

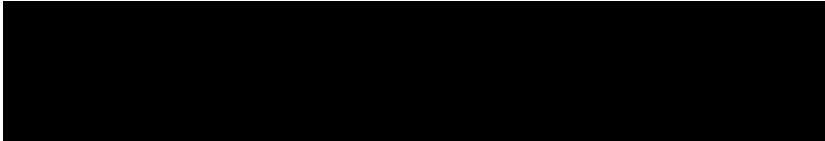
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
LIN 03 201 50066

Office: NEBRASKA SERVICE CENTER

Date: AUG 16 2005

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a convenience store. It seeks to employ the beneficiary permanently in the United States as a store manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that the beneficiary has the requisite training as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief.

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 unavailable in the United States.

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

- (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.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on April 26, 2001. The labor certification states that the position requires a four-year bachelor's degree with no specific major, two years of experience in the proffered position, and six months of training.

That the beneficiary has a bachelor's degree and two years of experience in the proffered position is not disputed. The discussion and analysis will focus on whether petitioner has demonstrated, in accordance with the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A), that the beneficiary has the requisite six months of training as specified on the approved labor certification.

With the petition counsel submitted no evidence pertinent to that requisite six months of training. Therefore, the Nebraska Service Center, on October 17, 2003, requested, *inter alia*, evidence pertinent to the required training. Consistent with the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A), the Service Center requested that evidence of the beneficiary's training be in the form of letters from trainers or employers giving the name, address, and title of the trainer, a description of the training received by the alien, and the specific dates of the training.

In response, counsel submitted a letter, dated October 25, 2003, from Harry's Plaza in Curaçao. That letter states that Harry's Plaza employed the beneficiary from July 1992 to August 1996, and that "[the beneficiary's] first one year of service was coupled with management training pursuant to Harry's corporate guidelines." The letter says nothing pertinent to the frequency or duration of training sessions.

Counsel also submitted a Certificate of Completion from Food Service Educational Seminars, Incorporated, showing that the beneficiary had successfully completed all requirements for Beverage Alcohol Sellers and Servers Education and Training (BASSET) and passed an examination in that subject on July 12, 2000. That certificate says nothing pertinent to the frequency or duration of any training sessions leading to that certificate.

Further still, counsel submitted a certification from the Chicago Department of Public Health stating that the petitioner passed an examination on June 17, 2000 and is a certified Foodservice Manager.

Counsel also submitted her own statement, dated November 26, 2003, in which she stated that the training the beneficiary received from the Chicago Department of Public Health "cover(ed) a three month span," and that the beneficiary received management training at Harry's Plaza in Curaçao, which training "was for one year." Counsel made no statement pertinent to the training required to receive the BASSET certificate.

The director determined that the evidence submitted did not establish that the beneficiary has the requisite six months of training. On April 6, 2004, the director denied the petition.

On appeal, counsel asserts that the evidence demonstrates that the petitioner has 18 months of training, and, in the alternative, if the training was part-time; then it is the equivalent of nine months of training.

The record contains no evidence of the length of the training that led to the beneficiary's BASSET certificate. In the absence of any such evidence, this office cannot credit the beneficiary with any number of months of training based on his possession of that certificate.

The only indication of the length of the training the beneficiary received in order to receive the Chicago Foodservice Certificate is counsel's own November 26, 2003 statement that the training "covered a three month span." The assertions of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. The record contains no evidence of the length of the training that led to the BASSET certificate. Absent any such evidence, this office cannot credit the beneficiary with any number of months of training based on his possession of that certificate.

The remaining claim of qualifying training is that received at Harry's Plaza in Curaçao. The letter from Harry's Plaza states that the beneficiary's first one year of service "was coupled with management training." Counsel asserts that this must be read to mean that the beneficiary's entire first year with that company consisted of training only or, in the alternative, if it consisted of part-time training it must be credited at 50% of its calendar duration, or six months of training.

The plain meaning of the words used indicates that the beneficiary had some unspecified amount of training during his first year of employment with Harry's Plaza. Counsel states that to read it according to that plain meaning is to misconstrue it. Counsel's argument is unconvincing.

The record contains no evidence of the frequency or duration of the training sessions. Counsel's assertion that, if the training was part-time, then the beneficiary still received the equivalent of six months of full-time training is without merit. In some contexts, part-time can mean 30 hours per week. Part-time can mean 15 hours per week. Part-time can mean two hours every six weeks. Without any indication of the frequency and duration of the training sessions the beneficiary attended, or may have attended, this office would be unable to find that the beneficiary's training was the equivalent of six or more months of full-time training.<sup>1</sup>

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has the requisite six months of training. Therefore the petition petitioner has failed to demonstrate that the beneficiary is qualified for the proffered position and for both reasons the petition may not be approved.

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.

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<sup>1</sup> This office is not obliged to determine, in the context of this case, what number of hours of training per week would constitute full-time training. Generally, full-time employment means 40 hours per week, whereas full-time attendance at a college means approximately 15 or more classroom hours per week and an appropriate amount of study. This decision does not address whether one of those standards or some other standard should apply to training. This decision finds only that, absent any indication of the frequency and duration of training sessions, and absent any competent evidence of the duration of the training period, the beneficiary's training cannot be found to be full-time, whatever the standard for that term might be, or to constitute six months of training.