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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

MAR 22 2004

File: WAC 02 071 53697 Office: CALIFORNIA SERVICE CENTER Date:

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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal, affirming the director's decision. The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decisions of the director and Associate Commissioner will be affirmed. The petition will be denied.

The petitioner is a newspaper. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and it seeks to employ the beneficiary permanently in the United States as a news writer. 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 requisite experience as stated on the labor certification.

In support of the motion, 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.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

> (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

> occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was eligible for the proffered position on the priority date of the petition, 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 14, 1998. The labor certification states that the position requires four years of experience in the job offered.

With the petition counsel submitted the beneficiary's Form ETA-750, Part B, Statement of Qualifications of Alien. That statement contains the beneficiary's résumé. That résumé states that the beneficiary worked as a news writer/photographer for the *Union Hispana*, a community organization in Santa Ana, California, from July 1990 to February 1992; as a news writer for *La Opinion* of Los Angeles, California, from April 1992 to May 1993; as a news writer for *El Universal*, of Puebla, Puebla, Mexico, from September 1993 to August 1994; as a news writer for *Pagina Regional*, of Puebla, Puebla, Mexico, from September 1994 to February 1996; as a freelance news writer for unspecified Spanish language newspapers in unspecified areas from March 1996 to September 1996; as a news writer for Latin Publications, Inc., in Chatsworth, California, from October 1996 to January 1997; and as a freelance news writer for unspecified Spanish language newspapers in unspecified areas from February 1997 to the date that statement was completed, December 11, 1997.

Counsel also submitted a declaration of the beneficiary, dated November 9, 2000. The beneficiary stated that she worked from April 1992 to May 1993 for La Opinion, a newspaper in Los Angeles, California, when she returned to Mexico and worked for *El Universal* from September 1993 to August 1994 and for *Pagina Regional* from September 1994 to February 1996. The beneficiary further stated that she had tried to obtain documentation from those employers but had been unable.

In support of the beneficiary's employment claims, counsel submitted a portion of the November 15, 1992 issue of *La Opinion*. The beneficiary is identified as the writer in the bylines of five articles in that issue.

In addition, counsel submitted copies of parts of the front pages of the November 4, 1993, December 14, 1993, June 28, 1994, July

14, 1994 issues of *El Universal*. One of the front-page stories on each issue is attributed to the beneficiary in its byline.

Counsel also submitted the masthead and an article from the September 19, 1994 issue of *Pagina Regional*, the October 10, 1994 issue, December 19, 1994 issue. All three articles are attributed to the beneficiary in their bylines. The October and December mastheads list the beneficiary as a reporter for that paper. The September issue does not.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite four years experience, the California Service Center, on March 12, 2002, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from employers on the employers' letterhead giving the name, address, and title of the person verifying the employment, the beneficiary's title, duties, dates of employment, and the number of hours the beneficiary worked each week.

In response, counsel submitted photocopies of the same evidence that he had previously submitted. On June 18, 2002, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite four years of salient work experience.

On appeal, counsel submitted an employment verification letter from Hermandad Mexicana Nacional, of North Hollywood, California, dated May 7, 1992. That letter states that the beneficiary worked for that community organization as a volunteer in an unstated capacity from February 1990 to February 1991, and as a reporter from February 1991 to February 1992 for the organization's *Union Hispana* newspaper. That letter does not state the number of hours the beneficiary worked each week during the year she allegedly worked as a reporter.

Counsel also submitted an employment verification letter stating that the beneficiary worked full-time as a news writer for the television guide section from of *La Opinion* April 1992 to May 1993. That letter is not on letterhead. The letter purports to have been notarized on July 16, 2002. The affiant states that she was La Opinion's television guide editor during that period.

Further still, counsel submitted an employment verification letter, dated July 3, 2002, stating that the beneficiary worked full-time as a reporter for *El Universal*, of Puebla, Mexico, from September 1993 to September 1994. That letter is not on

letterhead. The writer states that he was the regional manager of *El Universal* in Puebla, and that the paper no longer exists.

Finally, counsel submitted an employment verification letter, dated July 10, 2002, stating that the beneficiary worked as a reporter for the editorial department of *Pagina Regional* magazine in the town of Recta San Andres Cholula, Puebla, Mexico, from September 1994 to February 1996. That letter does not state how many hours per week the beneficiary worked for that paper. The letter is not on letterhead. The writer states that he was the Assignment Editor for the magazine, and that the beneficiary,

> as well as the rest of the employees at the company, stopped working for the company on (sic) February 1996 because the company <u>went out of business</u>. (Emphasis in the original.)

That letter is in the same modified block style as the letter that purports to be from the former regional manager of *El Universal*, in the city of Puebla, and is in the same type-face. The remarkable similarity between those letters leads to the conclusion that the same writer produced them at the same time on the same typewriter or printer.

Counsel stated that the beneficiary worked as a volunteer for the *Union Hispana* newspaper of Hermandad Mexicana Nacional from February 1990 to February 1991 and as a full-time news writer/reporter from February 1991 to February 1992. Counsel did not state how he had determined that the petitioner worked for the paper full-time.

Counsel further stated that the beneficiary's employment at *Pagina Regional* magazine from September 1994 to February 1996 was full-time, but did not state how he had made that determination.

From those submissions, counsel argued that the beneficiary has demonstrated that she has more than four years experience as a news writer.

On January 29, 2003, the AAO dismissed the appeal, finding that the petitioner had not established that the beneficiary has four years of experience in the proffered position.

On the motion, counsel submits a letter, dated February 21, 2003, from the news editor of *Union Hispana*. That letter states that from July 1990 to February 1992 the beneficiary worked as a full-time reporter covering community news in Los Angeles County. That letter also states that during 1990, *Union Hispana* belonged

to Hermandad Mexicana Nacional. Counsel also submitted four articles written by the beneficiary that appeared in Union Hispana during November of 1991.

As support for the petitioner's claim of employment for La Opinion's television guide, counsel submits photocopies of 24 articles which appeared in that publication under the beneficiary's byline. Those articles are dated from May 17, 1992 to February 21, 1993. The dates of the others do not appear on the photocopied portions.

Counsel also submits an amended version of the same letter that was previously submitted as evidence of the beneficiary's employment for La Opinion's television guide section. The signature is precisely the same as the previous letter, not merely as though signed by the same person, but clearly indicating that it was photocopied. The letter purports to have been notarized on July 16, 2002, as did the previous letter. The notary's seal is affixed in the same position and the notary's signature is identical to the signature on the previous version of the letter, not as though signed by the same person, but clearly indicating that it was photocopied. The two letters do have some differences, however.

The first letter was not on letterhead. The revised letter is on letterhead. A few words in the body of the letter have also been changed. The first letter stated that the beneficiary was a full-time writer. The altered photocopy states that the beneficiary was a freelance writer. The first letter stated that the beneficiary worked an average of 40 hours per week. The second letter states that the beneficiary worked an average of 20 hours per week.

Counsel submits 17 articles that appeared in El Universal under the beneficiary's byline from November 19, 1993 to August 28, 1994. As additional support for the beneficiary's claim of employment for El Universal, counsel submits what purports to be an undated employment verification letter on the letterhead of El Universal, although a previous letter submitted by counsel stated that the paper is defunct.

That letter, however, was submitted in Spanish without the required English translation. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Because the letter was

submitted without the required translation, its contents shall not be considered.

As additional support for the beneficiary's claim of employment for *Pagina Regional*, counsel submits six additional articles that appeared under the petitioner's byline and seven additional *La Pagina Regional* mastheads listing the beneficiary as a reporter. Those articles and mastheads are dated from October 3, 1994 to February 27, 1995.

Counsel submitted what purport to be press credentials issued to the beneficiary during 1995 identifying her as a reporter for *Pagina Regional*. Counsel also submitted a letter, dated March 15, 1996 and accompanied by an English translation, which purports to be from the General Director of *Pagina Regional*. That letter states that the beneficiary worked for *Pagina Regional* from September 1994 to February 1996 as a full-time reporter.

That letter purports to be on letterhead of *Pagina Regional*, and lists an address in Recta San Andres Cholula, although the masthead of *Pagina Regional* states that its central offices are in the city of Puebla. Further, the letter was only produced on the motion, with no explanation of how this relatively old letter suddenly came to light despite the avowed best efforts of the beneficiary to obtain evidence in support of her employment claims earlier. Finally, that letter purports to have been written on March 15, 1996, although an earlier letter submitted by the counsel states that the paper went out of business in February of 1996.

Counsel argues that the evidence submitted demonstrates that the beneficiary has the requisite four years of experience.

The photocopies of newspaper articles, press identification, and mastheads clearly demonstrate that the petitioner has worked for newspapers. The crux of this case is whether the evidence shows that the beneficiary worked full-time for four years as a news writer.

The two employment histories shown on the Form ETA-750 and on the beneficiary's declaration of November 9, 2000, also submitted with the petition, are merely assertions. Without supporting evidence, they are insufficient to demonstrate that the beneficiary has the requisite experience.

In response to the request for additional evidence, counsel submitted no additional evidence, and the petition was denied.

On appeal, counsel submitted letters purporting to support the beneficiary's claims of employment for Hermandad Mexicana Nacional/*Union Hispana*, *El Universal*, *Pagina Regional*, and the television guide section of *La Opinion*. Only the letters from *El Universal* and the television guide section of *La Opinion* state that the beneficiary worked full-time. The other two letters do not state how many hours the beneficiary is alleged to have worked per week.

The credibility of the employment verifications from *Pagina Regional* and *El Universal* is minimal, as those documents appear to have been produced at the same time by the same person on the same typewriter or printer.

Further, the beneficiary's employment history on the Form ETA 750 states that the beneficiary worked as a news writer/photographer for *Union Hispana* from July 1990 to February 1992. The beneficiary's November 9, 2000 declaration does not mention this employment. The May 7, 1992 employment verification letter from Hermandad Mexicana Nacional, which counsel submitted on appeal, states that the beneficiary worked for that community organization as a volunteer in an unstated capacity from February 1990 to February 1991, and as a reporter from February 1991 to February 1992 for the organization's *Union Hispana* newspaper. No explanation has been submitted for this date discrepancy.

Finally, the more recent version of the beneficiary's employment verification letter from *La Opinion* is obviously a doctored version of the first letter. The first letter was altered somewhat and copied onto a letterhead, almost certainly counterfeit, of *La Opinion*.

The willingness of the beneficiary to submit such employment documentation has reduced the credibility of her employment claim even further. The beneficiary's employment verification letters will be accorded no evidentiary weight.

No credible evidence has been submitted that the beneficiary has ever worked full-time for any newspaper. The evidence submitted does not, therefore, demonstrate credibly that the beneficiary has the requisite four years of experience, and the petitioner has not established that the beneficiary is eligible for the proffered position. The objection of the AAO has not been overcome on the motion.

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. Accordingly, the previous

decisions of the director and the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of January 29, 2003 is affirmed. The petition is denied.