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Citizenship and Immigration Services

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



File: SRC 02 041 57407 Office: VERMONT SERVICE CENTER

Date: **NOV 18 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.

Selen E Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant 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 seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a motel. It seeks to employ the beneficiary permanently in the United States as a motel manager. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary's qualifications satisfied the terms and conditions of the labor certification.

On appeal, counsel submits an additional work reference and asserts that the beneficiary's qualifications meet the terms required by the labor certification.

Section 203(b)(3)(A)(i) of 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.

The regulation at 8 C.F.R. § 204.5(g) also provides in pertinent part:

(2) *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The issue raised on appeal in this case is whether the petitioner has established that the beneficiary possessed the requisite qualifications for the position offered by the priority date. The petitioner must establish that the beneficiary has the necessary education and experience required by the terms of the labor certification for the job offered 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. In this case, the priority date is April 26, 2001. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In this case,

Block 14 contained the only information appearing in these sections. This information appears as follows:

Education	College Degree Required		
	No		
Experience	Job Offered	Related Occupation	Related Occupation
	Yrs.	Yrs.	
	2		

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of motel manager must have two years experience as a motel manager.

The regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence relevant to qualifying experience or training must be submitted in the form of letters from current or former employers or trainers and must include the name, address, and title of the writer and a specific description of the alien's duties. If this evidence is unavailable, other documentation will be considered.

In this case, the petitioner submitted insufficient evidence to support the beneficiary's work history. On April 18, 2002, the director requested the petitioner to supply additional evidence supporting the beneficiary's qualifications.

In response, the petitioner submitted two statements. One was from a maintenance worker at the Best Western Motel in Ringgold, Georgia who stated that the beneficiary worked at that location as a front office manager from August 2001 to April 2002. He described her duties as including billing and reservations, preparing housekeeping sheets, and directing guests. The other statement is from "D.K. Patel" who owns a Days Inn Motel in Acworth, Georgia. He states that the beneficiary worked as a night shift motel manager from March 2000 to July 2001. Mr. Patel also describes her duties as including guest and staff management and customer service.

The director denied the petition, noting that the petitioner had failed to provide evidence that the beneficiary had accrued two years experience as a motel manager as of the priority date of April 26, 2001. The director noted that the statement from the maintenance worker lacked evidentiary weight, as he would not be in a position to verify a manager's duties. We concur and would add that the beneficiary's experience described by the maintenance worker occurred after the priority date anyway. Thus, as the petitioner could only document that the beneficiary had thirteen months experience as a motel manager as of the priority date of April 26, 2001, the petition could not be approved.

On appeal, counsel re-submits a copy of Mr. Patel's letter and also contends that the beneficiary's March 1991 to November 1999 experience as an assistant manager at the Abu Dhabi Travel Bureau should be counted toward the required two years experience as a motel manager. Counsel submits a November 2000 letter from the manager, "Waheed Fakhri." His letter describes her duties as including arranging tours, making hotel reservations, handling correspondence, and providing travel

information. Counsel's argument would be more persuasive if the labor certification requirements had designated "travel bureau assistant manager" as an acceptable "related occupation" or referred to it as "other special requirements" in Block 14 or Block 15 of the labor certification. As it is, the terms of the labor certification specifically designate that the required experience be in the job of a motel manager. Counsel's assertion does not persuasively overcome the reasons set forth in the director's denial. As noted above, to be eligible, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House, supra*. This beneficiary had less than the requisite two years of experience as a motel manager. We cannot conclude that she met the terms required for the position.

Beyond the director's decision, we note that the record does not indicate that the petitioner had the ability to pay the beneficiary's proffered wage. The approved labor certification set her proposed wage at \$10.00 per hour or \$20,800 annually. The petitioner's 2000 federal partnership tax return reflects that it showed only \$506 as ordinary income. Schedule L indicates that the petitioner's net current assets were -\$27,819. Both figures are far less than the beneficiary's offered wage.

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.