



U.S. Citizenship
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FILE:

SRC 05 258 51553

Office: TEXAS SERVICE CENTER

Date:

MAY 03 2007

IN RE:

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. 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 petroleum product marketing, service station and convenience store. It seeks to employ the beneficiary permanently in the United States as a night shift manager. 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 and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary obtained the qualifying work experience. On the notice of appeal, counsel requests an unspecified amount of time if his motion to reopen/reconsider/appeal is not successful. This decision will be rendered on the record as it stands. Additional time to submit a brief or evidence is not conditional upon whether a previous argument succeeds or fails.

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. The filing date or priority date of the petition is the initial receipt in the DOL's employment service 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 30, 2001. The visa preference petition was filed on September 23, 2005.

The ETA 750B, signed by the beneficiary on April 29, 2001, does not indicate that he has worked for the petitioner.

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that two years of work experience is required in the job offered of a night shift manager.

In support of the beneficiary's qualifying past work experience, the petitioner provided a letter, dated February 3, 2001, from [REDACTED], the owner of "[REDACTED]" in India. [REDACTED] affirms that the beneficiary was a manager at his store from March 1999 to December 1999, and describes the nature of the beneficiary's managerial duties.

The petitioner also provided another letter, dated February 12, 2001, from [REDACTED] the president of [REDACTED], in Lawrenceville, Georgia. [REDACTED] states that the beneficiary was a manager at this gas station from February 9, 2000 to March 26, 2001.

In response to the director's request for evidence advising the petitioner that the documentation did not show that the beneficiary had acquired two full years of experience as a night shift manager, the petitioner, through counsel, provided a third letter from "Premier Automobiles" in India. This letter, with an unknown date is signed by [REDACTED]. [REDACTED]'s title or job is not identified. He states that the beneficiary worked for Premier Automobiles from 1985 to 1994 (ten years) as a manager in marketing and sales. [REDACTED] states that beneficiary was "more extensively involved in Marketing and Sales of various Automobile parts to different Clients in Various cities involving lot of travel."

The director denied the petition on November 8, 2005. The director determined that the beneficiary must have twenty-four months experience as a manager of a convenience store and that the experience must include gas sales and storage procedures. The director concluded that the beneficiary had accrued a total of twenty-two months and two weeks experience from the New Highway Diesel Service and N.R. Investment, Inc. However, the director concluded that the beneficiary's employment with Premier Automobiles had involved managerial duties unrelated to the certified position of a night shift manager at a gas station and convenience store. As such, the director determined that the beneficiary had not met the minimum requirements of two years of qualifying work experience as required by the terms of the labor certification.

On appeal, counsel provides another letter of employment verification. This letter, dated November 18, 2005, is from [REDACTED] of the [REDACTED] in India. [REDACTED] affirms that the beneficiary worked as an assistant manager from January 1, 1981 to December 31, 1981 and was promoted to petrol pump station manager from January 1, 1982 to December 31, 1984. His duties included daily operation of the business, staff management, and daily bookkeeping and accounting.

Through this letter, the AAO concludes that the petitioner has sufficiently demonstrated that the beneficiary has obtained two years of employment experience in the job offered as of the priority date of April 30, 2001. Therefore 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.