

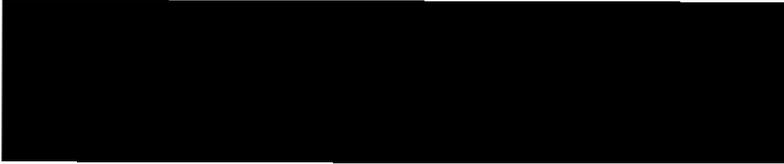
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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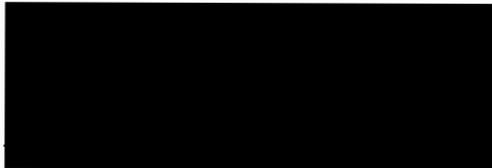
FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 05 016 51200

JAN 30 2007
Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

ON BEHALF OF PETITIONER:



PUBLIC COPY

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 Director, Nebraska Service Center denied the employment-based immigrant visa petition. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner conducts structural engineering design and analysis. It seeks to employ the beneficiary permanently in the United States as a structural engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the beneficiary met the requirements of the labor certification as of the priority date, June 28, 2002.

The record shows that the appeal is properly filed, 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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's August 30, 2005 denial, the single issue in this case is whether or not the beneficiary meets the requirements of the labor certification as of the priority date.

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.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(3) states, in pertinent part:

(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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the

petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date.¹ The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is June 28, 2002.

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 appeal².

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In this case, Block 14 requires that the beneficiary must possess a Masters of Science in Engineering [Structural (Civil) Engineering] and two years of experience in the job offered or two years of experience in the related occupation of structural (civil) engineering. Block 15 requires that the experience be post baccalaureate experience and must include three months in seismic engineering.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of structural engineer must have a Masters of Science in Structural (Civil) Engineering and two years of experience in the job offered or two years of experience in a related occupation. The experience must be post baccalaureate experience and must include three months of seismic engineering.

The beneficiary, in this matter, claims, on Form ETA-750 Part B, that his prior employment included employment with the petitioner from March 1998 to the present as a structural engineer, with Wong Hobach Lau Consulting Engineers in Los Angeles, CA from June 1997 to September 1997 as a junior structural engineer, and with Sungshan AFB, ROC Air Force in Taipei, Taiwan from July 1993 to May 1995 as a facilities engineer officer.

In the instant case, counsel submitted a letter, dated June 5, 2002, from WHL Consulting Engineers in Los Angeles, CA, a discharge letter, dated June 1, 1995, from the Minister of National Defense of the Republic of China (Taiwan), and a letter, dated February 11, 2005, from [REDACTED], Vice President, of the petitioner as evidence that the beneficiary met the experience requirements of the labor certification as of the priority date of the visa petition. Counsel also submitted evidence of the beneficiary's Master of Science Degree in Civil Engineering (obtained May 18, 1997). The first letter,

¹ 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).

² 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).

from WHL Consulting Engineers, states that it employed the beneficiary as a full-time structural engineer from June 12, 1997 through September 12, 1997, or three months.

The second letter, from the Minister of National Defense, Republic of China (Taiwan), states that the beneficiary was enrolled as a facilities engineering officer from July 16, 1993 through May 31, 1995, or one year and 10 ½ months.

The third letter, from _____ attempts to corroborate the beneficiary's prior employment with WHL Consulting Engineers and with the Taiwan Air Force.

The director determined that there was no evidence in the record that establishes that the beneficiary is currently qualified for the position listed on the ETA 750 as the petitioner is "not in a position to verify employment experience gained from unrelated organizations" and denied the petition accordingly. The director also determined that the experience letters from WHL Consulting Engineers and the Taiwan Air Force failed to meet the content requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A) because they did not contain a description of the duties performed by the beneficiary.

On appeal, counsel submits a new letter from WHL Consulting Engineers, dated September 20, 2005, explaining the beneficiary's duties while employed with WHL Consulting Engineers that included "engineering design of reinforced concrete work including structural modeling for seismic and other loads as well as development of reinforcing, etc." Counsel also submits a letter from Commander _____ of the National Defense Management College in Taipei, Taiwan, verifying the beneficiary's service in the Republic of China Air Force from July 1993 to May 1995 at Sung-San Air Force Base Command, Taipei. Commander Chang states that the beneficiary's duties during his service included construction projects design/management and facilities maintenance and that most of his design work concentrated on reinforced concrete design and a small portion of steel framing and design.

The evidence in the record, through the letters from Commander Chang with the National Defense Management College in Taipei and from WHL Consulting Engineers show that the beneficiary has the required two years experience as a structural engineer including the three months of seismic engineering as stated on the ETA-750A, Parts 14 and 15. The letter from Commander Chang reflects that Commander Chang was the beneficiary's trainer, provides contact information, and a description of the beneficiary's training. The letter from WHL Consulting Engineers is written by a principal of the business, provides contact information, and a description of the beneficiary's training. Thus, both letters conform to the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A) and establish the beneficiary's qualifications for the proffered position. If the director deems it necessary, he may request additional evidence or an investigation before the Form I-485, Application to Register Permanent Resident or Adjust Status, is adjudicated. According to the record of proceeding, the petitioner has established that the beneficiary met the requirements of the labor certification before the priority date of June 28, 2002.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.