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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



File: EAC 00 093 54266

Office: VERMONT SERVICE CENTER

Date:

SEP 04 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



Public Copy

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 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 that 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a convenience store. It seeks to employ the beneficiary permanently in the United States as a night manager. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on November 21, 2000. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on February 1, 2002. The revocation was based on the finding that the beneficiary did not have the required two years experience as a manager as required on the labor certification.

The memorandum from the Consular Section, Islamabad stated in pertinent part that the beneficiary submitted an employment letter from Misbah, owner of Swat Trade Centre. The investigators interviewed the younger brother of Misbah and equal owner of Swat Trade Centre who stated that the beneficiary never worked at Swat Trade Centre and also that he did not recognize a photograph of the beneficiary.

On appeal, counsel argues that:

...the evidence submitted does absolutely overcome the grounds of revocation. There is no evidence in the record to contradict the sworn affidavit of the prior Pakistani employer. His sworn affidavit directly and unequivocally rebuts the two related basis of the consular report: the conversation that the consular investigator had with someone and the prior employment of the beneficiary by the affiant. That is, the affidavit deals specifically with the question of with whom the consular officer spoke and specifically provides evidence as to why that information is totally irrelevant to this petition. Further, as indicated, the affidavit sworn to in the United States again confirms the beneficiary's employment with the petitioner.

Counsel's argument is not persuasive. As noted on the consular report "[d]uring the interview [the beneficiary] was unable to

provide details regarding his work experience, his colleagues, or even the phone number of the shop."

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

No additional evidence has been received to date. Therefore, upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the district director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act 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.