



U.S. Citizenship
and Immigration
Services

B2



FILE: WAC 01 299 51777 Office: CALIFORNIA SERVICE CENTER Date: SEP 15 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:
[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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
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DISCUSSION: The employment based immigrant 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 remanded to the director to request additional evidence and entry of a new decision.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), as a skilled worker. The petitioner is a liquor store. The petitioner seeks to employ the beneficiary permanently in the United States as a liquor store manager. As required by statute, the petition is accompanied by an individual labor certification (Form ETA 750), approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary possesses the requisite employment experience as required by the terms of the approved labor certification.

On appeal, counsel submits additional information and asserts that the director misinterpreted the evidence provided to support the beneficiary's experience.

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 nature, for which qualified workers are not available in the United States.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's priority date. The petitioner must also demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 CFR § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

The regulation at 8 C.F.R. § 204.5(l)(3) 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 two years of training or experience.

With the petition, the petitioner submitted Part A and Part B of the ETA 750. It contains several corrections as annotated by stamps, dated August 30, 2001, and three different sets of initials. Item 14 of Part A of the ETA

750 describes the minimum education, training, and experience that an applicant for the offered position of liquor store manager must have. It originally appeared to require two years in the job offered as the qualifying minimum experience. Item 15, Part B of the ETA 750, signed by the beneficiary on August 5, 1997, originally stated that she had been unemployed since April 1991, but had worked as a manager for a retail store in Syria from January 1981 until January 1991.

Four letters addressed to the DOL Alien Labor Certification Office accompany the petition. Two of these letters are dated February 5, 1998. One is from the petitioner and one is from the beneficiary. The petitioner's letter amends the prevailing wage to \$10.33 per hour and the experience required by the position offered on the ETA 750A to include the alternative of two years experience in any retail establishment. The petitioner's letter concludes by stating that the alien has satisfied these terms as she worked from 1/3/81 to 1/3/91 at the Dunia Al-Alaab store in Syria as a manager. The beneficiary's letter amends the dates of her past employment at the Dunia Al-Alaab store to be from 1/3/85 to 1/3/91. Both these letters bear an initialed DOL stamp, dated August 30, 2001, stating "attachment approved by U.S.D.O.L." The other two letters addressed to the DOL are dated May 6, 1998 and September 8, 1998, respectively. The letter, dated May 6, 1998, is signed by the beneficiary. She states that she is responding to correspondence from the DOL, dated May 4, 1998, and requests to amend Item 15 of the ETA 750B by providing a descriptions of her job duties at the Dunia Al-Alaab store and by amending the type of business to "retail sales of toys." The petitioner's letter, dated September 8, 1998, responds to correspondence from the DOL and amends the proposed work schedule stated on the ETA 750A. It also changes the number of employees that the manager will supervise to "3." Both these letters also bear an initialed DOL stamp.

Along with the petition, the petitioner submitted a copy of a letter in Arabic, dated 11/1/1997. The English translation of the letter reflects that one of the owners of the World Toy Company states that the beneficiary was employed as a sales manager from 3/1/85 until 3/1/91.

On February 9, 2002, the director requested additional evidence from the petitioner relevant to the conflicting dates of employment given on the World Toy Company letter as 3/1/85 to 3/1/91 and the dates on the ETA750 listed as 1/81/ to 1/91.

In response, the petitioner, through counsel, submits copies of the correspondence to DOL as noted above, but in a cover letter, dated March 11, 2002, counsel states that the amendment of dates to be 3/1/85 to 3/1/91, not 1/3/85 to 1/3/91. Counsel also states that the labor certification officer wrote the incorrect year on the ETA 750B.

On April 15, 2002, the acting director issued a notice of intent to deny the petition. She advised the petitioner that the information provided relating to the beneficiary's past employment was insufficient. She noted that the employment letter provided by the World Toy Company contained different dates than that on the ETA 750B. She also advised the petitioner that the beneficiary's biographic information sheet (Form G-325), dated August 10, 1992, submitted with her asylum application reflected that the beneficiary had listed no work experience for the preceding five years.

In response, counsel submits another letter from the petitioner's Syrian employer, dated April 27, 2002. This letter is from the same individual and gives the beneficiary's same employment information as that presented in the previous letter. The petitioner also submits a letter, dated May 1, 2002, from one of the beneficiary's neighbors, stating that the beneficiary used to work as a manager of kids' games from 1985 to 1991.

In counsel's transmittal letter, submitted with the letters from Syria, counsel states again that the dates listed on

the ETA750B were placed in error by someone at the DOL office and that the dates were later amended through correspondence with that office. Counsel further states that the beneficiary did not recall submitting a G-325 biographic form as she never submitted an independent asylum application, but was merely a beneficiary on her husband's asylum application. Counsel states that the G-325, listing no work experience, reflects the beneficiary's husband's information, and not that of the beneficiary.

The director determined that the evidence failed to satisfactorily establish that the beneficiary possesses the requisite two years of past retail experience and denied the petition. The director noted the inconsistent dates listed on the ETA 750B and the letter provided from the World Toy Company. The director noted that the ETA contained different initials and bore no actual correction stamp to indicate the change in employment dates. The director also states that the beneficiary did, in fact sign a G 325 biographic form, dated August 10, 1992, which indicated no work experience for the preceding five years. That form has not been included in the record.

On appeal, counsel asserts that the DOL has used unrelated initials in the past to correct the ETA 750 and that the petitioner had no control over this practice. Counsel submits an exemplar of another DOL labor certification. Counsel resubmits copies of the employment letters from Syria and maintains that the director did not give sufficient weight to these attestations. Counsel also submits an affidavit from the beneficiary stating that she and her husband spoke no English when they filed for asylum and that she signed a blank G-325 as per instructions from her attorney, Hirach Balozian, who fabricated answers, and who has since been sent to prison and been disbarred.

Although the beneficiary's statements, provided on her affidavit, are not consistent with counsel's initial explanation regarding the G-325 biographic form, the AAO finds that this petition merits further investigation. There is sufficient evidence in the record to indicate that the DOL may have approved the amendments relating to the beneficiary's past employment submitted by correspondence from the petitioner and beneficiary, but failed to actually make the corrections on the ETA 750. This should be corroborated through direct contact with the DOL. Further investigation through other sources is also warranted to verify the beneficiary's claimed employment.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to conduct further investigation and request any additional evidence from the petitioner pursuant to the requirements of 8 C.F.R. § 204.5(g)(1) and (2). Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.