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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 27 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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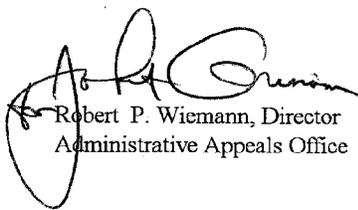
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 immigrant visa petition was initially approved by the Director, California Service Center. Upon considering information discovered at the beneficiary's adjustment of status interview, the director properly notified the petitioner of her intent to revoke the approval. After considering the petitioner's response to the notice of intent to revoke, the director revoked the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that specializes in auto sales. It seeks to employ the beneficiary as an automobile buyer. Accordingly, the petitioner filed the current petition to classify 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 petitioner filed the Form I-140 on December 23, 1994, and the director approved the petition on February 15, 1995. Subsequently, based on the beneficiary's statements at an interview in 1997, the director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Employment Certification. Accordingly, the director revoked the approval of the petition.

On appeal, counsel for the petitioner submits a brief. Counsel asserts that the director ignored the exculpatory documentation that was submitted with the petitioner's response to the notice of intent to revoke.

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.

Regarding the required initial evidence, the regulation at 8 C.F.R. § 204.5(1)(3)(ii) states:

(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) and section 204(b) of the Act, 8 U.S.C. § 1134(b), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. Regarding the minimum level of education required for a worker to perform the job duties in a satisfactory manner, block 14 of the labor certification requires three years of high school. Regarding the minimum level of experience required, the Form ETA-750 specifically requires two years of experience in "auto sales." Block 15 states that the experience must include: "1) foreign & domestic autos. 2) Damage repair estimating. 3) Mechanical condition reports. 4) Preparation of vehicles for re-sale. 5) Auto purchase and appraisal."

The beneficiary's eligibility in this matter hinges on whether he had the required experience as of the petition's priority date, which is 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). A petitioner must establish eligibility at the time of filing the immigrant petition; an immigrant petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Here, the petition's priority date is February 24, 1994.

Regarding the required experience, the original petition included a letter dated April 15, 1993 from Mr. [REDACTED] of [REDACTED] located in [REDACTED]. Mr. [REDACTED] letter states that the beneficiary "was employed by this company as a vehicle buyer for a period of two years, beginning February 1990."

After the petition was approved, the beneficiary appeared at the Los Angeles, California district office of the Immigration and Naturalization Service, now CIS, for an interview in conjunction with his application for adjustment of status to permanent resident. After the district director requested additional evidence, the beneficiary submitted records from the Social Security Administration which revealed that he had not reported any income between the years 1978 and 1994. For the year 1995, the Social Security records revealed that the beneficiary had reported an income in the amount of \$16,939, from [REDACTED] Inc. Counsel asserted that the beneficiary had been employed by [REDACTED] from 1990 to 1992, and explained that the beneficiary was paid in cash for his services and did not declare taxes.

Furthermore, on October 30, 1997, the beneficiary provided the following written statement, which was signed, dated, and titled

"Sworn Statement":

I worked there approximately 1 year 4 months, I believe it was between 1992 and 1993. I was totally taking care of business, buyer, sale, advertisement, DMV paperwork [sic]. It was a family business. Name was [REDACTED]

On November 13, 1997, the Los Angeles District Director returned the petition to the California Service Center for review and possible revocation.

On April 21, 2003, the Director, California Service Center, issued a notice of intent to revoke, stating that the beneficiary lacked the required experience as outlined in the labor certification. Specifically, the director noted that the beneficiary's "sworn statement" revealed that he worked for "12 to 13 months [sic]" for the previous employer. The director also noted that although the beneficiary claimed he was paid in cash, "[t]hat is not common business practice for an auto dealer." Finally, the director noted that the beneficiary's brother owned the dealership where he previously worked and that the beneficiary's prior experience was not verifiable because the business had closed.

In response to the notice of intent to revoke, counsel for the petitioner asserted that the factors cited by the director are "specious." Counsel stated that the fact that the beneficiary's employment was no longer verifiable was due to the delay of CIS and not the fault of the alien. Counsel also stated that the fact that the business was family owned was irrelevant and had been previously revealed by the beneficiary. Regarding the beneficiary's lack of reported income, counsel stated that the beneficiary had no Social Security number prior to 1995.

Regarding the beneficiary's critical statement that he was employed by his previous employer for "approximately 1 year 4 months," counsel emphasized that it is not a sworn statement. Counsel asserted that the statement was provided by the beneficiary under duress and without the opportunity to consult his records. Counsel conceded that the statement is accurate and consistent with the facts, since the beneficiary provided the dates when he worked for [REDACTED]. According to counsel, [REDACTED] was formed mid-1992 and as such his affidavit is accurate." Counsel stated that "[p]rior to the formation of [REDACTED] he and his brother were trading under their own name at the same address." In support of these claims, the beneficiary provided an affidavit attempting to clarify his previous statement and elaborating on his efforts to locate additional documentary evidence. The beneficiary also submitted a copy of an "L.A. Dealer Auto Auction Card" issued to the beneficiary on June 22, 1992 as a representative of [REDACTED] Sales; canceled checks from [REDACTED] that were signed by the beneficiary in September 1992; and the beneficiary's IRS Form 1040

Individual Income Tax Returns from 1990, 1991, 1996, 1997, 1998, 1999, and 2000.

On June 9, 2003, the director issued the final notice of revocation. In a cursory decision, the director repeated the factors enumerated in the notice of intent to revoke and noted that the documents submitted by the petitioner did not demonstrate that the beneficiary qualifies for the benefit sought.

On appeal, counsel asserts that the director failed to give due consideration to the evidence submitted in response to the notice of intent to revoke. Specifically, counsel points to the beneficiary's affidavit, the L.A. Dealer Auto Auction Card, and the canceled checks from [REDACTED]. Since the card and the checks were dated 18 and 17 months prior to the filing of the labor certification, counsel states that this evidence confirms the inaccuracy of the beneficiary's statement that he had only worked for 12 to 14 months. However, after questioning the accuracy of the beneficiary's October 1997 statement, counsel reiterates that the beneficiary's statement was accurate since the beneficiary was asked "to provide dates when he worked for [REDACTED] (Emphasis in original). Counsel asserts that prior to the formation of [REDACTED], the beneficiary and his brother "were working under their own names at the same address since February 1990, or four (4) years total." Although counsel has previously made this assertion, it is noted that the record does not contain any evidence of this claim. Regarding the fact that the beneficiary was claimed to have been paid in cash, counsel asserts that this is non an uncommon practice for an auto dealer, especially when the "alien worked for his family business and was illegal at the time."

With respect to the director's comment that the business had closed and that CIS could not verify the beneficiary's employment, counsel states that this fact is the most specious of the director's decision. Counsel again states that it is the delay in issuing the intent to revoke that created the situation. Counsel points out that "[t]he Bureau [CIS] takes no responsibility for the fact that had it completed or even commenced an investigation in a timely manner it might have been able to verify the alien's qualifying employment." Counsel's assertion is persuasive on this point. The fact that the business has closed in the time since the original petition was approved cannot be held against the beneficiary as a adverse factor. For this reason, the director's comment that "it has been established that the beneficiary's prior experience is not verifiable because the dealership has closed" will be withdrawn. Instead of relying on "verification" to establish the beneficiary's prior employment, CIS must focus on the evidence presented by the petitioner in an attempt to explain or reconcile the beneficiary's inconsistent statements regarding his prior employment.

Upon review, the evidence of record and counsel's assertions are not persuasive. The record does not contain independent and objective evidence that would establish the critical claim that the beneficiary was employed by Expo Auto for two years, beginning in February 1990. 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, 591-92 (BIA 1988).

Although counsel asserts that the rebuttal evidence establishes the beneficiary's eligibility, the record contains a number of conflicting statements and contradictory evidence. First, counsel claimed that the beneficiary was paid in cash because he did not have a social security number until 1995, after he filed for adjustment of status. Contrary to this claim, the beneficiary has submitted copies of his individual income tax returns from 1990 and 1991 which reflect the beneficiary's current social security number. Furthermore, it is also noted that these documents contradict counsel's original claim that the beneficiary did not report taxes until 1995. Most importantly, the tax returns reflect that the beneficiary was self employed in 1990 and 1991, and not employed by [REDACTED], as stated in the employment letter that was submitted with the original petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Prior to the notice of intent to revoke, the beneficiary claimed consistently that he had been employed by [REDACTED] for two years, beginning in 1990. The immigrant visa petition, the labor certification, the employment letter, the application for adjustment of status, and the beneficiary's Form G-325A Biographical Information all consistently assert that the beneficiary was employed by [REDACTED] for two years, starting in February 1990. The current explanation that the beneficiary's statement was accurate because [REDACTED] was not formed until "mid-1992" severely undermines the beneficiary's original claim. If accepted as true, the original employment letter would constitute a serious misrepresentation since the business would not have been formed in 1990, the time the author of the letter stated that the beneficiary began employment with the company. However, even this claim cannot be accepted as a fact since the petitioner has not submitted any evidence, such as articles of incorporation or other corporate documents, in support of the claim that [REDACTED] was formed in "mid-1992." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The labor certification in the present matter specifically requires two years of experience in "auto sales." In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position; CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

To establish that the beneficiary qualified for the proffered position at the time the petition was filed, the petitioner submitted an employment letter from [REDACTED] that stated the beneficiary "was employed by this company as a vehicle buyer for a period of two years, beginning February 1990." The beneficiary's employment letter did not testify that the beneficiary worked as a self-employed automobile buyer or as a buyer with his brother in a sole proprietorship. It was the beneficiary's own contradictory statement, claiming that he worked with [REDACTED] "approximately 1 year 4 months," that caused the director to question the beneficiary's eligibility. And as discussed, the beneficiary's attempts to clarify his conflicting statements have only muddled the beneficiary's claim to eligibility.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, 8 U.S.C. § 1155, 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 un rebutted, 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, supra at 590 (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In the present case, the beneficiary's contradictory statement constituted good and sufficient cause for the director to issue the notice of intent to revoke. The petitioner did not submit independent and objective evidence in response that would establish the beneficiary's eligibility. The director's decision to revoke will be affirmed.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.