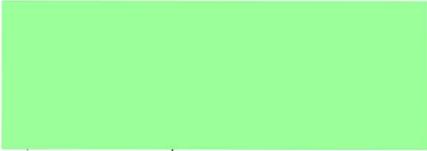


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



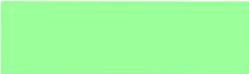
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 08 2013**

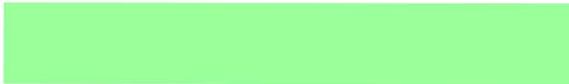
Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

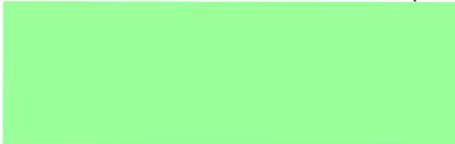
Petitioner:

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.

Thank you,

Ron Rosenberg
Acting 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 The director's decision will be withdrawn and the matter remanded to the Texas Service Center for action and a new decision.

The petitioner is a wholesale foods company. It seeks to employ the beneficiary permanently in the United States as a truck mechanic. The petition is accompanied by a copy of Form ETA 750, Application for Alien Employment Certification. Upon reviewing the petition, the director determined that the Immigrant Petition for Alien Worker (Form I-140) was submitted without the required initial evidence to demonstrate that the beneficiary satisfied the experience requirement. The director denied the petition accordingly.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is September 5, 2001, which is the date the copy of the labor certification indicates that it was accepted for processing by the Department of Labor (DOL). See 8 C.F.R. § 204.5(d). The Form I-140 was filed on September 26, 2007.

Upon review of the entire record, including evidence submitted on appeal and in response to the AAO's Notice of Intent to Dismiss, the AAO concludes that the petitioner has established that the beneficiary had all the experience specified on the Form ETA 750 as of September 5, 2001. The letters submitted by the petitioner sufficiently establish the beneficiary's work experience.

However, the petition may not be approved at this time because it does not appear that the petition is accompanied by a duplicate original labor certification. The regulation at 8 C.F.R. § 204.5(g)(2) prohibits the submission of copies of labor certifications to support a petition. Rather, the petitioner must submit an original labor certification. The Form ETA 750 does not contain any stamps or markings indicating that it is a bona fide duplicate labor certification. Accordingly, it cannot be concluded that the petition is accompanied by an original labor certification. 8 C.F.R. § 204.5(l)(3)(i).

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.

(b)(6)

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ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director of for issuance of a new, detailed decision.