

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



b6

Date: **MAY 03 2012**

Office: TEXAS SERVICE CENTER

FILE: 

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:

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 immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen and reconsider the director's decision. The director dismissed the motion. The petitioner appealed the dismissal of the motion to the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner is a boat and ship repair business. It seeks to permanently employ the beneficiary in the United States as a boat rigger. The petitioner requests classification of the beneficiary as skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).

The director's April 30, 2008 decision denying the petition concluded that the petitioner failed to resolve an inconsistency in the record pertaining to the beneficiary's claimed qualifying employment experience and qualifications for the offered position. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The record shows that the appeal is properly filed 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. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is December 13, 2004, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In the instant case, the labor certification requires two years of experience in the job offered.

Upon review of the entire record, it is concluded that the petitioner has satisfactorily resolved the inconsistency in the record with independent, objective evidence. It is further concluded that it is more likely than not that the beneficiary had the requisite experience specified on the labor certification as of the priority date.

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.

¹ This section of the Act grants preference classification to qualified immigrants who are capable 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.