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U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 01 223 50860 Office: NEBRASKA SERVICE CENTER Date: MAR 03 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:

[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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a painting and carpentry company. It seeks to employ the beneficiary permanently in the United States as a painter. 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 statement and indicates that a separate brief and/or evidence are being submitted within thirty days. To date, however, no further documentation has been received. Therefore, a decision will be made based on the record as it is presently constituted.

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, meets the requirements for 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 January 14, 1998, indicates that the minimum requirement to perform the job duties of the proffered position is four years of experience in the job offered.

Counsel initially submitted a letter documenting the beneficiary's experience as a stonemason. On September 19, 2001 the petitioner was requested to submit evidence that the beneficiary had the requisite four years of experience as a painter.

The petitioner responded by submitting a letter from Construction Services, which stated that the beneficiary had worked for the company as a painter from February 15, 1976 to December 31, 1987.

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite training as a painter and denied the petition accordingly. The director noted that:

> In response to the request for further evidence regarding the beneficiary's experience as a painter, the petitioner provided a letter dated May 15, 1996, stating that the beneficiary worked from 1976 to 1987 painting kitchens, bathrooms, outside facades of residential buildings, and varnishing woodwork. Neither employment letter details the number of hours the beneficiary

> worked per week during the years listed. The petitioner makes no explanation why the 1996 "painter" letter was not included with the initial filing of the visa petition. The petitioner does not explain how the beneficiary worked at two jobs simultaneously for 11 years.

On appeal, counsel argues that "[t]he Service's finding that somehow Petitioner could not perform work as both a stone mason and a painter is in error."

No additional evidence that the beneficiary had the requisite four years of experience as a painter has been received. Therefore, the petitioner has not overcome the director's decision, and the petitioner 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.