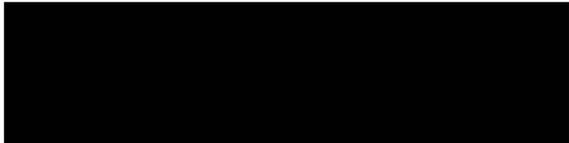


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APR 05 2007

FILE: WAC 05 045 52345 Office: CALIFORNIA SERVICE CENTER Date:

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

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a dentist. It seeks to employ the beneficiary permanently in the United States as a dental assistant. 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 that the beneficiary had acquired the necessary qualifying employment experience as of the priority date of the visa petition.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary possesses the qualifying work experience and is eligible for the visa classification sought.

Section 203(b)(3)(A)(i) of 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.

The regulation at 8 C.F.R. § 204.5(l)(3) further 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 petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, which is the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 9, 2001.<sup>1</sup>

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<sup>1</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

Item 14 of the ETA 750A describes the required education, training and experience that an applicant for the certified position must possess. In this matter, item 14 states that the alien must have a minimum of two years of experience in the job offered of dental assistant or two years in a related occupation of dental technologist.

On the ETA 750B, signed by the beneficiary on April 5, 2001, she lists her qualifying employment as working as a dental assistant/technologist for [REDACTED] of Capitol Heights, Bacolod, Philippines from June 1989 to May 1995.

With the petition a letter, dated February 15, 2001, was submitted in order to corroborate the beneficiary's employment by [REDACTED]. The letter is signed by [REDACTED] and affirms the beneficiary's employment as a dental assistant/dental technologist during the period noted above. Her duties are described as assisting the doctor, sterilizing instruments and instrument set-up, taking x-rays, fabricating custom trays and denture repair, and pouring and trimming master casts.

On May 11, 2005, the director requested additional evidence relevant to the verification of the beneficiary's past employment. He advised the petitioner that further authentication of the employment verification letter was requested as it was not submitted on letterhead. He requested that the petitioner submit an original letter from the beneficiary's qualifying employer verifying the beneficiary's duties. He requested copies of pay stubs, payroll summary, and tax records, as well as articles of incorporation in order to verify the employer's business.

In response, the petitioner provided a letter, dated June 9, 2005, from [REDACTED] on her business letterhead. [REDACTED] verified that the beneficiary had been employed full-time by her as a dental assistant/technologist from June 1989 to May 1995. She affirmed that the beneficiary assisted with dental procedures, x-rays, fabrication of trays and pouring and trimming master casts. This letter was accompanied by several copies of tax returns filed by [REDACTED] as well as another letter stating that no payroll stubs and/or checks were issued to the beneficiary because she was paid cash for her work. A letter from the beneficiary also states that she was paid in cash. The petitioner further supplied copies of the beneficiary's 1990-94 Filipino tax returns showing her occupation as a dental assistant and her reported wages.

The director denied the petition on August 24, 2005, determining that the two letters submitted by [REDACTED] were vague in nature and failed to explain if other employees had been paid in cash. The director also noted that he was unable to determine if the beneficiary had "prepared patients, sterilized and disinfected instruments, set up instrument trays, prepared materials and assisted the dentist during dental procedures."

On appeal, [REDACTED] submitted another letter, notarized and dated September 15, 2005, which corroborated that the beneficiary performed the duties required by the certified position described in the labor certification, and also explained that [REDACTED] is a sole practitioner and that the beneficiary was her only employee during the relevant time between 1989 and 1995. She stated that she paid the beneficiary in cash, but reported wages on her tax return.

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We find that the petitioner has provided sufficient evidence in support of the beneficiary's prior qualifying experience with ██████████ in the Philippines. The salary and wages reported as part of ██████████ tax returns is consistent with the beneficiary's description of her gross income on her own tax returns as ██████████' sole employee. ██████████ letters also corroborated the beneficiary's employment as a dental assistant/technologist with her office from 1989 to 1995. As the petitioner has demonstrated that the beneficiary possesses the required experience as set forth on the approved labor certification, the petition may be approved. The petitioner has established that the beneficiary is eligible for the visa classification sought.

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.