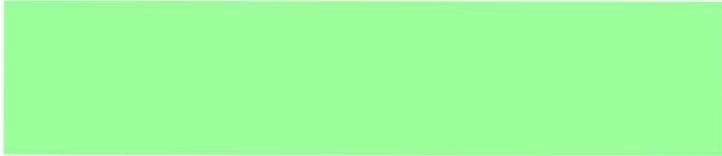




U.S. Citizenship
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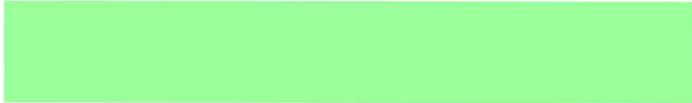


DATE: **SEP 25 2012**

OFFICE: TEXAS SERVICE CENTER

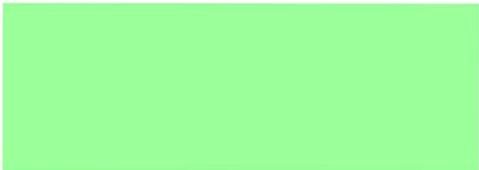
FILE: 

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Texas Service Center, 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 purveyor of painting and decorating services. It seeks to employ the beneficiary permanently in the United States as an industrial equipment repairer. As required by statute, the petition is accompanied by 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 January 23, 2009 denial, at 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.¹

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.

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.

Here, the Form I-140 was filed on July 18, 2008. 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. Accompanying the

¹ It is also noted that the record does not contain evidence of the petitioner's ability to pay the proffered wage of \$13.62 per hour (\$28,329 per year.) The record before the director closed on May 22, 2008. At that time, the petitioner's 2008 tax returns or other financial records for 2008 were not yet available. The record does contain the petitioner's 2007 Form 1120S that reflects negative net current assets, and net income of \$27,789, an amount \$540 short of the proffered wage.

petition is ETA Form 9089, Application for Permanent Employment Certification with a priority date of March 20, 2008. In Part H4, the labor certification indicates that the minimum level of education required for the position is “other,” and that the type of education required is “vocational school,” in the field of “electrical mechanics.” In part H5 of the labor certification, the petitioner is requested to indicate whether training is required for the job opportunity. The petitioner checked “no,” indicating that no training is required for the position. Part H6 of the labor certification requests that the petitioner indicate whether experience is required for the position. The petitioner checked “no,” indicating that no experience is required for the position.

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.² On appeal, counsel correctly notes that the director’s decision mentions that the labor certification does not require two years of experience; however, it does not discuss any training requirements. Counsel submits a document entitled “An Explanation of SVP,” from the DOL’s Foreign Labor Certification Data Center (www.flcdatacenter.com). Counsel highlights the portion of the document that indicates training could be acquired in a school and vocational education could be obtained in a high school.

The record contains a certificate awarded to the beneficiary on June 14, 1986, entitled “*Swiadectwo Ukonczenia Zasadniczej Szkoły Zawodowej*.” According to the accompanying translation, the certificate is a “vocational high school diploma.”³ Thus, at issue is not whether the beneficiary has met the “other” education requirement of “vocational school,” as is required in Part H4 of the labor certification; but whether the requirements of the labor certification support the skilled worker classification.

A plain reading of the labor certification establishes that an unspecified amount of vocational school is required education for the position; however, no training and no experience are required for the position. Thus, the evidence 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.

² 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).

³ The AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). <http://www.aacrao.org/About-AACRAO.aspx> (accessed August 31, 2012). The entry for the above-referenced degree from Poland translates the credential as a “Certificate of Completion of Basic Vocational School,” and indicates that it is “awarded after completion of 10 years of elementary and vocational secondary studies.” The entry also states that the degree represents attainment of a level of education comparable to less than completion of senior high school in the U.S. The entry also indicates that students transferring to the U.S., “[m]ay be placed in Grade 11.”

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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.