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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: APR 03 2012 Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an 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 was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the petition approved.

The petitioner seeks to classify the beneficiary as a child care worker pursuant to Section 203(b)(3)(A)(iii) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), which provides for the granting of preference classification to other 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. As required by statute, the Form I-140, Immigrant Petition for Alien Worker, is accompanied by a Form ETA 750, Parts A & B, Application for Alien Employment Certification, approved by the United States Department of Labor (USDOL). The director determined the petitioner had not established she had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date. The director also determined the petitioner had not submitted evidence to establish that the beneficiary had the required one year of experience in the job offered as a child care worker. The director denied the petition on March 5, 2009.

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

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS examines whether the petitioner employed and paid the beneficiary during that period, the net income figure reflected on the petitioner's federal income tax returns and proof of other assets provided for the record. Based on the wages paid to the beneficiary over an extended period of time, the petitioner's adjusted gross income and other proven assets factored against household expenses, it is determined she has overcome the finding of the director concerning the issue of her ability to pay the beneficiary the proffered wage.

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 April 30, 2001, which is the date the labor certification was accepted for processing by the USDOL. *See* 8 C.F.R. § 204.5(d). The Immigrant Petition for Alien Worker (Form I-140) was filed on February 28, 2008.

Upon review of the entire record, including evidence submitted on appeal and in response to a Request for Evidence issued by the AAO, it is determined that the petitioner has established that it is more likely than not that the beneficiary had the one year of experience as a child care worker as required on the Form ETA 750 as of April 30, 2001.

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.