

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. 3/F
Washington, D.C. 20536

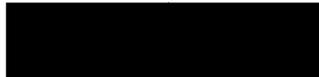


AUG 07 2003

File: WAC 02 032 51890 Office: California Service Center

Date:

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)

ON BEHALF OF PETITIONER:



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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference 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 restaurant. It seeks to employ the beneficiary permanently in the United States as a sushi cook. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that, as of the priority date, the beneficiary had the two years of experience which the ETA 750 states are necessary in order to be eligible for the proffered position.

On appeal, the petitioner submits a brief.

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(1)(3)(ii)(B) states, in pertinent part:

If the petitioner is for a skilled worker, the petition must be accompanied by evidence that the alien meets the education, training or experience, and any other requirements of the individual labor certification...."

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was eligible for the proffered position on the priority date of the petition, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the request for labor certification was accepted for processing on October 15, 1997.

With the petition, counsel submitted an undated "Certificate of Employment" purportedly signed by Mr. [REDACTED] presumably a person with some unstated connection to the Zipangu Restaurant in Santa Monica, California. That certificate states that the beneficiary was employed in some unstated capacity, presumably at the restaurant, from October 1993 to March 1998. The certificate is not on restaurant letterhead and does not state the beneficiary's job title, duties, or the number of hours he worked

per week.

In addition, counsel submitted a statement, dated November 4, 1998 addressed to the California Employment Development Department, and signed by the beneficiary. That statement indicates that the beneficiary worked as a sushi chef at the Zipangu Restaurant from October 1993 to March 1998, and as a chef at the Z II Restaurant, in Los Angeles, California, from July 1998 until November 4, 1998, the date of the statement.

Because the evidence submitted was insufficient to demonstrate the beneficiary's employment history, the California Service Center, on February 19, 2002, requested additional pertinent evidence. Specifically, the Service Center requested evidence of the beneficiary's prior experience on letter form on the previous employer's letterhead showing the name and title of the person verifying the information. The request also stipulated that the employment verification should state the beneficiary's title, duties, dates of employment, and hours per week.

In response, counsel submitted a letter from the beneficiary stating that he worked as a sushi chef at the Zipangu Restaurant, of Santa Monica, California, from October 1993 to March of 1998, and as a sushi chef at the Z II Restaurant in Los Angeles, California, from July 1998 to October 1998. The beneficiary further stated that he was paid in cash and received no Form W-2 wage and tax statements at either job. Further still, the beneficiary states that both restaurants are now closed and he is unable to locate the owners. The beneficiary did not then explain the provenance of the Certificate of Employment described above or the relationship to the restaurant or to the beneficiary of Kishi S.K. Han, the person who provided that certificate.

On July 5, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary had the requisite experience listed on the labor certification.

On appeal, the petitioner argues that the evidence submitted demonstrates that the beneficiary has the requisite experience. In a brief, the petitioner states that Mr. [REDACTED] was the owner of the Zipangu Restaurant, which is now closed.

In addition, counsel submitted a letter which purports to be from [REDACTED] Mr. [REDACTED] states that he was the chef at Zipangu Restaurant from October 1990 to October 1996, and that the beneficiary worked there as sushi chef beginning in October 1993. Mr. [REDACTED] further states that the beneficiary worked eight

hours per day on a split shift, five days per week. As Mr. [REDACTED] states that he was the restaurant's chef, he apparently implies that he also worked there full-time. Although Mr. [REDACTED] left during October 1996, he states that the beneficiary continued to work at Zipangu Restaurant until March 1998 "as far as (he) know(s)." That letter is not on Zipangu Restaurant letterhead.

As evidence in support of the claims made in that letter, the petitioner provided W-2 forms purporting to show that during 1994 [REDACTED] of Zipangu Restaurant paid [REDACTED] \$11,760 in wages, during 1995 paid [REDACTED] \$11,760 in wages, during 1996 paid [REDACTED] \$12,000 in wages, and during 1997 paid [REDACTED] \$12,000 in wages.

Neither counsel, nor the petitioner, nor Mr. [REDACTED] explained the discrepancy between the name shown on the 1994 W-2 and that shown on the 1995 through 1997 W-2 forms. Further, neither counsel, nor the petitioner, nor Mr. [REDACTED] explained why, if Mr. [REDACTED] left the restaurant during October 1996 as he stated, the restaurant continued to pay his full salary during 1997.

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. Further, the petitioner is obliged to resolve any inconsistencies in the record by independent objective evidence. 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 (Comm. 1988).

Initially, the beneficiary presented only his own word and that of the unidentified [REDACTED] as evidence of his employment. Subsequently, in response to a Request for Evidence, the beneficiary stated that he was unable to locate the owners of either the Z II Restaurant or the Zipangu Restaurant. At that time, the beneficiary admitted that he was unable to provide W-2 forms, the usual documentary evidence of employment in the United States.

On appeal, the beneficiary provided evidence from Mr. [REDACTED] allegedly the chef at Zipangu during part of the beneficiary's tenure there. As evidence that Mr. [REDACTED] did, in fact, work at that restaurant, four W-2 forms were submitted. Those W-2 forms appear, at first glance, to confirm that Mr. [REDACTED] worked at Zipangu and that [REDACTED] owned it.

However, the 1994 W-2 form is for a [REDACTED] not [REDACTED]. Further, according to the forms, [REDACTED] drew his full salary during 1997, notwithstanding that [REDACTED] stated he left the restaurant during October of 1996. Finally, \$12,000 seems a very low figure for a full-time chef during 1994 through 1997. With the credibility of [REDACTED] statement in doubt, the beneficiary, once again, is the only remaining witness to his employment history. The evidence is insufficiently credible.

The evidence submitted does not credibly demonstrate that the petitioner has the requisite two years of experience which would render him eligible for the proffered position. 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.