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U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

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



File:

Office: California Service Center

Date:

JUL 21 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: SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefor, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a security systems designer and installer and seeks to employ the beneficiary permanently in the United States as a security systems designer. As required by statute, the petition was accompanied by labor certification application approved by the Department of Labor.

The petition was approved on May 8, 1995. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on August 8, 2002. The revocation was based on the finding that the petitioner had not shown that the beneficiary has the requisite job experience as stated on the labor certification.

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.

Furthermore, 8 CFR § 204.5(1)(3)(ii) states, in pertinent part:

(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 CFR § 204.5(l)(3)(i), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification states that the minimum qualification required for the position is two and one half years of experience as an alarm systems technician.

To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the date that the request for labor certification was accepted for processing by the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Education and experience gained subsequent to the filing date may not be considered in support of the petition, since to do so would result in according the beneficiary a priority date for visa issuance at a time when he is not qualified to perform the duties sought by the petitioner. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The director, in his revocation notice, referred to the Notice of Intent to Revoke, which stated in pertinent part that:

Based on conflicting information provided by the beneficiary on the filing of his Request for Asylum in the United States, Form I-589, and his Application to Register Permanent Residence or Adjust Status, Form I-485, an overseas investigation was conducted to verify the beneficiary's claimed work experience as an operator of alarm systems and telephone technician. The overseas investigation was conducted by the American Embassy in Sofia, Bulgaria. In their statement, dated February 8, 1999, they note that a post fraud investigator from their office conducted an on-site investigation at the Regional Communications Administration in Plovdiv, Bulgaria, where the beneficiary claimed employment prior to entering the U.S. A company representative stated that the beneficiary had never worked for them and that the letter of employment submitted by the beneficiary on his behalf from their company had not been issued by their company.

On appeal, counsel submits letters which purport to be from a retired communications worker in Bulgaria. The writer states that he worked with the beneficiary after hours at a "telephone station."

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. 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 (BIA 1988).

The employment letter submitted on appeal does not state the length of the beneficiary's employment or the number of hours the beneficiary allegedly worked per week. Further, that letter does not make any reference to the evidence adverse to the beneficiary's employment claim, which indicates that the beneficiary did not work in the position he claimed and that his employment documentation is fraudulent. The beneficiary did not explain why he obtained employment documentation from a retiree instead of obtaining it directly from his alleged former employer.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the district director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and 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 appeal is dismissed.