



U.S. Citizenship  
and Immigration  
Services

*Bob*



FILE: WAC 02 026 55505 Office: CALIFORNIA SERVICE CENTER Date: **APR 27 2004**

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. 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 was qualified for the proffered position.

On appeal, counsel submits a letter 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.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

Eligibility in this matter hinges on the beneficiary's qualifications for the proffered position. Specifically, the labor certification requires that the beneficiary possess four years of relevant experience as a specialty cook.

In evaluating the beneficiary's qualifications, Citizenship and Immigration Services (CIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Mandamy v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In this case, the petitioner requires the beneficiary to possess at least four years of relevant experience as a Mexican specialty cook.

According to the labor certification application, the beneficiary worked 48 hours a week as a Mexican cook for the Restaurante Scala, Avenida #500, Tampico, Tamps, Mexico, from January 1984 to January 1989, and 40 hours a week in the same position for Palma Terraza, 3891 State Street, Santa Barbara, California, from January 1989 to June 1990. Accompanying the petition was a letter dated August 14, 2001, from Maria de los Angeles Reyes of the Restaurant La Escala, Calle Cultura 107, Tampico, which stated that the beneficiary worked at that restaurant for three years commencing in 1985.

On February 19, 2002, the director sent the petitioner a Request for Evidence (RFE) asking for verification of the beneficiary's prior experience. The director indicated that this evidence should be on the employer's letterhead, should indicate the title of the writer, and the beneficiary's title, duties, dates of employment, and number of hours worked. In response, the petitioner submitted another letter dated March 14, 2002, from Maria de los Angeles Reyes. This letter stated that the beneficiary worked full time at La Escala as a Mexican cook from 1985 to 1988.

On April 29, 2002, the director sent the petitioner another RFE. In this RFE, the director requested the hours worked by the beneficiary and the title of the person verifying the employment.<sup>1</sup> In response, the petitioner submitted a letter from the person who translated the previous letters. The translator stated that she had neglected to translate the verifier's job title into English. She furnished a new translation indicating that Maria de los Angeles Reyes was the owner of La Escala, and that full time employment meant 40 hours per week.

In his decision denying the petition, the director stated that the petitioner had not established that the beneficiary had the required four years of experience for the job. The director stated that, because the letters from La Escala indicated only the years of employment and not the months as well, he could not determine that the beneficiary worked at that restaurant for a full three years. The AAO notes that neither RFE expressly requested years and months. The director also noted that the record contained no other experience letters. The AAO notes that, although the director's first RFE requested verification of the beneficiary's claimed experience on the labor certification application, the second RFE limited itself to a discussion of the La Escala letter, and mistakenly indicated that the petitioner had to establish that the beneficiary had two years of experience.

On appeal, the petitioner explains that an employment letter from another employer of the beneficiary, the Palm Terrace, was not submitted because the beneficiary was unable to locate the owner. A letter from that employer dated September 6, 2002, is now submitted along with pay stubs. The letter states that the beneficiary worked at that restaurant full time as a Mexican cook from January 1989 to June 1990. The petitioner also submits another letter dated September 11, 2002, from Maria de los Angeles Reyes of La Escala which states that the beneficiary worked there as a Mexican cook 40 to 48 hours a week from January 1984 to January 1989.

Given the confusing nature of the aforementioned RFEs, the documentation verifying the beneficiary's previous employment submitted on appeal will be accepted. The letter from the owner of the Palm Terrace establishes 16 to 18 months of experience in the proffered position. The letters from La Escala jump from three to four to five years of experience for the beneficiary. The issue before the director was whether the beneficiary had worked a full three years at La Escala. Taken as a whole, the four letters submitted would establish that fact.

Accordingly, after a review of the record, it is concluded that the petitioner has provided sufficient evidence to establish that the beneficiary is qualified for the position offered.

**ORDER:** The appeal is sustained. The petition is approved.

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<sup>1</sup> The second request for evidence also requested documentation that would establish the petitioner's ability to pay the proffered wage. In addition to evidence of the beneficiary's qualifications, the petitioner also submitted an audited financial statement and a copy of its 2001 tax return. Since the director did not base his decision to deny the petition upon the petitioner's financial status, the issue will not be discussed within the scope of this decision.