PUBLIC COPY

B10

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: WAC 02 128 51218 Office: California Service Center Date: FEB 10 2004

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

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an immigration consulting company. It seeks to employ the beneficiary permanently in the United States as an abstractor. As required by statute, the petition is accompanied by an individual labor certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the required two years of experience in the job being offered as of the priority date, and denied the petition accordingly.

On appeal, the petitioner submits a brief. Both the beneficiary and a representative of the petitioner have signed the appeal. It will be accepted as being properly filed.

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 regulation at 8 C.F.R. § 204.5(l)(3)(ii) states, in pertinent part:

> (A) *General*. Any requirements of training or experience for skilled workers, professionals, 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.

To establish that the beneficiary possessed two years of experience as an abstractor as required by the approved labor certification which accompanied the petition, the petitioner submitted a letter in Spanish, accompanied by an English translation, which stated that the beneficiary had worked as an *ASISTENTE LEGAL*. In the accompanying translation, this term is given in English as "ABSTRACT SEARCHER/LEGAL ASSISTANT."

In a request for evidence, dated April 30, 2002, the director asked for additional evidence regarding the qualifying experience of the beneficiary, finding the translation to be unsatisfactory. The director noted that a supporting employment letter should state the duties of the prior employment. The director also asked for a second letter from another employer for whom the beneficiary had allegedly worked for in the United States. The

record does not contain employment letters which conform to the regulation as articulated by the director.

The director found that the employment letter had been mistranslated, that the beneficiary did not have the required two years of experience in the job being offered, and denied the petitioner accordingly. The director did not state that the supporting letters of employment failed to meet the requirements of the regulation.

On appeal, the petitioner states that there was no attempt at misrepresentation, and that the translation of *ASISTENTE LEGAL* to "ABSTRACT SEARCHER/LEGAL ASSISTANT" was as close as one could get because there is no word or words in Spanish for abstract searcher.

Whether there has been misrepresentation here on the part of the petitioner, or whether this is simply the case of a broad translation, the letters provided by the petitioner are deficient in establishing that the beneficiary has the required two years of experience in the job being offered. The AAO notes that the 2002-03 edition of the Department of Labor's *Occupational Outlook Handbook* states at page 216 that among the occupations related to those of paralegal and legal assistant is the occupation of abstractor. Clearly worded letters describing the duties of the beneficiary with her prior employers might have been of value in this regard.

The AAO finds that the petitioner has not established that the beneficiary has the requisite two years of experience in the job being offered.

Beyond the decision of the director, it is not clear that petitioner has established that it has the continuing ability to pay the beneficiary the proffered wage as required by 8 C.F.R. § 204.5(g)(2). As the appeal will be dismissed on another ground, this issue will not be discussed further.

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.