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Bureau of Citizenship 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: EAC 02 041 53883 Office: Vermont Service Center

Date:

JUN 19 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.

Helen E. Crawford-Joe
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a doughnut bakery. It seeks to employ the beneficiary permanently in the United States as a baker. 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 two years of experience.

On appeal, the petitioner submits 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 or seasonal 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 April 24, 2001. The labor certification states that the position requires two years salient experience.

With the petition, the petitioner submitted no evidence of the beneficiary's qualifications. Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience, the Vermont Service Center, on March 5, 2002, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. § 204.5 (1)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of 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.

In response, the petitioner submitted a letter, dated March 9, 2001. That letter is on the letterhead of a bakery in Colombia, South America. The writer does not give his title or identify his relationship to the bakery. That letter states that the beneficiary worked at that bakery from December 1997 to January 1999.

On August 5, 2002, the Director, Vermont Service Center, denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, the petitioner submits an undated letter from the same Colombian bakery which had submitted the previous letter. In that letter, the writer states that he had erred in stating that the beneficiary worked at that bakery only from December 1997 to January 1999 and that, in fact, the beneficiary began to work at that bakery during January of 1995 and continued to work there until January of 1999. The writer declares that he gave the dates of the beneficiary's most recent employment contract instead of the beneficiary's employment.

The petitioner also submits two form affidavits in which the affiants attest to the beneficiary's employment for the Colombian bakery from January 1995 to January 1999. Those affidavits do not state the basis of those affiants' purported knowledge of the beneficiary's employment or the affiants' relationship to the petitioner, the beneficiary, or the bakery where the beneficiary is alleged to have worked.

The beneficiary's original employment documentation stated that he had worked at the bakery for slightly more than a year. On appeal, the petitioner submits new documentation stating that the

beneficiary worked at that bakery for four years. The explanation for this discrepancy, that the beneficiary's alleged former employer stated the dates of the beneficiary's most recent employment contract instead of the dates of his employment, is not convincing. The additional affidavits lack any indication of the basis of the affiants' asserted knowledge of the beneficiary's employment history, and are not credible evidence of that employment history.

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.