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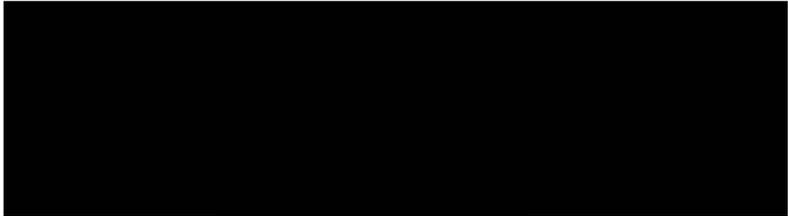
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
SRC 06 233 50513

Office: TEXAS SERVICE CENTER Date: MAR 25 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:



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 Director, Texas Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an electronic repair service. It seeks to employ the beneficiary permanently in the United States as an electronic technician. 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.

The record shows that the appeal was properly and timely filed, makes a specific allegation of error in law or fact, and is accompanied by new evidence. The procedural history of this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's decision of denial the sole issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified for the proffered position pursuant to the terms of the approved Form ETA 750 Labor Certification Application.

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.¹ *Matter of Wing's Tea House*, 16 I&N Dec.

¹ To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship and Immigration Services (CIS) must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to

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 30, 2001. The labor certification states that the position requires two years of experience in the proffered position² and one year of training in formal electronics.

On the Form ETA 750, Part B the beneficiary, who signed that form on April 24, 2001, stated that he studied "Electronics, communications" at Escuela Mecanica de la Armada (Army Mechanical School) in Capital Federal, Argentina from February 1977 to January 1978 and "Tecnical (sic) training Electricity" at Escuela Tecnica Industrial #1 in Coronel Dorego District, Buenos Aires, Argentina from March 1973 to November 1975.

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).

The AAO considers all evidence properly in the record including evidence properly submitted on appeal.³ In the instant case in support of the beneficiary's claims of qualifying technical education the petitioner submitted (1) transcripts from Escuela Tecnica Industrial #1 and English translations, (2) a transcript from the Argentine army mechanical school and an English translation, and (3) a letter dated August 31, 2006 from a professor at the University of Florida in Gainesville. The record does not contain any other evidence relevant to the beneficiary's claim of qualifying training.

The transcripts from the Escuela Tecnica Industrial show that the beneficiary attended that institution for two years. Very few of the classes the beneficiary took at that institution, however, appear to be related to electronics.

The transcript from the Argentine army indicates that the beneficiary studied there during 1977. Very few of the classes the beneficiary took at that institution are related to electronics.

The August 31, 2006 letter from the University of Florida professor purports to evaluate the beneficiary's training and employment experience, taken together, and concludes:

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 Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The decision of denial does not contest that the beneficiary has the requisite experience.

³ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Considering the eighteen years of progressively responsible work experience in Electronics Technologies, and related areas, it is my opinion that [the beneficiary] has completed the equivalent of one year of training in Electronics Technologies.

The director denied the petition on October 18, 2006.

On appeal, counsel asserted that the evidence submitted establishes that the beneficiary has the requisite one year of training. Counsel also noted that the request for evidence issued in this matter did not ask for evidence pertinent to the requisite training.

Counsel is correct that the request for evidence issued in this matter did not request evidence pertinent to the requisite one year of training in formal electronics. Whether counsel is therefore assigning error is unclear. In any event, however, the petitioner was accorded an opportunity to submit additional evidence and argument relevant to the requirement of one year of training in formal electronics, and did, in fact, submit evidence⁴ and argument on that point. Even if the failure to request additional evidence and argument pertinent to the beneficiary's training were error, it has been rendered harmless.

The evaluation of the beneficiary's training concludes that the beneficiary's work experience is equivalent to at least the required year of training in formal electronics. The Form ETA 750 labor certification, however, does not allow for substitution of work experience, or anything else, for the requisite training.

CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F2d 1 (1st Cir. 1981). Pursuant to 8 C.F.R. § 204.5(l)(3)(ii) the petitioner is obliged to demonstrate that the beneficiary has the training and other requirements listed on the approved labor certification.

The beneficiary's transcript from the Argentine army school indicates that he studied there during 1973, but does not indicate whether he studied there during the entire year or only some part of it. The beneficiary, on the Form ETA 750B, indicated that he studied there from February 1977 to January 1978, a period of less than one year. Nothing in the record indicates that the beneficiary studied at that school for one year or more.

Further, as was noted above, the record does not show that either the beneficiary's studies at the Argentine army school or his studies at Escuela Tecnica Industrial consisted chiefly of the study of electronics, nor even that his studies at either institution included any appreciable electronics training.

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite one year of training in formal electronics. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position. The petition was correctly denied on this ground, which ground has not been overcome on appeal.

⁴ The transcripts from the Argentine army school were not previously in the record.

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.