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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 180 54265 Office: NEBRASKA SERVICE CENTER Date: FEB 05 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for a 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or professional. The petitioner is a financial investments management firm. It seeks to employ the beneficiary permanently in the United States as a program management assistant vice-president. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had failed to establish that the beneficiary had the requisite five years of work experience in the offered position or a related occupation.

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

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 203(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is July 20, 1999. The successful applicant for the job of program management assistant-vice president must satisfy the educational, training, and experience requirements described in Part A, Block 14 of the ETA 750, "Application for Alien Employment Certification." Here, that means that he must have a bachelor's degree in finance or economics as well as five years of experience as a program management assistant-vice president or five years experience in a related occupation (IT, Training & Business Management). It is the petitioner's burden to submit sufficient evidence verifying that the alien beneficiary possesses the necessary education and experience.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The regulation at 8 C.F.R. § 204.5(g) also provides that if a letter from a current or former employer "is unavailable, other documentation relating to the alien's experience or training will be considered."

In this case, there is no dispute that the beneficiary has a bachelor's degree in finance. In support of the beneficiary's relevant work experience, the petitioner initially submitted a letter attesting to the beneficiary's employment with the petitioner since 1995 in program management and training. On July 17, 2002, the director requested additional

evidence in support of the petitioner's claim that the beneficiary possessed five years of employment experience as of the visa priority date of July 20, 1999. The director instructed the petitioner to provide this evidence in the form of employer letters pursuant to the regulatory requirements.

In response, the petitioner, through counsel, submitted a letter dated July 18, 2002, again describing the beneficiary's experience within the petitioning company in program management and training. The letter confirms that the petitioner began working at the petitioner's office in Chicago "in 1995." The letter also mentions that the beneficiary worked for a commercial real estate company for three years as an assistant sales manager.

In denying the petition, the director noted that the petitioner's letter failed to specify the date in 1995 that the beneficiary began employment there, and failed to include any verification of his experience at the commercial real estate company.

On appeal, counsel submits another copy of the approved labor certification, a copy of the petitioner's previously submitted letter of July 18, 2002, a summary of employment experience from the beneficiary, and a letter from the beneficiary's former commercial real estate employer, "The Januski Group." Counsel also asserts that the date of the eligibility should be measured as of September 25, 2001, which is the date that his office requested the state employment authority to process the labor certification as a reduction in recruitment. Counsel attaches copies of correspondence to support this assertion.

As noted above, the approved labor certification submitted with the file reflects that July 20, 1999 is the initial date of the acceptance by an office within the Department of Labor's employment service system. The record shows that this date has not been amended by the Department of Labor. The visa petition was filed with CIS on May 8, 2002 with the original approved labor certification. The original labor certification is stamped with the date July 20, 1999. The correspondence submitted on appeal does not support counsel's assertion that this date was ever changed. Rather the correspondence, dated October 30, 2001, from the state employment office, indicates that if sufficient documentation was not submitted to support the request for reduction in recruitment, the file would be closed, the priority date would be lost, and a new application would have to be filed. Counsel has cited no authority or provided any evidence to suggest that the priority date has ever changed.

Although counsel submitted an unsigned letter from the beneficiary summarizing his past employment experience, which noted that his employment with the petitioner began September 4, 1995, no explanation was offered why verification of the beneficiary's specific dates of employment with the petitioner was unavailable from the petitioning employer. It is also noted that Part B of the ETA 750, signed by the beneficiary, states that his employment with The Januski Group was part-time and ran from May 1992 to September 1995. Fortunately for the beneficiary, the letter from The Januski Group submitted on appeal sufficiently fills in the gaps to establish the beneficiary's past employment credentials. This letter, signed by the president, states that the beneficiary worked for The Januski Group from February 1992 to August 1995. He was involved in client development and vendor training and management. The beneficiary's employment with The Januski Group represented approximately one year and nine months of paid full-time experience. Together with his accrued employment with the petitioner, his length of employment experience is sufficient to establish his eligibility for the visa classification as of the priority date of July 20, 1999. As such, the petitioner has provided sufficient evidence on appeal that meets the director's concerns expressed in his decision.

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. The petition will be approved.