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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

File: [REDACTED]
LIN 08 034 50176

Office: NEBRASKA SERVICE CENTER

Date: APR 05 2011

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 summarily dismissed.

The petitioner claims to be a factory. It seeks to permanently employ the beneficiary in the United States as an industrial mechanic. The petitioner requests classification of the beneficiary as an other, unskilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

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 April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on January 7, 2009. The director's decision concludes that the petition cannot be approved for the requested unskilled worker classification because the offered position requires three years of experience.

The AAO maintains plenary power to review each appeal on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The petitioner appealed the decision on February 3, 2009. No brief or additional evidence was submitted with the appeal. On Part 2 of Form I-290B, Notice of Appeal or Motion, the petitioner indicated that no brief and/or additional evidence would be submitted to the AAO. Part 3 of Form I-290B, the space allotted to identify any erroneous conclusions of law or fact in the decision, states:

I am hereby filing a new I-140 petition and I am also requesting use of the previously submitted labor certificate using a classification which better meets the qualifications listed on the labor certificate. This labor certificate is still open for this alien.

This statement does not provide a statement explaining any erroneous conclusion of law or fact. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

¹ Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), grants preference classification to other 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.

Even if the AAO did not summarily dismiss the appeal, the appeal would have been dismissed on the merits. The instant petition requests classification of the beneficiary as an unskilled worker. 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(1)(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 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(1)(4).

In the instant case, the labor certification states that the offered position requires three years of experience in the job offered or in the related occupation of "industrial mech." Since the job offer portion of the labor certification requires two or more years of experience, the petition cannot be approved in the requested unskilled worker classification.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

ORDER: The appeal is summarily dismissed.