



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 31 2012** Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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:

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 (the director), denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a carpenter. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the petition requires at least two years of training or experience and, therefore, that the beneficiary cannot be found qualified for classification as a skilled worker. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case 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 March 12, 2009 denial, the single issue in this case is whether or not the petitioner has established that the petition requires at least two years of training or experience such that the beneficiary may be found qualified for classification as a skilled worker.

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. Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), 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.

Here, the Form I-140 was filed on April 3, 2007. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional or a skilled worker.

The AAO conducts appellate review 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.¹

On appeal, counsel submits a brief; an excerpt from the DOL's Occupational Outlook Handbook (2008-09 ed.) (OOH); an excerpt from the OOH (2002 ed.); and an excerpt from the DOL's Dictionary of Occupational Titles (2001 ed.).

¹ 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 record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

On appeal, counsel and the petitioner assert that the director erred in concluding that the proffered position does not qualify for skilled work, simply because the petitioner did not identify any educational or experiential requirements in Part A, Section 14 of Form ETA 750. Counsel asserts that the position requirements were set forth in Section 15 of Part A; that the proffered position is that of a carpenter which by definition is skilled labor; and that the “occupation of carpenter carries an SVP of 7 {over two up to four years experience or training as defined by the Department of Labor}.”

The regulation at 8 C.F.R. § 204.5(l) provides in pertinent part:

(4) Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

In this case, the key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, “Offer of Employment,” describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, U. S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983)* USCIS must examine “the language of the labor certification job requirements” in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith, 595 F. Supp. 829, 833 (D.D.C. 1984)* (emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education: NA

Experience: Blank

Block 15: Must have Certificate of Completion of Apprenticeship

As set forth above, the labor certification indicates that there are no education, training or experience requirements for the proffered position. The petitioner did include a requirement in Section 15 of Part A which states that the proffered position requires a Certificate of Completion of Apprenticeship. However, the nature of the certificate is not defined nor is the training program associated with it or the duration of time which is required for attaining such a certificate. However, the petitioner requested the skilled worker classification on the Form I-140.

Part A of the Form ETA 750 indicates that the DOL assigned the occupational code of 47-2031 with accompanying job title carpenter, to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at <http://online.onetcenter.org>, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States.²

In the instant case, the DOL categorized the offered position under the SOC code 47-2031. Within the SOC code 47-2031 there are two subcategories: 1) Construction Carpenters (SCO 47-2031.01) and 2) Rough Carpenters (SOC 47-2031.02). The O*NET online database states that both of the subcategories included under this occupation fall within Job Zone Two, requiring "some preparation" for the occupation type closest to the proffered position.

The DOL assigns a specific vocational preparation (SVP) of 4.0 but less than 6.0 (4.0 to < 6.0) to the occupation. According to the DOL, an SVP of 4.0 signifies that the position requires over three months of preparation and up to and including six months of preparation. An SVP of 6.0 signifies that the position requires over one year and up to and including two years of preparation.³

Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

These occupations usually require a high school diploma.

²See <http://www.bls.gov/soc/socguide.htm>.

³See <http://www.onetonline.org/help/online/svp>

Some previous work-related skill, knowledge, or experience is usually needed. For example, a teller would benefit from experience working directly with the public. Employees in these occupations need anywhere from a few months to one year of working with experienced employees. A recognized apprenticeship program may be associated with these occupations.

See id.

According to Form ETA 750, the position has no educational or experiential requirements. According to the DOL's classification and assignment of educational and experiential requirements for the occupation, the certified position is not considered skilled labor, in accordance with 8 C.F.R. § 204.5(1)(3) and (4), because the DOL sets the minimum vocational preparation for carpentry occupations at SVP 4.0, indicating that the position would require at least three months of preparation, but sets the higher limit at less than 6.0, indicating that the position would require less than two years of preparation. Based upon the requirements for the position, as stipulated on Form ETA 750 and based upon the code assigned by the DOL, the proffered position does not meet the regulatory definition of skilled labor.

On appeal, counsel asserts that the director erred in concluding that the position does not qualify as skilled labor because:

The finding in support of the denial appears to rest upon the lack of any stated job requirements in block 14 of the ETA Part A of the supporting labor certification and therefore there is no way to know that the minimum job requirement [sic] are.

Counsel further asserts, "In lieu of completing block 14 of the ETA Part A, block 15 was used setting forth what would be acceptable evidence to establish a job applicant had the minimum two to four years of training or experience required for the occupation of carpenter – 'a certificate of apprenticeship.'"

However, as has already been noted, a petitioner is required to "state in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13" in Section 14 of Part A of the ETA 750 (emphasis in the original).⁴

If the proffered position entailed specific educational, training or experiential requirements, the petitioner should have included those specific requirements in Section 14 of Form ETA 750. Section 15 is provided for purposes of identifying "other special requirements," that is "the job related requirements." Examples of such requirements are "shorthand and typing speeds, specific foreign language proficiency, test results" and documenting a "business necessity for a foreign language requirement."⁵ The petitioner did not identify any education, training, or experience which would be required for an individual "to perform satisfactorily the job duties described in item 13." Further,

⁴ Taken from the directions in Section 14 of Part A of the Form ETA 750.

⁵ See <http://www.foreignlaborcert.doleta.gov/750inst.cfm>.

though the petitioner indicated that the prospective carpenter “must have a Certificate of Completion of Apprenticeship,” it provided no further details explaining the nature of the certificate, the type or duration of training required to obtain the certificate or any other information which might assist in determining whether the certificate is commensurate with recognition as a skilled worker.

On appeal, counsel asserts that the proffered position is that of a carpenter and that the nature of such work corresponds with skilled work. Counsel further asserts that “the occupation of carpenter carries an SVP of 7.” In support of his assertion, counsel refers to an excerpt from the DOL’s Dictionary of Occupational Titles (2001 ed.) (DOT).

Submitted as evidence on appeal, counsel included an excerpt from the DOT for Carpenter (construction) which is assigned the DOT code 860.381-022.

Prior to O*NET, the DOL used the DOT occupational classification system. The O*NET website contains a crosswalk that translates DOT codes into SOC codes. See <http://online.onetcenter.org/crosswalk/DOT>. Using the O*NET crosswalk, DOT code 860.381-022 translates to SOC code 47-2031.01 and the occupation Construction Carpenters.

First, in the instant matter, when the petitioner initially filed Form ETA 750, the DOL was no longer relying upon the DOT. By 2004, the year of the priority date in this case, the DOL had already migrated to the O*NET. This fact is further reflected in that the DOL assigned an SOC number to the proffered position, as indicated in the endorsement portion of Part A of Form ETA 750. Second, the DOT excerpt provided by counsel identifies a DOT code, 860.381-022 which translates into the SOC code 47-2031.01 and the occupation, Construction Carpenter. However, in issuing the certified Form ETA 750 for the proffered position, the DOL assigned the general SOC code 47-2031 and not the specific SOC code 47-2031.21. In making reference to the DOT excerpt provided, counsel is characterizing the proffered position in way which was not articulated to the DOL when filing Form ETA 750. Therefore, even though the DOT excerpt for Construction Carpenters provided on appeal assigns an SVP of 7 to positions with the DOT code 860.381-022, this SVP does not apply in the instant circumstance because neither the SVP nor the DOT code necessarily correspond with the proffered position, as this position was articulated to the DOL and as the DOL designated the position when issuing the certified Form ETA 750.

On appeal, counsel also provides an excerpt from the OOH (2008-09 ed.). According to the excerpt, and as highlighted by counsel, “between 3 and 4 years of both on-the-job training and classroom instruction usually is needed to become a skilled carpenter.”

However, within the section bearing the heading “Training, Other Qualifications, and Advancement,” the OOH includes the following educational and training information:

Learning to be a carpenter can start in high school. Classes in English, algebra, geometry, physics, mechanical drawing, blueprint reading, and general shop will prepare students for the further training they will need.

After high school, *there are a number of different ways to obtain the necessary training.* Some people get a job as a carpenter's helper, assisting more experienced workers. At the same time, the helper might attend a trade or vocational school, or community college to receive further trade-related training and eventually become a carpenter (emphasis added).

Some employers offer employees formal apprenticeships. These programs combine on-the-job training with related classroom instruction. Apprentices usually must be at least 18 years old and meet local requirements. Apprenticeship programs usually last 3 to 4 years, *but length varies with the apprentice's skill.*

(Emphasis added).

Counsel also supplied an excerpt from the OOH (2002 ed.). This document also contains educational and training requirements for carpenters under the section bearing the heading "Training, Other Qualifications, and Advancement:"

Carpenters learn their trade through on-the-job training, as well as formal training programs. Most pick up skills informally by working under the supervision of experienced workers. Many acquire skills through vocational education. Others participate in employer training programs or apprenticeships.

The materials submitted by counsel indicate that there are many ways by which an individual might train and qualify to become a carpenter, and because the length of training varies, the position cannot be characterized, by definition, as skilled work within the regulatory definition of that term. In order to demonstrate that the position meets the regulatory requirements for skilled work, the petitioner must demonstrate that the specific position which is being offered requires at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(B) and (4). Such requirements must be identified in Section 14 of Part A of Form ETA 750. The petitioner did not specify such requirements, or any requirements, in Section 14 of Part A of Form ETA 750. Therefore, the petitioner has not demonstrated that the proffered position meets the regulatory requirements for skilled work.

As noted above, the only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The evidence submitted does not establish that the petition requires at least two years of training or experience such that the beneficiary may be found qualified for classification as a skilled worker.

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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.

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