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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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BC

FILE:

LIN 08 097 50367

Office: NEBRASKA SERVICE CENTER

Date:

APR 28 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private household. It seeks to permanently employ the beneficiary in the United States as a housekeeper. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).<sup>1</sup> The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is February 10, 2003, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

As set forth in the director's September 21, 2009 denial, the primary issue in this case is whether the job offered requires a skilled worker.

The petitioner appealed the decision on October 20, 2009. The record shows that the appeal is properly filed and timely. On appeal, the petitioner does not dispute the director's decision. Instead, the petitioner now asks to change the requested classification to that of unskilled worker pursuant to section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii).<sup>2</sup>

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

A skilled worker is an alien who is capable of performing labor requiring at least two years of training or experience 8 C.F.R. § 204.5(l)(2). An unskilled worker is an alien who is capable of performing labor requiring less than two years training or experience. *Id.* The determination of whether a beneficiary is properly classified as a skilled worker or unskilled worker is based on the training and/or experience requirements of the offered position as set forth in the labor certification. 8 C.F.R. § 204.5(l)(4). In the instant case, the labor certification states that the offered position

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<sup>1</sup>Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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.

<sup>2</sup>Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), grants preference classification to qualified immigrants who are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

requires three months of experience. Since the offered position requires less than two years of experience, it is properly classified as an unskilled worker and not as a skilled worker.

The petitioner initially requested classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act. The petitioner now attempts to change the requested classification to that of an unskilled worker pursuant to section 203(b)(3)(iii) of the Act. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). In this case, the appropriate remedy would be for the petitioner to file a new petition on behalf of the beneficiary with the proper fee and required documentation.

The evidence submitted does not establish that the labor certification requires a skilled worker, and the appeal must therefore be dismissed.

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.