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

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

[REDACTED]

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: **DEC 13 2003**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

[REDACTED]

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 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 chiropractor. It seeks to employ the beneficiary permanently in the United States as a physical therapist assistant. 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 additional evidence.

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.

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 March 21, 2000. The labor certification states that the position requires two years experience.

The petition, which was filed September 25, 2002, gives a United

States address for the beneficiary, and states that the beneficiary last arrived in the United States on June 19, 1995.

With the petition counsel submitted an undated letter and translation. The letter was from a chiropractor at the Metropolitan Autonomous University in San Mateo Xalpa, Xochimilco, Mexico. The letter states that the beneficiary worked for that chiropractor from April 1, 1995 to October 31, 1998.

Because the information on the petition contradicted the beneficiary's employment claim, the California Service Center issued a Notice of Intent to Deny on January 21, 2003. The notice observed that the beneficiary had stated that she had been in the United States since June 19, 1995 and could not, therefore, have worked in Mexico from April 1, 1995 through October 31, 1998. The petitioner was accorded 30 days to respond.

In response, counsel submitted another undated letter from the same chiropractor who had previously attested to the beneficiary's employment. The letter states that, because of an error, the dates on the first letter were incorrectly stated. The letter further states that the beneficiary worked for the chiropractor from April 1, 1992 to June 14, 1995.

On February 25, 2003, the Director, California Service Center denied the petition.

On appeal, counsel submitted yet another letter from the same chiropractor; this one dated March 11, 2003. The third letter reiterates that the beneficiary worked for that chiropractor from April 1, 1992 to June 14, 1995. With the letter, counsel submitted what purport to be receipts and copies of receipts for wages. The receipts and copies are all dated within the period during which the beneficiary, in the revised employment history, is alleged to have been employed by the chiropractor. Although the receipts purport to have been issued during 1994 and 1995, they are all unwrinkled and appear to be new.

Information on the petition directly contradicts the beneficiary's original employment claim. Faced with this contradiction, counsel submitted an amended employment claim.

A petitioner raises serious questions of credibility when asserting a new claim to eligibility in response to information indicating that the original claim was apparently fraudulent.

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).

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.