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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]
WAC-03-038-50418

Office: CALIFORNIA SERVICE CENTER

Date: JUL 21 2004

IN RE: Petitioner:
Beneficiary:

[Redacted]

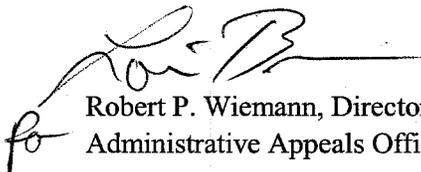
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[Redacted]

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

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 a garment manufacturer. It seeks to employ the beneficiary permanently in the United States as a pattern maker. 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.

The director denied the petition because he determined that the beneficiary did not possess the experience claimed on 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.

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 September 28, 2000, indicates that the minimum requirement to perform the job duties of the proffered position of garment pattern maker is two years of experience. On the ETA 750 Part B, the beneficiary indicated that she worked for [REDACTED] 2 ga 4 beonji (Kyugil Bldg 3F) Seoul, S. Korea from May 1995 to August 1997.

Counsel initially submitted an affidavit from the beneficiary, who attested that she worked for [REDACTED] Inc. as a garment pattern maker from May 1995 to August 1997. The beneficiary states that she could not obtain employment verification because the company had closed. Counsel also submitted Verification of Employment dated August 22, 2000, from the [REDACTED]. The employment verification indicated that the beneficiary had "Year End Grade A Income" of 1,500,000 Won¹ during 1995 and Year End Grade A Income of 865,700 Won during 1996. The tax withholder is identified in both years as Doosol, Inc.

¹ The amounts are presumed to be in Won as the document is of Korean origin and does not specify that the amounts have been converted to dollars.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated January 23, 2003, 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 additional evidence to demonstrate that the beneficiary possessed the experience listed on the Form ETA 750 Application for Alien Employment Certification. The director requested an employment verification letter from the beneficiary's previous employer on the employer's letterhead stating title, duties and dates of employment. In the alternative, the director requested pay stubs, a work I.D. or tax returns.

In response, counsel submitted a second affidavit from the beneficiary affirming her employment for Doosol, Inc. from May 1995 to August 1997, stating: "I do not know why the verification of income form does not show my earnings for 1997. I can only assume that [REDACTED] made a mistake and did not report correctly." Counsel also submitted a Certificate of Business Cessation for [REDACTED] dated April 3, 2003.

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite experience and denied the petition accordingly.

On appeal, counsel states that the beneficiary has exhausted all attempts to contact her former employer. Counsel states that CIS cannot rely exclusively on the evidence requested and must consider other evidence submitted. Counsel states that a work I.D. and pay stubs did not exist at the time of employment and that "Pursuant to Rules and Regulations of Korean Tax Office [sic], records are kept for five years." Counsel states that the beneficiary contacted friends and acquaintances in an attempt to locate her former employer.

Counsel submits the beneficiary's business card from [REDACTED] email correspondence with friends and acquaintances, an internet phone directory under the owner's name, an additional letter to the Korean Tax Office, an email from a friend who states that he attempted to contact the owner at his last known address and evidently the owner filed bankruptcy and may be hiding from creditors, and a third affidavit from the beneficiary.

In considering counsel's assertion that the entire body of evidence be examined a review of the evidence submitted is in order. A review of the evidence reveals that it consists of the attestations of the beneficiary or family and friends of the beneficiary, whose testimony it must be concluded is derived from the attestation of the beneficiary and other more objective evidence. It is conceivable that, assuming [REDACTED] had a sole owner, it could prove difficult to find him. However, neither the beneficiary nor counsel has proffered any evidence that any attempt was made to contact any co-workers. Assuming that Doosol, Inc. had more than one employee, co-workers should have been readily available to proffer objective employment verification. The absence of such evidence is highly questionable.

Counsel has submitted a business card, which may attest to the beneficiary having worked for [REDACTED]. The verification of employment attests to the beneficiary having worked for [REDACTED] in 1995 and 1996. While the director erred in failing to consider the official verification of employment, that error was not prejudicial. 8 C.F.R. § 204.5(g) does specify that when employment letters are unavailable, "other documentation relating to the alien's experience will be considered." That provision, however, does not indicate that all such documentation will be sufficient. Neither the beneficiary nor counsel has addressed the fact that, according to the employment verification form, the beneficiary earned 1.7 times as much during seven months of 1995 than she earned in purportedly all of 1996. Such evidence suggests that the beneficiary terminated her employment sometime during 1996. Further, counsel's claim that tax records were kept for only five years is refuted by the verification of employment form, which covers a period of time from 1994 and was issued in August 2002. Therefore, assuming the beneficiary worked for Doosol, Inc., Inc, there is a question as to exactly when the beneficiary worked and whether she worked the required two years.

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).

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to deny the petition. 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.