



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 01 2012 OFFICE: TEXAS 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:

[REDACTED]

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a provider of engineering services. It seeks to employ the beneficiary permanently in the United States as a project engineer as a skilled worker or professional pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, the petition is accompanied by Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary possessed the requisite two years of experience as a project engineer as of the March 3, 2003 priority date. The director denied the petition on December 15, 2008.

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 meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). See also *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The labor certification requires, *inter alia*, that the beneficiary possess two years of experience as a project engineer as of the priority date.¹ On appeal counsel submitted letters from the beneficiary's

¹ Form ETA 750 also requires that the beneficiary have ten years of grade school education, two years of high school education, a bachelor of science in engineering degree in the field of mechanical engineering or a related field (or equivalent), and certification by the American Concrete Institute (ACI). Evidence of the beneficiary's education was submitted with the filing of the petition in July 25, 2007. Evidence of ACI certification was submitted in response to a July 22, 2012 request

former employers to establish that the beneficiary possessed the requisite work experience as of the priority date.

Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that the petitioner has established that the beneficiary possessed the requisite work experience 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.

for additional evidence (RFE) issued by the AAO. Also submitted in response to the RFE was evidence of the petitioner's continuous ability to pay the proffered wage and the wages of the beneficiaries of additional petitions filed by the petitioner.