

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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
and Immigration
Services

PUBLIC COPY

B6

FILE: LIN 07 167 52066 Office: NEBRASKA SERVICE CENTER Date: OCT 15 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner claims to be a dairy. It seeks to permanently employ the beneficiary in the United States as a milking parlor technician pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).¹ As required by 8 C.F.R. § 204.5(l)(3), the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor.

The director denied the petition on September 16, 2008. The petitioner appealed the decision on October 14, 2008. On appeal, the petitioner does not dispute the director's decision. Instead, the petitioner now asks to change the requested classification to that of skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

An unskilled worker is an alien who is capable of performing labor requiring less than two years training or experience. 8 C.F.R. § 204.5(l)(2). A skilled worker is an alien who is capable of performing labor requiring at least two years of training or experience. *Id.* The determination of whether a worker is 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 requires 24 months of experience. Since the offered position requires at least two years of experience, it is properly classified as a skilled worker and not as an unskilled worker.

The petitioner initially requested classification of the beneficiary as an unskilled worker pursuant to section 203(b)(3)(A)(iii) of the Act. The petitioner now attempts to change the requested classification to that of a skilled worker pursuant to section 203(b)(3)(i) 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 an unskilled 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.

¹Section 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.