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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

MAY 07 2003

File: SRC 01 158 53779 Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a manufacturer of valves. It seeks to employ the beneficiary permanently in the United States as a product safety engineer. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

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 or seasonal nature, for which qualified workers are not available in the United States.

The issue is whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA 750 as of the petition's priority date.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. 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. 8 C.F.R. § 204.5(d). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this instance, it is March 29, 1999.

The Form ETA 750 indicated that the position of product safety engineer required four (4) years of college with a bachelor of science degree or equivalent and a major in mechanical engineering technology. Also, it specified two (2) years of experience in the related occupation of managing a nationwide network of ASME-authorized pressure relief valve setting stations.

Counsel initially submitted insufficient evidence to establish that the alien met the educational, training, experience, and any other requirements of the labor certification. In a request for evidence (RFE) dated January 25, 2002, the director requested evidence to establish that the petitioner met the requirements of the Form ETA 750 as of the priority date.

After obtaining a response, the director determined that the Form ETA 750 did not indicate that the petitioner would accept less than four (4) years of college, or a combination of education and work experience equivalent to the degree, and denied the petition.

On appeal, counsel introduces a letter dated October 4, 2002 from the responsible certifying officer of DOL to the director (request letter). It advises the director that counsel and DOL erred, causing the employer to fail to correct the Form ETA 750 before filing it with the final determination (ETA Form 7145 PA REV.MAR., 1990, or ETA Form 7145). It requests that the Bureau (formerly the Immigration and Naturalization Service or INS) allow the petition to proceed.

In evaluating the beneficiary's qualifications, the Bureau must look to the job offer portion of the labor certification to determine the required qualifications for the position. The Bureau 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. 1986). *See also, Mandany 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).

As of the priority date, the beneficiary met the qualifications as finally stated by the DOL. A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) does not contradict the proposition that a petition will be approved if the beneficiary, at the priority date, met the petitioner's requirements, as transmitted under the regulations.

In passing, counsel urges a number of constitutional and other points and authorities. These points and authorities are moot in view of the proceedings on the Form ETA 750 approved by the DOL.

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.