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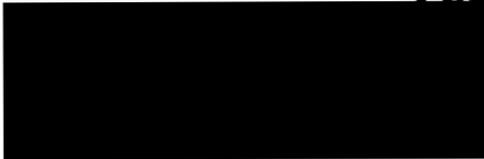
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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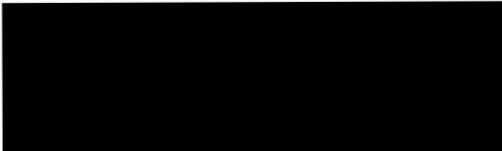
Office: NEBRASKA SERVICE CENTER

Date: NOV 01 2007

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:



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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, the appeal will be sustained, and the petition approved.

The petitioner is a dyeing/manufacturing company. It seeks to employ the beneficiary permanently in the United States as a production supervisor. As required by statute, a Form ETA 9089, Application for Permanent Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary met the experience requirements of the labor certification as of the priority date of the visa petition. The director denied the petition accordingly.

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 May 10, 2007 denial, the single issue in this case is whether or not the beneficiary met the experience requirements of the proffered job as specified by the Form ETA 9089 at the priority date of February 27, 2006.

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) 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.

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. 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 February 27, 2006.

Citizenship and Immigration Services (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).

The approved alien labor certification, "Offer of Employment," (Form ETA-9089 Part H) describes the terms and conditions of the job offered. In this case, Part H, Question 6-A requires that the beneficiary must possess two years of experience in the job offered.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of production supervisor must have two years of experience in the job offered of production supervisor.

In the instant case, counsel submitted an affidavit, dated February 15, 2007, from the beneficiary stating that he was the owner and production supervisor of [REDACTED] from May 12, 1997 to December 30, 2001. Counsel also submitted an affidavit, dated February 15, 2007, from [REDACTED] stating that from 1997 to 2001, he was one of the beneficiary's main clients, and, therefore, has first hand knowledge of the beneficiary's employment at [REDACTED] states, that as owner and production supervisor of [REDACTED] the beneficiary committed more than 40 hours per week in his employment overseeing production and manufacturing of sewing machines and sewing machine parts. The director determined that the two affidavits were insufficient as proof of the beneficiary's two years of experience as a production supervisor and denied the petition accordingly.

On appeal, counsel states:

Although we submitted various documents in support of beneficiary's experiences as Production Supervisor with [REDACTED] from May 12, 1997 through December 30, 2001, nevertheless, the Nebraska Service Center denied the I-140 petition.

Therefore, we hereby submit Employment Verification Letter, Certificate of Income and Certificate of Corporate Registration to support beneficiary's prior experiences as Production Supervisor with Kumho Machine Co. in Seoul, South Korea from May 1, 1984 to December 20, 1993.

The letter supplied by counsel on appeal, signed by [REDACTED] President, states that the beneficiary was employed by [REDACTED] as a full-time production supervisor from May 1, 1984 to December 20, 1993. The Certificate of Income from the Seong-dong Office provides the wages earned by the beneficiary from the [REDACTED] in 1993 and 1994. The Certificate of Corporate Registration from the Seong-dong Tax Office shows that the [REDACTED] was registered on July 20, 1983.

As there is nothing in the record of proceeding that leads the AAO to doubt the validity of the letter from [REDACTED] the AAO must conclude that the petitioner has established that the beneficiary met the experience requirements at the priority date of February 27, 2006. If the director deems it necessary, he may request additional evidence or an investigation of the beneficiary's experience requirements before the Form I-485, Application to Register Permanent Resident or Adjust Status, is adjudicated.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal overcome the decision of the director.

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 director's May 10, 2007 decision is withdrawn. The petition is approved.