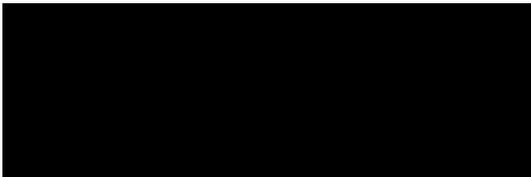


B-6

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

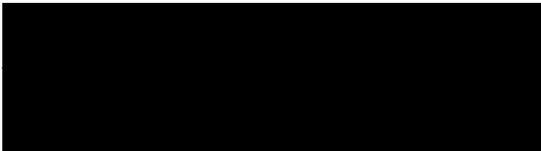


FILE: WAC-02-126-50331 Office: CALIFORNIA SERVICE CENTER Date: 12/10/2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

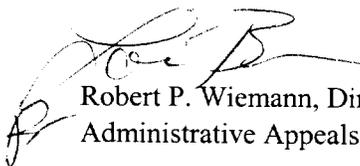
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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

PROTECTION of personal privacy

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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 dismissed.

The petitioner is an installer of marble and granite. It seeks to employ the beneficiary permanently in the United States as a marble setter. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

The director denied the petition as he determined the petitioner had failed to establish that the beneficiary is qualified for the proffered position.

On appeal, counsel submits a letter stating that the beneficiary's former employer no longer exists, making more specific employment verification unavailable. Counsel submits an additional letter of the beneficiary's employment for another employer.

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.

Regulations at 8 C.F.R. § 204.5(l)(3) state, in pertinent part:

(ii) *Other documentation -- (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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on November 18, 1997, indicates that the minimum requirement to perform the job duties of the proffered position of marble setter is four years of experience.

The petitioner, through counsel, initially submitted a letter addressed to DOL from Isabel Mauri of Centro Latino requesting that the ETA 750B be amended to reflect that the beneficiary worked for Marble Innovations, Inc. from February 1989 to May 1990 and from April 1992 to July 1995 as marble setter. The letter further indicated that the beneficiary worked for Majestic Marble & Tile from October 1994 to the "present" loading and unloading marble. The petitioner also submitted an additional letter dated October 27, 1997 from Bernardino Sanchez¹ asserting that the beneficiary worked as a marble finisher for "our company" from 1989 to 1992. The letter is not on any company letterhead.

In a request for evidence (RFE) dated May 17, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage. In addition, the director requested that the petitioner submit

¹ On this letter, the author's name is spelled "Sanches" but in subsequent correspondence the name is spelled "Sanchez."

additional evidence to demonstrate that the beneficiary possessed the experience listed on the Form ETA 750 Application for Alien Employment Certification.

In response, counsel submitted a letter from Marble Innovations, Inc., signed by Bernardino Sanchez, indicating that one Benjamin Soledad was employed as a marble finisher from 1992 to 1995.

On July 9, 2002, the director issued a Notice of Intent to Deny the petition (NOID), noting that Mr. Soledad is not the beneficiary.

In response to the notice, counsel submitted another employment verification letter dated October 23, 1997 and signed by Bernardino Sanchez as Associate Partner indicating that the beneficiary worked as a marble finisher from 1992 to 1995. The letter appears to have been stamped with the company name, Marble Innovations, Inc., at the top.

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite training of four years of experience and denied the petition accordingly. The director stated, in pertinent part, that:

The record contains an employment verification letter dated October 23, 1997, which was originally submitted in support of the Application for Alien Employment Certification with the Department of Labor. The verification letter states that the beneficiary worked as a marble finisher from 1989 to 1992. This period is less than the required minimum (4) four years experience specified on the ETA-750.

The director further stated that, in response to a Request for Evidence, the petitioner submitted "a copy of experience verification issued by the same company, Marble Innovations, Inc., almost identical to [a] previously submitted letter. The letter failed to indicate the number of hours worked by the beneficiary and the duties were not specified. Furthermore, the letter indicates that the beneficiary was employed as a marble finisher from 1992 to 1995. This period is less than the required four years. . ."

On appeal, counsel submits a letter stating that the beneficiary's former employer no longer exists, making more specific employment verification unavailable. Counsel submits an additional letter of the beneficiary's employment for another employer that does not correspond to the employment experience he declared as true on the Form ETA 750 Part B.

Counsel's assertion that the beneficiary's former employer, Marble Innovations, Inc., gave its employees standardized letters of reference may be plausible but is not persuasive of the beneficiary's qualifying experience. We acknowledge the relatively identical nature of the letters to both Benjamin Soledad and the beneficiary. However, even if the beneficiary worked for Marble Innovations, Inc, the record contains inconsistencies regarding exactly when the beneficiary worked and for how long.

The Form ETA 750 B, as amended by the petitioner, indicates that the beneficiary worked for Marble Innovations, Inc. from February 1989 to May 1990 and from April 1992 to July 1995, indicating some apparent break in employment. However, the original Form ETA 750 B signed by the beneficiary states that the beneficiary has worked for the petitioner 30-35 hours per week since 1994. Additionally, the petitioner has provided two letters, both dated on the same date in 1997, reflecting that the beneficiary worked for a company (Marble Innovations, Inc. according to the letter submitted in response to the NOID) that provide two different time periods of employment: 1989 to 1992 or 1992 to 1995. Assuming that the beneficiary worked for Marble Innovations, Inc. during both periods, it is unclear why Mr. Sanchez would issue two separate letters on the same day for the two time periods. The third letter submitted on appeal adds to the inconsistencies and confusion as it does not relate to any other factual assertion in the record of proceeding at

all. Notably, none of the letters conform to the requirements set forth at 8 C.F.R. § 204.5(l)(3)(ii) that require the name, address, and title of the beneficiary's employer and trainer along with a description of the experience gained. Therefore, it cannot be concluded exactly for whom or when the beneficiary worked. Further, counsel has stated that there is no way to further verify the beneficiary's purported employment for Marble Innovations, Inc.

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 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.