U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FEB 02 2004

File: [redacted] LIN 02 235 51686 Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
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: SELF-REPRESENTED

PUBLIC COPY

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 Citizenship and Immigration Services (CIS) 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.

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 dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty chef. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanies the petition. The director determined that the petitioner had failed to establish that the position requires at least two years training or experience.

On appeal, the petitioner states the position requires at least two years or training or experience.

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.

Furthermore, 8 CFR 204.5(l)(3)(ii) states, in pertinent part:

> (B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification.

In differentiating between skilled and unskilled workers, CIS will look to the training or experience requirements placed on the position by the prospective employer as certified by DOL. 8 C.F.R. 204.5(l)(4).

With the petition the petitioner submitted an ETA 750 indicating the proffered position did not require any experience and required no specific educational requirements. The only criterion listed was that the individual be able to cook Middle Eastern foods.

In a request for evidence (RFE) dated October 18, 2002, the director requested evidence to establish that the position required two years training or experience. In response, the petitioner submitted that it required an experienced cook to

prepare the various dishes it intended to offer.

The director determined that the petitioner had not established that the position required any training or experience, and the position therefore cannot be classified as a skilled worker.

On appeal, the petitioner states the position requires at least two years experience in preparing the types of food it will offer. The petitioner also submitted various opinions regarding the experience requirements of a Middle Eastern cook.

The petitioner, however, failed to specify this or any experience or training requirement on the ETA 750 that was submitted for certification by the DOL. Therefore the position as certified by DOL cannot be classified as that of a skilled worker.

The petitioner requests oral argument in support of this appeal. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for argument is shown. Therefore, the request is denied.

Upon review, it is determined that the petitioner has not overcome the findings of the director in his decision to deny the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and the petition will be dismissed.

This decision is without prejudice to the filing with the director of a new petition for classification of the beneficiary as an unskilled worker pursuant to section 203(b)(3)(iii) of the Act. Alternatively, the petitioner may wish to go back to the U.S. Department of Labor, and reapply for labor certification showing clearly that the job requires at least two years of training or experience.

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.