

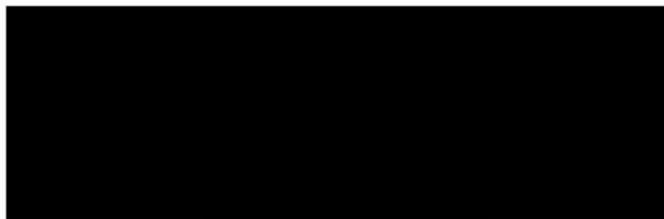
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Handwritten mark



FILE:



EAC 04 106 53810

Office: VERMONT SERVICE CENTER

Date: **OCT 20 2006**

IN RE:



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)

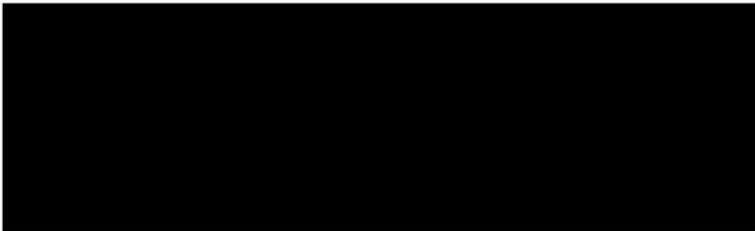
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Michael Valada".

Robert P. Wiemann, Chief
Administrative Appeals Office



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

The petitioner is a gas station and automobile repair firm. It seeks to employ the beneficiary permanently in the United States as an automobile mechanic. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

The director determined that the petitioner had not established the beneficiary's qualifying work experience pursuant to the requirements of 8 C.F.R. § 204.5(l)(3) and issued a notice of intent to deny the petition on July 29, 2004. The director advised the petitioner, through former counsel,¹ that the letter submitted in support of the beneficiary's requisite two years of experience in the certified position, purportedly from a prior employer, contained an unknown signature and failed to describe the beneficiary's specific duties. She advised the petitioner that a final decision on the case would not be made for thirty (30) days and that the petitioner could submit evidence to overcome these deficiencies. The director also advised the petitioner that its submission must include the original employment verification letter and a description of the beneficiary's specific duties during the claimed employment.

On March 21, 2005, the director informed counsel that as no evidence had been received in response to the notice of intent to deny, the grounds for the intended denial of the petition had not been overcome. The director denied the petition.

Counsel filed a timely appeal and submitted a letter from the beneficiary's previous employer. The AAO will not consider such evidence and finds that the director's grounds for denying the petition were appropriate. As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the document(s) in response to the director's intent to deny the petition on July 29, 2004. Under the circumstances, the AAO need not and does not consider the sufficiency of this evidence provided for the first time on appeal. Since the petitioner has made no other argument on appeal, this appeal will be dismissed.

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 appeal is dismissed.

¹ The appeal was filed on April 19, 2005. As the petitioner's counsel was subsequently expelled (December 2, 2005) from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security, the petitioner will herein be treated as representing itself. A copy of this decision will be furnished to former counsel.