

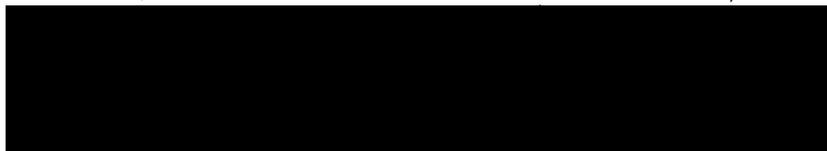
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



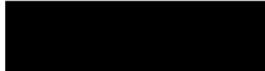
**U.S. Citizenship  
and Immigration  
Services**



B6

Date: FEB 03 2012

Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Other, Unskilled Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition and a subsequent motion to reopen were denied by the Director, Texas Service Center, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a hotel. It seeks to employ the beneficiary permanently in the United States as a computer support specialist as an other worker pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, the petition is accompanied by a Form ETA 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of experience stated on the labor certification. The director denied the petition on April 2, 2007 (petition) and a subsequent motion to reopen on February 4, 2008 (motion to reopen).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is October 30, 2006, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d). The Immigrant Petition for Alien Worker (Form I-140) was filed on December 21, 2006.

Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that the petitioner has established that it is more likely than not that the beneficiary had all the experience specified on the Form ETA 9089 as of October 30, 2006. Accordingly, the petition is approved under section 203(b)(3)(A)(iii) or the Act, 8 U.S.C. § 1153(b)(3)(A)(iii).

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, and the petition is approved.