U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Service: CALIFORNIA SERVICE CENTER Date: AUG 1 6 2004

IN RE: Petitioner: [redacted]
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:

[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, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner is an accounting firm. It seeks to employ the beneficiary permanently in the United States as an auditor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification filed on April 30, 2001, and approved by the Department of Labor (DOL), on March 4, 2002. The director determined that the petitioner had not established that the beneficiary had the necessary experience because the petition was not supported by evidence that the beneficiary had previously been employed on a full-time basis as an auditor.

On appeal, counsel for the petitioner submits a brief, and additional evidence in support of the appeal.

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. Pursuant to 8 CFR § 204.5(l)(3)(ii)(B), the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA 750 which, in this case, includes a bachelor's degree in accounting and two years of experience in the job offered or two years of experience in an auditing/accounting position.

A review of the record discloses that the petition was accompanied by a "Statement of Operations" dated December 31, 2001, a copy of the beneficiary's college degree and transcript, and a "Certification" dated April 27, 2002 from [redacted] in the Philippines, which indicated that the beneficiary was employed as a staff member from November 18, 1996, to November 30, 1999, and related her work on the audit staff of the company. The letter did not include any information regarding the number of hours per week that the beneficiary worked for the company, or whether her employment was on a full-time or part-time basis.

The Service Center issued a Request for Additional Evidence (RFE), dated August 14, 2002, seeking various forms of additional evidence on the petitioner's ability to pay and the beneficiary's experience. The relevant request for purposes of this decision is the Service Center's request that the petitioner submit evidence of the beneficiary's experience. With respect to the evidence requested, the petitioner was advised the following:

> Evidence of prior experience should be submitted in letterform on the previous employer's letterhead showing the name and title of the person verifying this information. This verification should state the beneficiary's title, duties and dates of employment/experience and number of hours worked per week.

In response, counsel submitted a letter dated August 30, 2004, from the same individual who supplied the previous certification. This certification stated generally that the beneficiary had been employed as a "regular staff member." No specific information was provided regarding the hours worked by the beneficiary, and

counsel offered no related supplemental information from which the hours could be ascertained such as pay stubs or tax records. The director issued a decision dated December 6, 2002, finding that the petitioner had not provided the information requested, and thus had not established that the beneficiary had the required experience necessary for the position. (Director's Decision at p.2.)

On appeal, counsel submits a brief and a letter dated December 21, 2002, from The letter addresses the issue of the hours worked by the beneficiary specifically stating:

> At her request, we would like to certify that was employed as a **full time** regular staff member or four Firm **working at least 40 hours a week** from November 18, 1996 to November 30, 1999.

(Emphasis in original.)

Counsel argues that the number of hours worked by the beneficiary is irrelevant, as it is clear that she possesses the experience necessary to perform the duties. (Counsel's Appeal Brief, at p.3.) In support of this position, counsel cites two cases, *Matter of Maple Derby,* 89-INA-185 (May 15, 1991), and *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Reg. Comm. 1977). Counsel's reasoning appears to be that the two cases cited support the principle that that so long as the previous position consisted of job duties similar to those of the proffered position, the beneficiary should be deemed to be qualified for the position. Counsel's next argument appears to be that once the beneficiary possesses the qualifications for the position, the fact that the number of hours was not provided is irrelevant. (Counsel's Appeal Brief at p.4.)

Although we find that the appeal overcomes the director's decision, we do not find counsel's arguments persuasive. First, counsel's reliance upon these cases in support of her position is misplaced. *Matter of Maple Derby, Inc.*, did not find that it was unnecessary to determine whether the alien's qualifying experience involved full-time employment, nor did it otherwise address the issue of whether the hours an employee worked in a job were somehow not determinative. Rather, the issue in the case involved a situation where DOL's Certifying Officer (CO) had rejected evidence of an individual's employment experience on the basis that the alien only possessed six months of experience in the position of an accountant. *Matter of Maple Derby, Inc.,* at p.2. The Board of Alien Labor Certification Appeals rejected the CO's conclusion, finding that experience performing the job duties specified would qualify, regardless of whether the duties were performed under different titles and that it would be appropriate to aggregate the experience gained through the alien's different and qualifying positions. *Matter of Maple Derby, Inc.* at p.6. The decision did not, however, address any issue regarding positions that were less than full-time employment situations. Second, counsel's argument ignores the fact that the regulations in the context of the labor certification process define employment. The applicable regulation defines employment as "permanent full-time work by an employee for an employer other than oneself." 20 C.F.R. § 656.3. Therefore, contrary to counsel's assertion, whether a beneficiary has been engaged in full-time employment is important to a determination of whether the employment constitutes qualifying experience for purposes of the petition.

Nevertheless, the AAO has determined that it is appropriate to consider the evidence submitted on appeal which indicates that the beneficiary was engaged in full-time employment during her employment at

Although the letter originally submitted to the Service Center did not contain specific information regarding the number of hours the beneficiary was employed or whether she was engaged in full-time employment, we note that the Service Center's request was not simply ignored. Therefore, it is possible that the failure to include the necessary information was due to a misunderstanding. As the necessary information has now been provided, and because we are unaware of any reason to question the evidence, the AAO will accept the evidence even though it is being submitted for the first time on appeal. We further find that the evidence submitted resolves the remaining issue relating to the beneficiary's qualifications in the beneficiary's favor.

ORDER: The director's decision is withdrawn and the appeal is sustained.