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U.S. Citizenship and Immigration Services

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[redacted]

MAR 02 2004

FILE: WAC 99 207 50417 Office: CALIFORNIA 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:

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

The petitioner is a health and rehabilitation provider. It seeks to employ the beneficiary permanently in the United States as an occupational therapist. 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 requisite experience as of the priority date of the visa petition.

On appeal, counsel submits a brief and additional evidence.

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.

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

> (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.
>
> (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, or meets the requirements of Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on August 6, 1997, indicates that the minimum requirement to perform the job duties of the proffered position is two years of experience in the job offered.

Counsel submitted a letter of experience from Integrated Health Services, which stated that the beneficiary had been employed with them since May 5, 1997.

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite training as an occupational therapist and denied the petition accordingly. The director noted that "[b]ased on this evidence, the beneficiary had only three months of experience at the time the ETA-750 was accepted for processing."

On appeal, counsel argues that the Labor Certification Handbook states that any experience gained while working for the employer cannot be counted in determining whether the alien meets the minimum experience requirements listed in Item 14.

Counsel has provided no evidence that the beneficiary has the requisite two years of experience as an occupational therapist. Form ETA-750 A&B by itself is insufficient to prove eligibility. Evidence must be provided as stated in 8 C.F.R. § 204.5(l)(3).

Therefore, the petitioner has not overcome the director's decision, and the petition may not be approved.

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.