

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

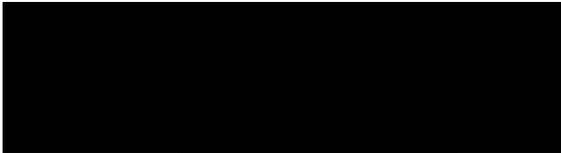
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B6



FILE:



Office: TEXAS SERVICE CENTER

Date:

OCT 14 2008

SRC 06 257 52971

IN RE:

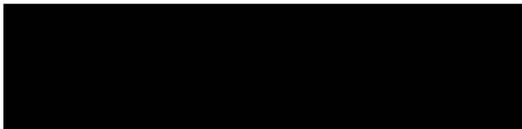
Petitioner:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is an exporter of automobiles and parts. It seeks to employ the beneficiary permanently in the United States as an automotive specialist. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had six years of work experience in the proffered position as stipulated on the Form ETA 750, and based on conflicting academic equivalency reports submitted to the record, the petitioner had not established that the beneficiary had the one year of college also stipulated on the Form ETA 750. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case has been discussed in these proceedings previously and is documented by 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 December 18, 2008 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position

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.

The petitioner must demonstrate 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). Here, the Form ETA 750 was accepted on December 28, 2004.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> On appeal, counsel submits a brief, and the following evidence:

A letter dated February 5, 2007 written by [REDACTED] Vice President, Foundation for International Services, Inc., (FIS). In her letter, Ms. [REDACTED] states that the first evaluator stated the Saitama Technical College was not an accredited school because the Japanese Ministry of Transportation accredited automotive technical colleges, rather than the Japanese Ministry of Education. Ms. [REDACTED] then states that the second FIS evaluation submitted to the record in the instant petition is not inconsistent with the first evaluation, because the second evaluator relied on the expert opinion by Dr. [REDACTED] after a thorough review of the beneficiary's coursework at Saitama Technical College;

---

<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

The beneficiary's affidavit dated February 6, 2007. In this document, the beneficiary stated that he graduated from Saitama Technical College in Saitama, Japan, which is a two-year post secondary automotive technical college accredited by the Japanese Ministry of Land, Infrastructure and Transport (formerly the Ministry of Transportation). The beneficiary also stated that his work at Tokyo Mazda included remodeling passenger cars, and small and big trucks, and that he worked at Tokyo Mazda for three years and nine months. The beneficiary also stated that he worked for four years at Hakko Automotive Company, and that 95 percent of the automobiles that he worked on were American and European cars that the beneficiary routinely modified to meet the Japanese traffic code. The beneficiary described this work in detail. Finally the beneficiary described his work at K-Fee International for two years and five months, in which he repaired, serviced, modified, remodeled and rebuilt both Japanese and foreign automobiles. The beneficiary concludes by stating based on his employment at Hakko Automotive Company and K-Fee International alone, he had more than six years of experience in repairing, servicing, modifying, remodeling and rebuilding both European and American automobiles;

An affidavit from [REDACTED] dated February 3, 2007. In his affidavit, [REDACTED] described how he met the beneficiary and the work that the beneficiary performed for him at Hakko Automotive Company involving the restoration of [REDACTED]'s 1970 Volkswagen Beetle over a period of one and a half years. Dr. [REDACTED] also stated that he observed the beneficiary servicing, repairing, modifying and remodeling all kinds of European and American cars during the beneficiary's employment at Hakko.

With the initial petition, the petitioner submitted an academic evaluation report written by [REDACTED], [REDACTED], FIS, dated March 7 2000. In his evaluation, [REDACTED] stated that based on the certificate of graduation from Saitama Technical College in Saitama, the beneficiary's education was equivalent to completion of two years of technical credit in vehicle equipment mechanics from a technical school "that is not regionally accredited in the United States." [REDACTED] attached his Vita Curriculum to his evaluation that described his academic credentials as a Master of Science in Education, earned in 1992.

The petitioner also submitted a letter of work verification for Tokyo Mazda for two places of employment from April 1988 to December 1991; a letter of employment verification from Hakko Automotive Company that stated the beneficiary worked for the company from January 5, 1992 to January 17, 1996, and listed the beneficiary's job duties. Finally the petitioner submitted a letter of employment verification from K-Fee International, Tokyo, Japan that stated the beneficiary was employed from August 1997 to December 1999. [REDACTED], President, described the beneficiary's job duties with regard to general repairs, and more specialized work. [REDACTED] stated that the beneficiary conducted all kinds of remodeling projects, and that in addition to working on Japanese and American cars, the beneficiary repaired, remodeled, and rebuilt such European automobiles as Mercedes Benz, BMW, Porsche, Audi, Volkswagen, Ferrari and Rolls Royce. The petitioner also submitted copies of various training certificates received by the beneficiary while employed in Japan.

In response to the director's Request for Further Evidence dated September 22, 2006, the petitioner submitted an expert opinion letter dated November 2, 2006, written by [REDACTED] professor of Industrial and Manufacturing Engineering, New Jersey Institute of Technology. In his letter, [REDACTED] described his academic credentials in the field of industrial engineering and operations research. Dr. [REDACTED] also stated that he is authorized to give university credits for transfer from community colleges and other universities as well as for practical experience. Dr. [REDACTED] examined the beneficiary's transcript

from Saitama Technical College and stated that his degree and technical course work in the area of automobile engineering qualify the beneficiary for two years of credit to be granted by a U.S. regional college. The petitioner also submitted an additional FIS evaluation report written by [REDACTED], FIS Assistant Director of Evaluations, dated November 7, 2006. [REDACTED] stated in her evaluation report that based on [REDACTED]'s expert opinion that the beneficiary had the equivalent of two years of technical training in the United States, and based on [REDACTED]'s expert opinion letter the beneficiary had the equivalent education of an individual with two years of education from a regionally accredited college in the United States. Ms. [REDACTED] attached her Curriculum Vita with the academic report that indicated she had a bachelor of Arts, Canadian-American Studies, Western Washington University, Bellingham, Washington.

On appeal, counsel asserts that the beneficiary has the requisite six years of work experience performing the job duties outlined in the Form ETA 750, based on his work with Tokyo Mazda, Hakko Automotive Company, and with K-Fee International, Tokyo, Japan. Counsel incorporated some of the description of the beneficiary's work at Hakko and K-Fee International, described by [REDACTED] in his affidavit.

With regard to the required one year of college studies stipulated by the ETA 750, counsel states that the ETA Form 750 does not indicate that the beneficiary is required to have one year of college credit in Auto Mechanic and Car Electronics at a regionally accredited school in the United States. Counsel also states that the petitioner did not submit two conflicting evaluations and stated that *Matter of Sea* 19 I&N Dec. 817(Comm.1988) is inapplicable in the instant case.

Counsel states that the FIS evaluators are not necessarily experts in the academic disciplines in which the beneficiary did coursework. Counsel states that FIS evaluators primarily based their preliminary evaluation on the World Education Series publications, unless petitioners specifically request expert opinion letters based on careful review of foreign transcripts. Counsel states that [REDACTED]'s evaluation was done based on the beneficiary's transcript from Saitama Technical College without an expert opinion. Since the college was not accredited by the Japanese Education Ministry, [REDACTED] determined that the beneficiary's coursework was equivalent to completion of two years of technical credit in vehicle mechanics from a technical school that is not regionally accredited in the United States. Counsel then notes that in the second FIS report, the evaluator primarily relied on [REDACTED]'s expert opinion that concluded the beneficiary had the equivalent of two years of education from a regionally accredited college in the United States. Counsel asserts that [REDACTED]'s evaluation is more accurate and reliable due to its reliance on [REDACTED]'s expert opinion.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to 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. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of automotive service technician and mechanic. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education  
Grade School  
High School  
College 1 (one)  
College Degree Required  
Major Field of Study Auto Mechanic and Car Electronics

The applicant must also have six years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A as follows:

Modify U.S. and European automobiles to meet the Japanese traffic code prior to their export to Japan. Remodel such cars according to Japanese customers' specifications. Rebuild U.S. classic cars for collectors in Japan. Must be familiar with the Japanese traffic code. Must be able to communicate with Japanese-speaking importers and read the Japanese traffic code and customers' specifications in Japanese. Must use all automotive tools and equipment including diagnostic machines. Must work without supervision.

Item 15 of Form ETA 750A reflects the following special requirements: "Fluency in Japanese. Prior to exporting U.S. and European automobiles to Japan, the worker must modify them to mee[t] the Japanese traffic code written in Japanese. The worker has to communicate with Japanese-speaking importers and classic car collectors regarding remodeling and rebuilding specifications."

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has worked for the petitioner as an automotive engineer from July 2000 to the date he signed the Form ETA 750, namely December 20, 2004, and that his duties included the following:

Design, manufacture and remodeling of user-friendly, customized Ahna Vans for disabled drivers in Japan. Modify U.S. and European automobiles to meet the Japanese traffic code before shipping them to Japan. Remodel such automobiles according to Japanese importers' specifications. Rebuild U.S. classic cars for collectors in Japan. Test and Diagnose all vehicles prior to their export to Japan using computers and computerized diagnostic machines.

The beneficiary also represented that he had worked for K-Feet International, Tokyo, Japan, as an automotive designer and engineer from August 1997 to December 1999, and that his duties included the following:

Repaired, remodeled, and rebuilt Japanese, American and European automobiles. Overhauled engines, automatic and manual transmissions, and differential gears. Remodeled engines and automatic transmissions for high performance and heavy duty. Improved the braking system for higher efficiency. Performed body work and paintjob with customized color match. Installed air bags, alarms, and audio systems. Repaired electric and electronic devices.

The beneficiary further represented that he had worked for [REDACTED] as a certified automotive mechanic, post-repair inspector, and certified vehicle inspection supervisor from January 1992 to January 1996, and that his job duties included the following:

Inspected and diagnosed automobiles for legally mandated vehicle inspection. Repaired automobiles in accordance with legal specifications. Diagnosed, repaired and overhauled gasoline and diesel engines. Inspected and repaired automotive and manual transmissions, clutches, brakes, suspensions, mufflers, and chassis. Used diagnostic digital oscilloscopes, pulse testers, and engine analyzers to diagnose and repair carburetors, fuel injection, and electronic control systems. Inspected and certified the repairs and overhauling of engines, brakes, transmissions, and differential gears.

Finally, the beneficiary represented that he had worked for Tokyo Mazda, Ltd., Tokyo, Japan, a car dealership, as a certified automotive mechanic, service advisor, and certified vehicle inspection supervisor from April 1988 to December 1991, and performed the following duties:

Inspected and repaired vehicles pursuant to Japanese Vehicle Inspection Law. Repaired and maintained gasoline and diesel engines, automatic and manual transmissions, differential gears, clutches, chassis, and brakes. Tested all electric and electronic devices with various diagnostic machines, diagnosed and repaired all electric and electronic problems. Supervised, in the capacity of Chief Inspector, the legally-mandated inspection of all types of vehicles.

The petitioner did not specifically state whether the instant petition was filed under the professional or skilled worker classification. DOL assigned the occupational code of 49-3023, Automotive Service Technicians and Mechanics. This code now consists of two related SOC codes 49-3023.1, Automotive Master Mechanics, and 49-3023.2, Automotive Specialty Technicians. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls into Job Zone Three: Medium Preparation Needed. Previous work-related skills, knowledge, or experience is required for these occupations. The DOL website also notes the skill level for the automotive master mechanics is 6.0 to 7.0, and that "[M]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." Some may require a bachelor's degree." See <http://online.onetcenter.org/link/summary/49-3023> (accessed September 15, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job. Employees in these occupations usually need one or more training involving both on-the-job experience and informal training with experienced workers.

*See id.*

Further, the petitioner's stipulation of one year of college would establish that the position is for a skilled worker, rather than a professional, a classification that pursuant to 8 C.F.R. §204.5(1)(3)(ii)(C) requires a baccalaureate degree. In addition, a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Thus the AAO considers the proffered position to be a skilled worker classification and will review the instant petitioner under that classification.

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

(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.

Upon review of the record, the AAO finds that the director's comments with regard to the beneficiary's work duties with Tokyo Mazda, Inc, and with Hakko are correct. The job duties as identified on the letters of work experience do not necessarily reflect job duties similar to those outlined on the Form ETA 750, which concern more specifically remodeling and modifying U.S. and European cars for the Japanese market. However, the beneficiary's previous work with the petitioner prior to the December 28, 2004 priority date reflect similar duties to those outlined on the ETA 750, and thus the beneficiary's prior work with the petitioner from July 2000 to December 28, 2004 can be utilized to establish four years and at least five months of relevant work experience. Further, the beneficiary's job duties as described by his former employer at K-Fee International from August 1997 to December 1999, a period of two years and at least four months, include "all kinds of remodeling projects" including design and manufacturing and installing automobile parts. These duties also reflect the job duties outlined in the ETA 750, Part B. The combined period of time for these two jobs is six years and nine months. Thus, the petitioner has established that the beneficiary has the requisite six years of work experience stipulated by the Form ETA 750.

With regard to the issue raised by the director with regard to the requisite one year of college stipulated on the Form ETA 750, the AAO agrees that the two FIS evaluations do contain conflicting testimony with regard to whether Saitama Technical College is an accredited institution of learning. Mr. [REDACTED] in the initial academic evaluation written in 2000 stated that the beneficiary's coursework in vehicle equipment mechanics was from a technical school that was not regionally accredited in the United States. Mr. [REDACTED] then combined the beneficiary's educational credentials and his ten years of experience in the automotive mechanic, inspector and designer fields and stated that the beneficiary had the educational background of an individual with a bachelor's degree in automotive technology from an accredited college or university in the United States. Thus, Mr. [REDACTED] combined both the beneficiary's academic credentials and work experience, ostensibly for the beneficiary's H-1B petition.

Ms. [REDACTED] in her evaluation incorporated Dr. [REDACTED]'s conclusions,<sup>2</sup> in her evaluation and stated that the beneficiary, through his education, had an educational background the equivalent of an individual with two years of education from a regionally accredited college in the United States. Thus, the two evaluators came to different final conclusions. Mr. [REDACTED] stated that the beneficiary's education and work experience were sufficient to establish that he had a baccalaureate degree while Ms. [REDACTED] merely states that the

---

<sup>2</sup> examined the coursework undertaken by the beneficiary in the field of automobile engineering in examining the beneficiary's academic credentials, which neither Mr. [REDACTED] or Ms. [REDACTED] examined.

beneficiary has the equivalent of two years of college level studies equivalent to the years of studies at an accredited U.S. institution.

As previously stated, in evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to 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. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In the instant petition, then, the petitioner has to establish that the beneficiary has one year of college studies in auto mechanics and car electronics.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). ACCRAO, according to its website, [www.aacrao.org](http://www.aacrao.org), is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://accraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

EDGE provides a great deal of information about the educational system in Japan. In the educational ladder section, EDGE identifies technical or junior colleges as post secondary education following twelve years of elementary and secondary education. EDGE does not contain specific information on the Saitama Technical College. Nevertheless the AAO has no reason to view the academic transcript from Saitama Technical College submitted to the record by the petitioner as fraudulent. This document establishes that the beneficiary attended Saitama Technical College for two years and establishes the beneficiary's two years of specific technical coursework at the technical college. This document, in conjunction with [REDACTED]'s expert opinion on the beneficiary's actual specific coursework undertaken at Saitama Technical College, provides sufficient evidence that the beneficiary has one year of college level instruction prior to the 2004 priority date.

The burden of proof is on the petitioner. In the instant matter, the petitioner has met its burden. In the instant matter, the director's decision dated December 18, 2006 is withdrawn. The appeal is sustained. The petition is granted.

**ORDER:** The appeal is sustained. The petition is approved.