



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
EAC 06 060 51165

Office: VERMONT SERVICE CENTER

Date: JAN 22 2008

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner identifies itself as being in the architectural business. It seeks to employ the beneficiary permanently in the United States as an architectural drafter. 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 concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite qualifying knowledge of AutoCad 2000 as of the visa priority date, and denied the petition accordingly.

On appeal, the petitioner, through counsel, provides additional evidence and maintains that the petitioner has demonstrated that the beneficiary's knowledge of the AutoCad 2000 meets the requirements of the approved labor certification.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3) 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 January 28, 2002.<sup>1</sup>

Part 5 of the Immigrant Petition for Alien Worker (I-140), which was filed on December 21, 2005, indicates that the petitioner was established in 1999, claims a gross annual income of 75 million dollars and over 100 employees. It identifies itself as being in the construction business rather than primarily doing architectural work as indicated on the ETA 750.

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 no college education is required, but an applicant must have two years of work experience in the job offered as an architectural drafter.

Item 15 describes other special requirements. Here the special requirement is stated as follows:

Must have knowledge in AutoCad 2000. Verifiable references.

Relevant to the beneficiary's two years of employment experience as an architectural drafter, a letter, dated November 16, 2001, from a Venezuelan company called [REDACTED] of Maracaibo states that the beneficiary worked as a "Grafter Architectural" from June 1993 to June 1996.<sup>2</sup> The letter is signed by [REDACTED] and claimed that the beneficiary worked full-time during this period.

On May 2, 2006, the director issued a request for evidence, instructing the petitioner to submit evidence that the beneficiary possessed the required knowledge in AutoCad 2000 as of the priority date of January 28, 2002.

In response, the petitioner provided a letter, dated July 18, 2006, from the general director of Centro De Capacitacion Profesional, [REDACTED]. According to the reference at the bottom of the letter, this institution is located in Wheaton, Maryland. [REDACTED] states that the "Professional Development Center certifies that [the beneficiary] is currently attending Autocad 2000" and that the training will end on October 28, 2006.

Determining that this letter did not confirm that the beneficiary possessed knowledge in AutoCad 2000 as of the priority date of January 28, 2002, the director denied the petition on September 12, 2006.

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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.

<sup>2</sup> The AAO takes the use of the word "Grafter" to mean drafter.

On appeal, counsel asserts that the beneficiary acquired knowledge of previous AutoCad versions while working for [REDACTED] from June 1993 to June 1996 and that the beneficiary kept himself updated in later versions. Counsel claims that the beneficiary acquired knowledge of AutoCad 2000 in approximately one month after receiving an AutoCad 2000 manual from a friend in Venezuela in November 2001. Counsel submits an affidavit from the beneficiary in support of this assertion. It is claimed that the course taken in 2006 was only upon the instructions of the beneficiary's previous attorney.

The beneficiary's affidavit offers similar assertions, stating that he used prior versions of AutoCad while working for the [REDACTED] and only needed to update himself by reviewing the instruction manual sent to him by a friend. Along with this affidavit, is a copy of a letter from what the beneficiary identifies as a co-worker at the Venezuelan company who states that during his employment with that company from June 1993 to June 1996, he used AutoCad programs daily as an employee of the company. Along with the beneficiary's affidavit and this letter, counsel has submitted a copy of a certificate commemorating the beneficiary's assistance in a course involving AutoCad R12 in 1995, certificates reflecting training in ARC/INFO, BASIC ARCAD and ARC/VIEW in June and July of 1995, and a partial copy of printouts from an AutoCad2000 publication accompanied by a mail receipt which the beneficiary states reflects its delivery to him in November 2001.

We do not find counsel's contentions on appeal to be persuasive. To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(i) of the Act. CIS jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the Act, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary v. Coomey*, 662 F.2d 1 (1<sup>st</sup> Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). In evaluating the beneficiary's qualifications, 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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The Application for Alien Employment Certification Form ETA-750A, item 15 specifically requires that the applicant "must have knowledge in AutoCad 2000." This is phrased as a requirement rather than as a desirable attribute of an applicant for the certified position of architectural drafter. It implies at a minimum that a foreign applicant or an interested U.S. worker should be able to establish at least a basic proficiency in AutoCad 2000. It is not found that the materials submitted on appeal which reflect the beneficiary's training or use of other kinds of AutoCad related programs in the period between 1993 to 1996 and a mail receipt alleged to be related to the shipment of a manual related to AutoCad 2000 specifically verify that the beneficiary acquired the kind of "knowledge in AutoCad 2000" as required by the terms of item 15 of the ETA 750 as of the priority date of January 28, 2002. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner's actual

minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Based upon our review of the record, we conclude that the petitioner failed to meet its burden of proof in demonstrating that the beneficiary had obtained the required knowledge in AutoCad 2000 as of the priority date of January 28, 2002.

Beyond the decision of the director, it is noted that in any future proceedings, further investigation should be conducted relevant to the qualifying work experience claimed by the beneficiary. It is noted that the record contains evidence that the beneficiary was sponsored by another employer that sought his services as a janitorial service supervisor. On the ETA 750B in that case, signed by the beneficiary in 2001 and on an employment verification letter, it was claimed that he worked full-time as a janitorial service supervisor in Venezuela from January 1995 to August 1997. As this period of time overlaps the claimed architectural employment in this case, consistent with the requirements of the regulation at 8 C.F.R. § 103.2(b)(16)(i), any future petitioner should be informed of the adverse information contained herein and offered an opportunity to provide rebuttal.

The petitioner has not established that the beneficiary possessed the requisite qualifying credentials as of the priority date. 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 not met that burden.

**ORDER:** The appeal is dismissed.