



U.S. Citizenship
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APR 10 2007

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 03 201 50066

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:

[REDACTED]

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 employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted as a motion to reopen. The previous decisions of the director and the AAO will be withdrawn, and the petition will be approved.

The petitioner is a convenience store. The petitioner sought to employ the beneficiary permanently in the United States as a store manager. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The director determined that the evidence did not establish that the beneficiary had the requisite six months of training required by the terms of the labor certification. On April 6, 2004, the director denied the petition.

The AAO dismissed the petitioner's appeal on August 16, 2005.¹ The AAO reviewed the evidence of the beneficiary's training, consisting of a certificate from the Food Service Educational Seminars, Incorporated, certification as a Foodservice Manager from the Chicago Department of Health, and an employment verification letter from ██████████ in Curacao, but found that each document failed to provide sufficient information from which the frequency or duration of training could be determined. The AAO concluded that the evidence failed to show that the beneficiary's training represented six or more months of full-time training.

Counsel submits a motion styled as a "motion to reconsider" accompanied by a new letter from ██████████

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or CIS policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision. A motion to reopen must state the new facts to be submitted in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(3).

Although counsel's new letter from ██████████ refers to an earlier letter provided to the underlying record, it more closely resembles the submission of new facts relevant to a motion to reopen rather than constituting a basis to conclude that the earlier decisions of the director and AAO were based on an incorrect application of law or CIS policy. The AAO will treat counsel's motion as a motion to reopen.

As noted in the earlier AAO decision, a petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date in this case is April 26, 2001. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

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

(ii) *Other documentation*—

¹ The labor certification contained other requirements related to the applicant's education and work experience. The only issue disputed on appeal is whether the beneficiary had acquired six months of training pertinent to store management.

(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 record contains a letter, dated October 25, 2003, from [REDACTED] signed by [REDACTED] President. He describes the beneficiary's duties during his employment from July 1992 to August 1996 and states that the beneficiary's "first one year of service was coupled with management training pursuant to [REDACTED]'s corporate guidelines, teaching employee policies, as well as introduction to small department management, inventory control, employee supervision, procedures for handling employee duties and employee issues, sales promotions, inventory control and customer public relation."

The phrase "coupled with management training" was interpreted in the earlier AAO decision to mean that the beneficiary had received some unspecified amount of training during his first year of employment with [REDACTED]

The AAO rejected former counsel's contention that the training consisted of part-time training or lasted at least six months. The AAO continues to find that [REDACTED] initial letter is not clear as to what percentage of time the beneficiary was receiving management training and does not demonstrate that he obtained six months of full-time training.

On motion, current counsel submits a new letter, dated August 20, 2005, from [REDACTED]. He states that he intends to clarify his 2003 letter by confirming that the beneficiary's first year of employment (July 1992 through June 1993) was devoted to management training in accordance with corporate guidelines. [REDACTED] states that at all times during the first year of employment, the beneficiary was considered a trainee and was trained and supervised by experienced corporate personnel.

The AAO finds that the petitioner has met its burden in establishing that the beneficiary acquired six months of training as of the priority date and qualifies for the visa classification sought.

ORDER: The motion to reopen is granted, and the previous decisions of the director and the AAO are withdrawn. The petition is approved.