

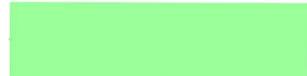


U.S. Citizenship
and Immigration
Services

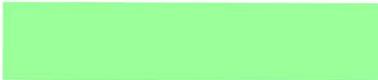
(b)(6)



DATE: JUN 27 2013 OFFICE: NEBRASKA SERVICE CENTER



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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and motion to reopen. Counsel filed a second motion to reopen. The AAO granted the motion and issued a request for evidence. The matter will be remanded to the director for the issuance of a new decision.

The petitioner describes itself as a construction company. It seeks to permanently employ the beneficiary in the United States as a cabinet maker. The petitioner requests classification of the beneficiary as a 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).

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is March 17, 2004. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition and the AAO's decision dismissing the appeal concluded that minimum requirements of offered position were not sufficient to support the requested skilled worker classification. On April 2, 2013, the AAO granted the petitioner's second motion to reopen and simultaneously issued a request for evidence.

Section 203(b)(3)(A)(i) of 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.

Therefore, the minimum requirements for this classification are at least two years of training or experience. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(B). The determination of whether a petition may be approved in the skilled worker classification is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4).

On Part 2.e. of Form I-140, the petitioner indicated that it was filing the petition for a professional or a skilled worker. On Form ETA 750, the place for stating the minimum requirements of the offered position is Part A, Items 14 and 15. The labor certification submitted with petition does not contain any information at Part A, Items 14 and 15, meaning that the offered position has no required education, training, experience or other special requirements. Such a position does not qualify for classification as a skilled worker, and the director correctly denied the petition for this reason.

The petitioner claims that the offered position requires two years of experience, and that the omission of this experience requirement on the labor certification originally submitted with the petition was a typographical error. The record contains an amended labor certification issued by the DOL containing the two-year experience requirement. The record also contains a copy of the

documentation generated during the labor certification process in accordance with 20 C.F.R. § 656 (2004), including the recruitment report, recruitment conducted for the position, the posted notice of the filing of the labor certification, and the resume received in response to the recruitment efforts. These documents corroborate the required experience on the amended labor certification.

Since the amended labor certification before the AAO requires two years of experience in the offered position, the petition may be considered for approval in the skilled worker classification if all other requirements for approval are satisfied.

In view of the foregoing, the previous decisions of the director and the AAO are withdrawn. The petition is remanded to the director to determine whether all of the other requirements of the requested classification are satisfied, including whether the beneficiary possessed the minimum requirements of the offered position, and whether the petitioner possessed the continuing ability to pay the proffered wage. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The petition is remanded to the director for further consideration and the issuance of a new decision.