

BCG

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: WAC 02 114 50573 Office: California Service Center

Date: SEP 16 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:



**PUBLIC COPY**

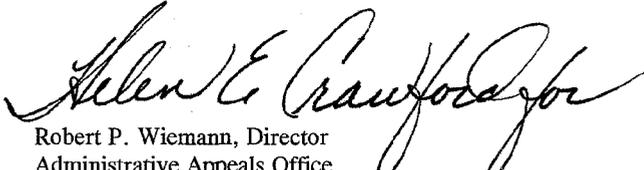
**INSTRUCTIONS:**

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, 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 dental office. It seeks to employ the beneficiary permanently in the United States as a bookkeeper. 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 experience required by the Form ETA 750.

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 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.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was qualified for the proffered position on the priority date, 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 January 12, 1998. The labor request states that the requirements of the position include two years of experience.

With the petition, counsel submitted a sworn declaration of the beneficiary, dated January 15, 2002, that he worked as a bookkeeper for Ace Trading Company from August 1974 to August 1979. The beneficiary stated, however, that he did not believe he could obtain an employment verification because Ace Trading Company had

been out of business for almost 20 years.

Because the evidence submitted did not demonstrate that the beneficiary is qualified for the proffered position, the California Service Center, on April 5, 2002, requested additional evidence pertinent to the beneficiary's salient work experience.

Specifically, the Service Center requested that the beneficiary submit an employment verification on his former employer's letterhead, stating his title, duties, dates of employment, and hours worked per week. The Service Center noted that the beneficiary's own affidavit is insufficient to credibly verify the beneficiary's employment claim.

In response, counsel submitted another, almost identical affidavit from the beneficiary, dated June 18, 2002, reiterating his claim of employment for Ace Trading Inc. and his inability to obtain evidence in support of that claim.

On August 7, 2002, the Director, California Service Center, denied the petition, finding that the beneficiary's own statement is insufficient to credibly verify the beneficiary's employment claim.

On appeal, counsel argues that the petitioner has filed conclusive tangible evidence of the beneficiary's previous employment as a bookkeeper for Ace Trading Inc. from 1974 to 1979. Counsel cites the beneficiary's own affidavits as evidence in support of his employment claim.

In addition, counsel provides a letter, dated August 21, 2002, which purports to be from Romeo M. Bernardo, the proprietor of Ace Trading Inc. That letter states that the beneficiary worked as a full-time bookkeeper for Ace Trading Inc. from 1974 to 1979. Counsel explains that the letter is not on company letterhead because the company has declared bankruptcy, and Philippine law forbids companies which have declared bankruptcy from issuing a letter on their letterhead.

Counsel stated that, notwithstanding that the letter is not on company letterhead, "the validity of the Certification is duly certified," and "discredits the main reason of the Service in denying the . . . (p)etition . . . ."

Finally, counsel argues that the Department of Labor has determined that no U.S. workers are willing to fill the proffered position and denial of the petition would result in hardship for the petitioner.

As the Director, California Service Center, observed, the

beneficiary's own statement is insufficient to corroborate his employment claim. On appeal, the petitioner submitted a second statement, allegedly from the proprietor or former proprietor of the business which employed the beneficiary. That statement purports to confirm the beneficiary's employment claim, but is not on company letterhead, as the Service Center requested.

Counsel states that Philippine law forbids companies in bankruptcy from issuing letters on their letterhead. That is as it may be, though counsel did not cite to that law.

Counsel states that the alternative evidence is submitted pursuant to 8 C.F.R. § 204.5(g)(1), which states that, "If (evidence in the form of letters from current or former employer(s) or trainer(s) with the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received) is unavailable, other documentation shall be considered.

The letter from the beneficiary's putative employer has, in fact, been considered. The record contains insufficient evidence that Ace Trading has declared bankruptcy, that Mr. Bernardo was its proprietor, or that it ever existed.

8 C.F.R. § 103.2(b) states, in pertinent part, that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. That the petitioner was unable to submit the requested employment verification on company letterhead creates a presumption that the beneficiary is ineligible and the petition must be denied. The petitioner has submitted no evidence which overcomes that presumption. The evidence of the beneficiary's previous employment is not credible. The evidence submitted does not demonstrate that the beneficiary has the requisite work experience.

Counsel's argument pertinent to hardship is inapposite. The petitioner is obliged to show that the beneficiary is qualified for the proffered position. This obligation is not excused by hardship.

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. Under these circumstances, the petition may not be approved, notwithstanding that the petitioner has an approved labor certification. The pertinent law and regulations make no exception in cases where denial will work a hardship on the petitioner.

**ORDER:** The appeal is dismissed.