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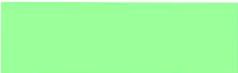


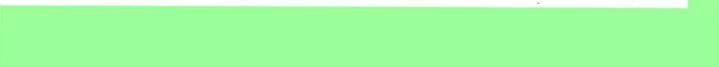
U.S. Citizenship
and Immigration
Services



Date: **APR 16 2013**

Office: TEXAS SERVICE CENTER

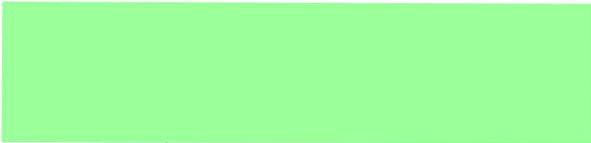
FILE: 

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:

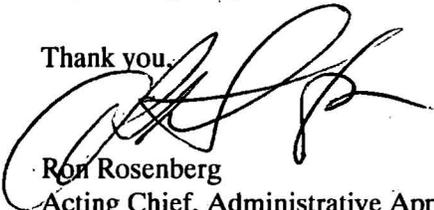


INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion to reopen the petition will be dismissed. The AAO's decision of June 1, 2012 is affirmed.

The petitioner is a fish wholesaler. It seeks to employ the beneficiary permanently in the United States as a fish cleaner-cutter. 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 also determined that the beneficiary was not qualified for the proffered position. The director denied the petition accordingly. The AAO dismissed the petitioner's appeal on the same basis.

The record shows that the motion to reopen is properly filed. 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 regulation at 8 C.F.R. § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel states that the classification intended to be sought on the Form I-140, Part 2 was box g, which states, "Any other worker (requiring less than two years of training or experience)" and that the incorrect classification was the result of a clerical error and not done with the intent of the petitioner to "...make material changes to a petition in an effort to make deficient petition conform to USCIS requirements." In support of the motion, counsel has submitted a copy of the AAO's June 1, 2012 decision, a December 13, 2001 correspondence to the New York Department of Labor referencing a 3 month experience requirement, a November 27, 2001 correspondence from the New York Department of Labor, a copy of the amended Form ETA 750 referencing a 3 month experience requirement, a December 20, 2001 cover letter referencing a 3 month experience requirement with certified mail receipt and return receipt, copies of posted job ads from March 18 to 20, 2002 referencing a 3 month experience requirement, a notarized statement from [REDACTED] of the Daily News confirming the job postings and a copy of the job notice at the business establishment referencing a 3 month experience requirement. DOL certified the labor certification requiring only three months of experience, which the AAO recognizes as the labor certification's minimum experience requirement.¹

¹ The AAO notes that box 15 on Form ETA 750A lists the other special requirements as "must be able to lift and handle fish crates weighing up to 100 lbs. and own waterproof boots and leather support belt." Nothing shows that the beneficiary meets these requirements.

The AAO notes that the petitioner has not presented new facts related to the basis of the petitioner's denial or the appeal's dismissal, as the evidence presented was available and could have been discovered or presented in the previous proceeding. As such, the motion will be dismissed. Even if the motion was considered, nothing would overcome the basis for the petitioner's denial and the AAO's dismissal, that the labor certification submitted which only requires three months of experience does not support the I-140 visa category selected of a skilled worker which requires at least two years of training or experience. See 8 C.F.R. § 204.5(1)(2). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) it must also be dismissed for this reason.

ORDER: The motion to reopen is dismissed.