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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, Rm 3042  
425 Eye Street N.W.  
Washington, D.C. 20536



File: WAC 01 277 57288 Office: CALIFORNIA SERVICE CENTER

Date: **DEC 08 2003**

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 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 Director, California Service Center, revoked approval of the preference visa petition that 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 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 the beneficiary has the requisite experience as stated on the labor certification.

On appeal, counsel submits a brief and copies of evidence previously submitted.

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 nature, for which qualified workers are not available in the United States.

The regulation at 8 CFR § 204.5(1)(3)(ii) states, in pertinent part:

(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.

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 April 20, 2001. The labor certification states that the position requires two years of experience.

With the petition the petitioner submitted what purports to be an employment verification letter from the Fuzhou Cheng Long Grand Hotel in China and an English translation of the letter. The letter, purportedly issued on September 8, 1995, states that the beneficiary worked in the hotel's restaurant as a cook from May 1992 to the date the letter was issued. The letter bears the seal of the Human Resources Department of the hotel.

On May 29, 2002, the petition was approved.

On September 6, 2002, the California Service Center issued a Notice of Intent to Revoke based on information from a Report of Investigation from the American Consulate/Embassy in Guangzhou, China. The Notice stated that the seal of the Human Resources Department of the hotel is for internal use only. The Notice further stated that the hotel did not open until December 1995 and that the beneficiary could not, therefore, have worked at the hotel beginning in May of 1992. The Notice stated that this information was received from an official of the hotel, who viewed a facsimile of the beneficiary's employment verification letter and pronounced it to be a fabrication. The petitioner was accorded 30 days to respond to the adverse evidence.

On September 24, 2002, counsel submitted a letter in which she asked for an extension of time in which to respond to the Notice. Counsel requested an additional 60 days beyond the original deadline for the petitioner's response.

Subsequently, counsel submitted what purports to be a letter and translation from the Chang Le City Wu Hang He An Grand Hotel stating that the beneficiary worked there as a cook from May 1992 to September 1995.

In addition, counsel submitted what purports to be a correction of the previous employment certification from Fuzhou Cheng Long Grand Hotel. The purported correction notice states that the employment certification mistakenly listed the period of the beneficiary's employment and erroneously used the departmental seal rather than the hotel's seal. The putative correction stated that the beneficiary actually worked in the food and beverage department of the hotel as a cook from January 1996 to September 1997.

Neither that letter nor counsel explained how the hotel could mistakenly issue an employment verification that stated that the

beneficiary worked there during a time when the hotel did not exist. Further, neither explained how the hotel could mistakenly issue an employment letter prior to coming into existence.

Because he found that the evidence submitted did not credibly demonstrate that the beneficiary has the requisite two years of work experience, the Director, California Service Center, revoked approval of the petition on December 10, 2002. Although the director's decision was issued after the petitioner's response to the Notice was issued, the decision does not address that additional evidence. This office concludes that the evidence had not been received into the record of proceeding at the time the decision was issued.

On appeal, counsel argues that CIS failed to accord the petitioner sufficient opportunity to respond to the adverse evidence. Counsel characterized the incorrect dates on the previously issued employment verifications as clerical errors. Counsel also stated that the new evidence submitted, the new employment verification and the correction of the original employment verification, taken together, are sufficient to overcome the adverse evidence.

The original employment certification states that the beneficiary began work at the Fuzhou Cheng Long Grand Hotel during May of 1992 and worked there until September 8, 1995, the date upon which the employment certification purports to have been issued.

The adverse information indicates that the hotel did not begin operations until December 1995. Counsel does not contest the accuracy of the adverse evidence.

Instead, counsel submits a "correction" which states that the petitioner worked at that hotel from January 1996 to September 1997, a period of less than two years. The "correction" might conceivably be found to have explained how the first employment verification could have incorrectly stated the beneficiary's dates of employment. This office, however, is unable to fathom how that employment verification letter, which claims to have been issued prior to the alleged employer's coming into existence, could have been issued pursuant to an innocent mistake. A letter that purports to have been issued prior to the issuing body's existence, which incorrectly states employment dates, is likely to be the product of fraud.

With that "correction," counsel submits another employment verification, from an alleged employer never previously mentioned to CIS. That additional employment verification states that the petitioner worked at another hotel from May 1992 to September 1995 as a Chinese cook. That additional employment verification,

if found to be credible, is sufficient to demonstrate the beneficiary's eligibility.

A new claim to eligibility, not previously mentioned but submitted after the original claim is uncovered as a fraud, is inherently suspect. In this case, counsel offers no reason for the failure to include this new claim initially with the petition. The regulation at 8 CFR § 204.5(1)(3)(ii) does not encourage petitioners to hold evidence in abeyance and submit it after the initial evidence is shown to be the product of deceit. Rather, it clearly states that evidence of the beneficiary's experience **must accompany** the petition. Under these circumstances, the new claim cannot credibly demonstrate that the beneficiary is eligible for the proffered position.

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is 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.