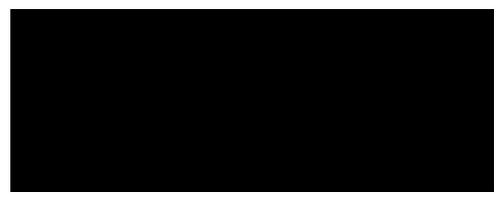


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS  
CIS,AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



DEC 16 2003

File: LIN 97 234 51470 Office: NEBRASKA SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:  
[Redacted]

Identifying data deleted to  
prevent unauthorized or unwanted  
invasion of personal privacy

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Nebraska Service Center, revoked on notice, and brought before the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal, and the petitioner brings the matter before the AAO on a motion to reconsider. The motion will be granted, the previous decisions of the director and the AAO will be affirmed, and the petition will be denied.

The petitioner is a restaurant specializing in Indian cuisine. It seeks to employ the beneficiary permanently in the United States as a chef's assistant. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

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.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. The priority date 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). In this case, the priority date is July 3, 1995.

The Form ETA 750, in block 14 and block 15, detailed the minimum education, training, and experience to perform the job. It required two (2) years of experience in the related occupation of cooking of North Indian cuisine and the special requirement of the use of the "Tandoor" (clay oven) method of cooking.

Two (2) unsworn letters stated that the beneficiary worked, first, as a cook preparing North Indian food from 1982 to 1985 at Shahi Darbar in Delhi, India (Delhi undated) and, then, as a cook preparing "veg & nonveg items" from 1985 to 1992 at Kipps in Ludhiana, India (Ludhiana 1, June 27, 1992). The director approved the petition on September 15, 1997.

A Biographic Information Form (G-325) in the record of an asylum application later came to the director's attention. The G-325 contradicted both the Delhi and Ludhiana 1 letters. It stated the beneficiary's employment only in his own auto electric shop from 1970 to 1993 without reference to any other occupation. See letter of notice of intent to revoke dated June 20, 1999 (NOIR).

The petitioner, in responding to the NOIR, made no attempt to support the Delhi letter.

*Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states:

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.

Further writings of a co-worker and a neighbor in Ludhiana were unpersuasive, as they were undated and cumulative. They did not come from an employer or trainer. 8 C.F.R. § 204.5(g)(1).

The petitioner, also, tendered a statement on the letterhead of Kipps Baker & Sweet House, dated 04-08-1999 [British style] with the signature attested on 10/8/99 [British style] (Ludhiana 2). This one said that the beneficiary "worked as a cook at my establishment during the period 1985 to 1992." The text did not name the witness, the signature is illegible, and the record of proceedings never identifies the owner of Kipps.

Counsel stated that the letter was from the owner of Kipps. Counsel laid no foundation for a menu of Kipps and three photographs, and justified no convincing conclusion from them.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director determined that Ludhiana 2, statements, photographs, and the menu did not overcome the adverse evidence of the G-325 and revoked the petition on January 7, 2000 (NOD).

The petitioner filed a late appeal considered as a motion to reopen, a delayed brief, and six (6) statements of customers of Kipps (customers' lauds). Their signatures were sealed impressively, as attested, or acknowledged, but not as sworn under oath.

Counsel, nonetheless, insisted in the Brief in Support of Appeal (appeal brief), at page 5:

[The petitioner] submitted sworn statements from [the beneficiary], the owner of Kipps, a coworker of [the beneficiary], and a neighbor of [the beneficiary] in Ludhiana. All of these sworn statements confirm Mr. Singh's qualifications as a cook.

Included with the appeal brief are six (6) additional sworn statements regarding [the beneficiary's] part-time employment with [the petitioner].

It is well settled that submission of affidavits is sufficient to prove an alien meets the requirements for the job. *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F.Supp 7 (D.D.C. 1988).

The customers' lauds include no affidavits under oath. The owner remains unnamed and without a title in Delhi 1, Ludhiana 1, and Ludhiana 2. Counsel elects, therefore, to buttress the evidence with the claim that writings are sworn under oath.

Delhi and Ludhiana 1, however, have only bare signatures, and the illegible signature on Ludhiana 2 is only acknowledged. There are no affidavits.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Notwithstanding counsel's complaints, Citizenship and Immigration Services (CIS), formerly the Service or INS, considered both the customers' lauds and allegations of the beneficiary's illiteracy. The AAO summarized them and found them wanting in the decision of July 25, 2001, dismissing the appeal.

Furthermore, counsel mistakes the beneficiary's communications to him for sworn testimony:

[The beneficiary] avers that he spoke almost no English when he arrived in the United States in 1993. He hurriedly filled out an asylum application with the help of friends. [The beneficiary] states that he did not understand the difference between "business" and "part-time employment."

[The beneficiary] corrected the inconsistency regarding his employment history when the [ETA 750) was filed. This was his first true opportunity to do so as he had

not been interviewed on his asylum application. [The beneficiary] provided then and has provided now additional corroborating evidence of his experience as a cook in addition to his affidavits.

Based on the precedent in the aforementioned asylum cases, [the beneficiary's] explanation of inconsistencies in his employment history, which is supported by ample evidence, would be accepted.

Counsel supports the acceptance of affidavits with *Osorio v. INS*, 99 F.3d 908 (9 Cir. 1996) and *Aguilera-Cota v. INS*, 914 F.2d 1375, 1381. Those authorities do not apply because, despite ample occasion, this petitioner has presented no credible affidavit of qualifying experience. The beneficiary's self-serving affidavit, dated August 19, 1999, does not come from, or show the unavailability of one from, an employer or trainer. See 8 § C.F.R. § 204.5(g)(1). See also 20 C.F.R. § 656.21(a)(3)(iii)(A) and (B).

8 C.F.R. § 103.2(b)(7) specifies:

Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document and acknowledged *under oath thereon*. (Emphasis added).

Moreover, the petitioner did not fulfill the demand for the name, person, or capacity of those who signed critical papers, viz., Delhi, Ludhiana 1, and Ludhiana 2. Counsel seeks to strengthen such evidence with the claim that it is under oath, but none is.

Provisions of 8 C.F.R. § 103.2(b)(14) state:

Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. . . .

In addition, counsel's explanation, *supra*, concedes the part-time work of the beneficiary. The Form ETA 750 required two (2) years of experience in the related occupation of cooking of North Indian cuisine with the special requirement of the use of the "Tandoor" (clay oven) method of cooking. No employer or trainer has

supported qualifying employment with credible evidence of two (2) years of full-time employment in the related position with the special requirement. See 20 C.F.R. § 656.21(a)(3)(iii)(A) and (B). For this further reason, 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 motion to reconsider is granted, and the previous decisions of the director and the AAO are affirmed. The petition is denied.