

9 FAM 42.32(c) NOTES

*(CT:VISA-1708; 09-23-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(c) N1 DEFINING "SKILLED WORKER"

(CT:VISA-999; 09-03-2008)

The Department of Homeland Security (DHS) regulations 8 CFR 204.5(l)(2) define a "skilled worker" as one who, at the time of petitioning, is capable of performing skilled labor (requiring at least two years training or experience) not of a temporary or seasonal nature, and for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision. (See INA 203(b)(3)(A)(i) (8 U.S.C. 1153(b)(3)(A)(i)).)

9 FAM 42.32(c) N2 DEFINING "PROFESSION"

(CT:VISA-680; 01-28-2005)

INA 101(a)(32) defines "profession" as including, "but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." DHS has also held that an occupation may generally be considered to be a "profession" within the meaning of INA 101(a)(32) if the attainment of a baccalaureate degree is usually the minimum requirement for entry into that occupation.

9 FAM 42.32(c) N3 DEFINING "OTHER WORKER"

(CT:VISA-680; 01-28-2005)

DHS regulations define "other worker" to mean a qualified alien capable, at the time of petitioning, of performing unskilled labor, requiring less than two years training, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States.

9 FAM 42.32(c) N4 LABOR CERTIFICATION/PETITION REQUIREMENT

(CT:VISA-1562; 09-30-2010)

You will not issue an immigrant visa (IV) to any third preference employment-based immigrant until you are in receipt of an approved petition accompanied by a labor certification granted by the Department of Labor (see the Foreign Labor Certification Web Site), evidence that the alien's occupation is on the Department of Labor's Schedule A (see 20 CFR 656.15), or evidence to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

9 FAM 42.32(c) N5 SIGNIFICANCE OF APPROVED PREFERENCE PETITION

(CT:VISA-1562; 09-30-2010)

A certification under INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)) is included in the approval of the preference petition. The Department of Homeland Security is responsible for determining the eligibility of an alien for preference immigrant status. You should not readjudicate the petition, but rather should review the petition to determine whether:

- (1) The supporting evidence is consistent with the approval;
- (2) There was any misrepresentation of a material fact; and
- (3) The alien meets the requirements of the employment offered.

9 FAM 42.32(c) N6 SPOUSE AND CHILDREN

(CT:VISA-1708; 09-23-2011)

The spouse, or the child of a marriage which existed at the time of the principal alien's admission into the United States, is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status. *Further information regarding follow to join eligibility of derivative spouse and children is available at 9 FAM 40.1 N7.*