from the petitioner to the beneficiary in the years 1999, 2000, 2001, 2002 and 2003. Only the Form W-2's for 1999 and 2000 cover periods before the priority date, but those forms are not acceptable evidence to establish the beneficiary's work experience, because they lack information required by the regulation at 8 C.F.R. § 204.5(g)(1). Moreover, the record does not establish that experience with the petitioner could be qualifying experience in the instant petition.

Prior to the director's decision the petitioner submitted an employment verification form dated March 5, 2001, issued by [REDACTED] of Catonsville, Maryland. However that form was incomplete, because the space for the name of the employee was left blank.

On appeal, the petitioner submits a letter dated September 22, 2004 from the president of [REDACTED] who states that he was formerly a partner with [REDACTED] and who states that the

beneficiary worked for that company as a concrete finisher from August 15, 1998 until May 8, 1998, eight hours a day, five days a week. The September 22, 2004 letter submitted on appeal is sufficient to establish that the beneficiary had two years of experience in the offered position as of the April 26, 2001 priority date.

In her decision, the director found the March 5, 2001 employment verification form to be insufficient proof of the beneficiary's experience, because the form did not contain the name of the employee. The director also found that the beneficiary's Form W-2's in the record before the director, which included on the Form W-2's for 2001 and 2002, were not relevant to establish the beneficiary's experience, since they covered periods after the priority date. The director's decision to deny the petition was correct, based on the evidence in the record before the director. However, the assertions of counsel on appeal and the evidence newly submitted on appeal are sufficient to overcome the decision of the director.

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.