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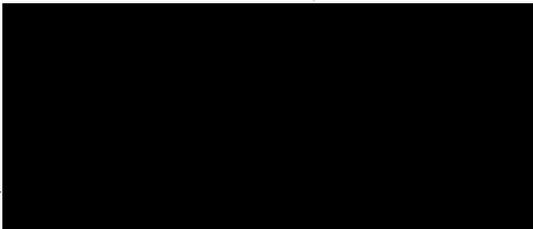


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 26 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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
Robert P. Wiemann, Director
for Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment based immigrant visa petition. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore. The director subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. 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 was accompanied by an individual labor certification approved by the Department of Labor.

The beneficiary's employment history is set forth in the Form ETA 750-B, signed by the beneficiary. It describes past employment experience with "King Fung Restaurant and Maxim's Caterers Limited" in Hong Kong. The beneficiary was purportedly employed as a junior cook at "King Fung Restaurant" from February 1982 to January 1986 and as a chef from February 1986 to February 1993, thus reflecting that he had the requisite four years of experience required by the position certified by the Department of Labor. The visa petition was approved on May 6, 1997.

Pursuant to a subsequent investigation by United States immigration officials in Hong Kong, the director issued a notice of intent to revoke on September 10, 2002. It stated in relevant part:

Regarding eligibility for the classification sought, the Service has received a Report of Investigation conducted by an officer in charge in Hong Kong which states in part, "...confidential information obtained from Hong Kong Immigration Department indicated that the subject was a casual worker, driver, and salesman at Hing Lan Cigarettes Company and Lotus Cigarettes Company in Hong Kong during the period from 1983 through 1988." The investigative report further indicates that an on-site investigation conducted on May 12, 1999 at [redacted] West, Hong Kong revealed that King Fung Restaurant was no longer in business and that [the] building located at this address is currently occupied by Nice Restaurant. The report also indicates that in response to the investigator's inquiry, a female staff member of Nice Restaurant advised that King Fung Restaurant closed its business about a year ago, and she also stated that she has no cognizance of any person by the name of [redacted] and [redacted] former general manager of King Fung restaurant.

The director concluded that the petitioner had not established that the beneficiary had the requisite four years of experience required by the offered position.

Counsel responded to the notice of intent to revoke on October 9, 2002. He stated that the King Fung Restaurant was registered with the Inland Revenue Department, Business Registration Office of the Government of Hong Kong on September 9, 1981. Counsel also stated that Mr. [redacted] Managing Partner and General Manager of the restaurant left the partnership in 1994 and immigrated to Canada. The beneficiary and Mr. [redacted] have had no contact since that time. Counsel asserted that the beneficiary did work as a casual worker, driver and salesman at the cigarette companies listed above in a part-time capacity while also working at King Fung Restaurant as a junior cook from February 1982

to January 1986 and then as a chef from February 1986 to February 1993. Counsel stated that since chefs are poorly paid in Hong Kong and China, it is not unusual for them to work second jobs. Counsel further commented that it is understandable that the employee of the new restaurant (Nice Restaurant) would not recognize the names of the beneficiary or the managing director since the beneficiary left Hong Kong in 1993 and the managing director, Mr. [REDACTED] left Hong Kong in 1994. Counsel submits a copy of King Fung Restaurant's business registration showing that the restaurant began operations on September 9, 1981. No other evidence of the beneficiary's claimed employment was submitted.

In his notice of revocation, the director found counsel's response could not overcome the grounds for denial. The director noted that the beneficiary's claimed work experience is not proven to be authentic in that the petitioner did not submit evidence to establish why the confidential information received from the Hong Kong Immigration Department did not indicate that the beneficiary was a cook and/or chef at the claimed restaurant while it revealed that he was a casual worker, driver, and salesman at the two cigarette companies. The director noted that this employment was not included on the Form ETA 750-Part B certified by the Department of Labor and submitted with the visa petition.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. In this case, that date is March 1, 1994. As noted on the labor certification, the beneficiary must have four years of experience in the job offered or in a related occupation as set forth on Block 14 of the ETA 750.

Section 203(b)(3)(A)(i) of 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(l)(3) additionally provides:

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

On appeal, counsel initially requested an additional 30 days to "make the necessary inquiries with the Hong Kong Immigration Department." Subsequently, counsel submits a brief that reiterates previous arguments and asserts that reporting to the Hong Kong Immigration Department is voluntary. Thus, according to counsel, the department's employment records are incomplete. The petitioner, through counsel, resubmits

documents already in the record and a new letter purportedly from a customer of the King Fung Restaurant for several years up until 1993 who affirms the beneficiary's position as a chef at that restaurant. The petitioner does not submit any documentation from the Hong Kong Immigration Department confirming counsel's assertions regarding the incomplete nature of the department's records.

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, 591-92 (BIA 1988). Further, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's unsupported assertion that the Hong Kong Immigration Department's records are incomplete and a letter from a customer cannot overcome the basis of the director's decision.

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.