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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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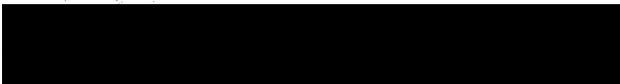
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Office: CALIFORNIA SERVICE CENTER

Date: 25 FEB 2002

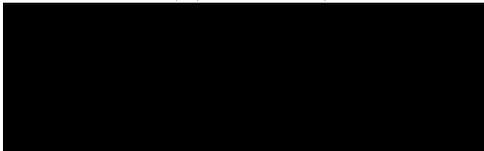
IN RE: Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(i)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On the basis of an overseas investigation, the director determined that the beneficiary was not eligible for the benefit sought and served the petitioner with a notice of her intention to revoke the approval of the petition. After considering the petitioner's response, the director revoked the approval of the petition. The petitioner subsequently filed a motion to reopen and the director affirmed her decision to revoke the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The decision of the director will be withdrawn and the petition will be approved.

The petitioner is a corporation located in Woodland Hills, California, which specializes in the manufacture of electronic parts and equipment. The petitioner seeks to employ the beneficiary as a market analyst. Accordingly, the petitioner has requested classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i). The director approved the immigrant petition on September 21, 2000.

After the beneficiary applied for adjustment of status, the District Director, Los Angeles, California, returned the petition to the California Service Center for review. The California Service Center requested an overseas investigation of the beneficiary's claimed job experience. Based on an investigation by the American Institute in Taiwan (AIT), the director issued a notice of intent to revoke the approval on December 21, 2001. In the initial petition, the beneficiary claimed to have been employed in Taiwan by Standard Building Materials, Inc. as a "Marketing Specialist" or a "Market Analyst" from December 1978 until January 1984, and by Asiatic, Inc. as a "Marketing Assistant Manager" from February 1985 until June 1987. According to the AIT report, the investigator was unable to verify the beneficiary's claimed work experience as the previous employers were not located at the listed addresses and the provided phone numbers were not associated with the companies. Based on the report, the director concluded that the "business entities in question do not appear to exist" and determined that the beneficiary was not qualified for the proffered position.

On appeal, counsel for the petitioner submits a brief and asserts that the director's decision was based on less than substantial evidence as the director relied solely on the AIT investigative report. The petitioner submitted affidavits and additional evidence in support of the appeal.

Section 203(b)(3) of the Act states, in pertinent part:

(A) In general. - Visas shall be made available . . . to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Furthermore, 8 C.F.R. 204.5(1)(3) states:

(i) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor The job offer portion of an individual labor certification, Schedule A application, or Pilot Program application for a professional must demonstrate that the job requires the minimum of a baccalaureate degree.

(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 occupation designation. The minimum requirements for this classification are at least two years of training or experience.

As required by 8 C.F.R. 204.5(1)(3)(i), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification requires three years of experience in the job offered. The labor certification does not indicate that any level of education is required. The beneficiary claimed more than five years of experience in the proffered position. As required by 8 C.F.R. 204.5(1)(3)(ii)(A), the beneficiary provided a translated letter from her previous employer, Standard Building Materials,

Inc., describing her employment as a "market analyst" from December 1, 1978 until the date of the letter, January 31, 1984. The beneficiary did not submit a letter regarding her claimed employment with Asiatic, Inc.

In the current proceeding, the investigative report is a one-and-one-half page description of the AIT investigator's visit to the addresses reported by the beneficiary as her former place of employment. At the first address, 4F Han Ling Building, 200 Ho [REDACTED] Taipei, the investigator reported that he found the "Athena Law Office" where an employee and a security guard had no recollection of the company, Standard Building Materials, Inc. A female employee of the law office reported that her employer purchased the building in 1988. The investigator reported that when he called the four telephone numbers listed on the beneficiary's employment letter, the numbers were determined to be a wrong number, a residence, a fax number, and an unrelated investment consulting company. The investigator also visited the address for the beneficiary's second place of employment, Asiatic, Inc., and found the address occupied by an unrelated warehouse. The investigator reported that the owner of the warehouse had never heard of Asiatic, Inc., and that her family had owned the building prior to 1987. The report stated that the two companies were either closed or never existed, and concluded by stating that AIT had found no way to verify the beneficiary's claimed employment.

It must be noted that while the report does raise concerns regarding the bona fides of the beneficiary's claimed employment history, the report does not provide the Service with concrete information regarding the existence of the foreign company as of the date of the beneficiary's employment letter, January 31, 1984. However, as the investigation raised doubt regarding the existence of the beneficiary's prior employers, the director did have good and sufficient cause to issue the notice of intent to revoke based on the abbreviated investigative report.

Based on the overseas investigation, the director issued a notice of intent to revoke the approval of the petition, indicating that the Service could not confirm that the beneficiary possessed the required experience that was described in her employment letter. The director disclosed the results of the investigation in the notice of intent to revoke and noted the investigation's findings for the record. In response, the petitioner submitted an affidavit from [REDACTED] one of the original owners of Standard Building Materials, Inc., who described the beneficiary's employment and confirmed the office's address. After considering the petitioner's response, the director revoked the petition's approval.

The petitioner filed a subsequent motion to reopen and submitted additional evidence, including a copy of the articles of incorporation and the corporate registry records for Standard Building Materials, Inc., both certified by the Taipei City Office

of Commercial Business Control. The documents listed the affiant, Mr. Bin Chun Chao, as a founder of the company and stated that the company was dissolved on May 28, 1988. The director granted the motion and affirmed her previous decision to revoke the approval of the immigrant petition.

On appeal, counsel for the petitioner states that the director improperly discounted the evidence submitted in response to the notice of intent to revoke. Counsel explains that the AIT investigator was unable to locate the beneficiary's overseas employer as the company was dissolved in 1988. Counsel asserts that the petitioner has submitted independent and objective evidence to rebut the findings of the AIT investigation. In support of the appeal, the petitioner supplemented the previously submitted evidence with copies of the 1982 and 1983 Taipei telephone directory, which include a listing for Standard Building Materials, Inc. The phone directory confirms both the address and the phone numbers contained on the beneficiary's employment letter. The petitioner also submitted letters from the Taiwan Ministry of Finance regarding the availability of tax records for both the beneficiary and her former employer.

Counsel's assertion is persuasive. Although the director had good and sufficient cause to issue the notice of intent to revoke based on the findings of the AIT investigative report, the petitioner has submitted independent and objective evidence to rebut the report's findings.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing Matter of Estime, 19 I&N 450 (BIA 1987)).

As stated in Matter of Ho, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent and objective evidence. Supra at 591-92. The discrepancy presented in the present matter arose after the AIT investigator was unable to confirm the beneficiary's claimed employment history, as presented in her 1984 employment letter from Standard Building Materials, Inc. In response to the director's notice of intent to revoke, the petitioner submitted an affidavit of the beneficiary's former employer, [REDACTED] which confirms the beneficiary's employment with the overseas company and describes her job duties. The petitioner also submitted certified copies of the company's articles of incorporation and business registration, which confirm that the company was dissolved in 1988 and also corroborate information contained in the affidavit [REDACTED] as well as his original 1984 employment letter. The petitioner has also submitted copies of the local Taipei telephone directories from 1982 and 1983, which confirm the claimed address and telephone numbers of the beneficiary's overseas employer. In response to the director's observation that the petitioner has not submitted copies of employment records or tax returns, the petitioner has submitted documentation to establish that the records are unavailable, in accordance with 8 C.F.R. 103.2(b)(2). On appeal, the petitioner submitted two translated letters from the Ministry of Finance, National Tax Bureau of Taipei, which state that the 1979 to 1984 tax returns for both Standard Building Materials, Inc. and the beneficiary are unavailable as the statutory time limit for record keeping had expired and the documents had been destroyed. As the records are unavailable, the Service must accept secondary evidence and affidavits.

The submitted documents constitute independent and objective evidence that supports the critical 1984 employment letter from Standard Building Materials, Inc., which was submitted in accordance with 8 C.F.R. 204.5(1)(3)(ii)(A). Accordingly, the petitioner has submitted sufficient evidence to counter each element of the proposed revocation. The decision to revoke the approved visa petition cannot be sustained.

The director's decision was deficient in that it failed to give due consideration to the entirety of the evidence, including the evidence submitted in rebuttal of the notice of intent to revoke. For this reason, the decisions of the director of the California Service Center dated January 4, 2002 and January 17, 2002 are withdrawn. The petition is approved.

ORDER: The decisions of the director dated January 4, 2002 and January 17, 2002 are withdrawn. The petition is approved.