



U.S. Citizenship
and Immigration
Services

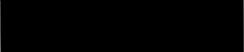
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 08 2006**

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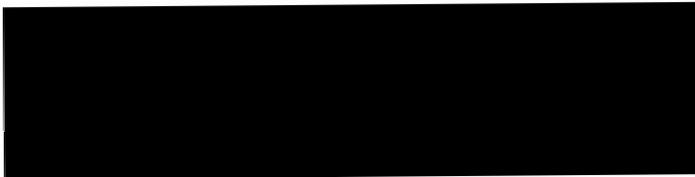
Petitioner:

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California 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 floor covering company. It seeks to employ the beneficiary permanently in the United States as a supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's February 15, 2005 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.

The petitioner must demonstrate 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 DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 26, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal¹. On appeal, counsel submits a brief and a copy of the certified Form ETA 750. Other relevant evidence in the record includes a letter dated January 13, 2005 from the petitioner indicating that the beneficiary has worked for the petitioner since February 1996, a letter dated January 15, 2005 from [REDACTED] indicating that the beneficiary worked for Mr. [REDACTED] as a floor covering installer from February 1994 to February 1996, a letter dated January 17, 2005 from [REDACTED] indicating that the beneficiary worked for [REDACTED] as a floor covering installer from September 1990 to February 1994, a letter dated March 16, 2004 from the petitioner indicating that the beneficiary has worked for the petitioner as a floor covering installer since February 1996, an affidavit dated February 17, 2004 from [REDACTED] indicating that the beneficiary worked for Mr. [REDACTED] as a floor covering installer from February 1994 to February 1996, and an affidavit dated February 17, 2004 from [REDACTED] indicating that the beneficiary worked for Mr. [REDACTED] as a floor covering installer from September 1990 to February 1994. The record does not contain any other evidence relevant to the beneficiary's qualifications.

¹ 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).

On appeal, counsel asserts that the director misread the requirements listed on the Form ETA 750. He states that the labor certification application clearly indicates that two years of experience is required on the job offered of supervisor or four years in the related occupation of floor covering installer. He asserts that the beneficiary met the minimum requirements of the position with his over four years of experience as a floor covering installer.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of supervisor. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	N/A
	High School	N/A
	College	N/A
	College Degree Required	blank
	Major Field of Study	blank

The applicant must also have two years of experience in the job offered or four years of experience as a floor covering installer.² The duties of the job offered are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked as a floor covering installer for [REDACTED] Carpet Service from September 1990 to February 1994, that he worked as a floor covering installer for [REDACTED] Carpet Service from February 1994 to February 1996, and that he worked for the petitioner as a floor covering installer from February 1996 to the date he signed the Form ETA-750B. He does not provide any additional information concerning his employment background on that form.

The record of proceeding also contains a Form G-325, Biographic Information sheet submitted in connection with the beneficiary's application to adjust status to lawful permanent resident status. On that form under a section eliciting information about the beneficiary's employment for the last five years, he represented that he had

² Item 14 of Form ETA 750A permits an employer to list alternative experience requirements. An employer may specify alternative experience or qualification requirements on the labor certification application, provided the alternative requirements and primary requirements are substantially equivalent to each other with respect to whether the applicant can perform the proposed job duties in a reasonable manner. *Matter of Francis Kellogg*, 94-INA-465 (BALCA 1998)(en banc).

worked for the petitioner as a floor installer from February 1996 to the date he signed the Form G-325A on March 31, 2004 above a warning for knowingly and willfully falsifying or concealing a material fact.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(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 evidence submitted by the petitioner demonstrates that the beneficiary worked for [REDACTED] as a floor covering installer from February 1994 to February 1996, that he worked as a floor covering installer for [REDACTED] Carpet Service from September 1990 to February 1994, and that he worked for the petitioner as a floor covering installer from February 1996 through January 2005. The petitioner provided documentation of his prior work experience as required by 8 C.F.R. § 204.5(l)(3). Item 14 of the Form ETA 750A clearly provides that the applicant must have two years of experience in the job offered or four years of experience as a floor covering installer. The preponderance of the evidence demonstrates that the beneficiary acquired over four years of experience as a floor covering installer from the evidence submitted into this record of proceeding. Thus, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.