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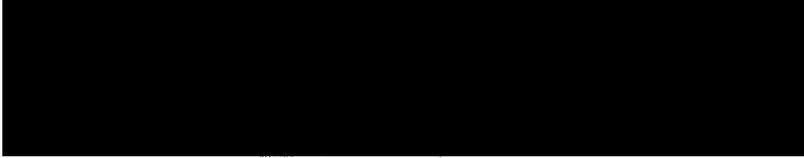
U.S. Department of Homeland Security  
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Washington, DC 20529

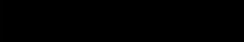


**U.S. Citizenship  
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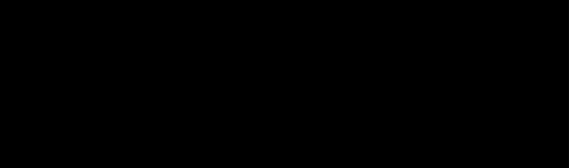
*136*



FILE:  Office: CALIFORNIA SERVICE CENTER Date: **APR 13 2005**  
WAC-03-072-51972

IN RE: Petitioner:   
Beneficiary:

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

**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 remanded to the director.

The petitioner is a health care facility. It seeks to employ the beneficiary permanently in the United States as a medical records technician. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position and denied the petition accordingly.

On appeal, counsel submits a brief and 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 nature, for which qualified workers are not available in the United States.

The issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position. 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, which is March 3, 2000. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of manager of fast food services. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |                         |       |
|-----|-------------------------|-------|
| 14. | Education               |       |
|     | Grade School            | C     |
|     | High School             | C     |
|     | College                 | Blank |
|     | College Degree Required | Blank |
|     | Major Field of Study    | Blank |

The applicant must also have two years of training in order to perform the job duties listed in Item 13, which states "Will compile and maintain medical records to document patients' condition and treatment; Review medical records

for completeness; Gather clinical data in order to prepare statistical reports on types of diseases treated, surgery performed and use of hospital beds; Operate computer to store and get health information of patients." Item 15 indicates that there are no special requirements.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, she indicated that she was employed at Clinica Choc Para Ninos in Santa Ana, California as a medical record technician from August 1990 to August 1994 for 20-30 hours per week. Her job duties were as follows: "Compiled and maintained medical records of patients of health care delivery system to abstract and coded [sic] clinical data, such as diseases, operations, procedures and therapies using standard classification systems. Compiled medical care and censused [sic] data for statistical reports on types of disease, surgery performed." Additionally, she stated she was an administrative assistant for Clinica Choc Para Ninos from August 1994 to the current time for 20 hours per week. The beneficiary also recorded her work history as an administrative assistant with Medaphis Corporation in Cypress, California from October 1990 to the current time for 10-20 hours per week.

With the initial petition, the petitioner submitted a notarized affidavit signed by the beneficiary that states the following:

That on August 8, 1990, I entered the United States of America with passport under assumed name [REDACTED]

That I applied for California ID and Social Security Number under the assumed name [REDACTED]

That I was employed at Clinica Para Ninos of Children's Hospital of Orange County for the period from June 1996 to May, 2001 using the assumed name [REDACTED]

That I declare [REDACTED] and [REDACTED] is the same and only one person . . .

(Emphasis in original). The petitioner also submitted a letter on Clinica Choc Para Ninos letterhead, signed by [REDACTED] with contact information. That letter, dated January 27, 1995, confirmed the employment of [REDACTED] as a data/billing representative "for the past six months." Additional correspondence confirms the hiring of [REDACTED] as a billing representative for Clinica Choc Para Ninos, along with details about the position, which shows that it involved "computerized patient accounting and billing system" and "data entry, billing, and collections of patient's accounts." The petitioner also submitted paystubs issued to [REDACTED] from Children's Hospital of Orange County from July 1999 to May 2001, and one paystub issued to [REDACTED] from Clinica Choc Para Ninos in 1999.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on March 17, 2003. The director requested the beneficiary's W-2s from 1990 to the present; the original document used by the beneficiary to enter the United States; the beneficiary's original California

identification; the beneficiary's original birth certificate, and an original identification document (with picture) from the beneficiary's country of citizenship.

In response to the director's request for evidence, the petitioner's former counsel stated the following, in pertinent part, in a letter:

Kindly note that the beneficiary . . . entered the United States with an *assumed name*. [REDACTED]  
[REDACTED] This name appears in [the beneficiary's] passport and I-94. Likewise, this name appears in all official transactions of [the beneficiary] which were carried out in the United States (e.g. Taxes, I.D., etc.). Nonetheless, we respectfully submit that both names refer to one and the same person.

(Emphasis in original). The petitioner provided W-2 and 1099s, individual income tax returns, a passport and I-94 card, and a California identification card, all in the name of [REDACTED]. The petitioner also provided a copy of a birth certificate and a "Home Development Mutual Fund" card in the beneficiary's name.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on June 5, 2003. The director requested additional identification clarification evidence and clarification about the beneficiary's employment with Clinica Choc Para Ninos since the W-2 forms provided were paid by Medaphis Corporation.

In response, the petitioner's former counsel stated the following, in pertinent part, in a letter:

**The beneficiary . . . worked for CLINICA CHOC (Children's Hospital of Orange County) PARA NINOS as a full-time BILLING REPRESENTATIVE performing the duties of a MEDICAL RECORDS TECHNICIAN. . . . [The beneficiary], while commencing employment with CLINICA CHOC (Children's Hospital of Orange County) PARA NINOS was basically in charge of pulling and refilling the medical records of patients and entering the medical information to the data entry. We respectfully submit that the duties performed by [the beneficiary] are comparably similar to that of a Medial Records Technician. . . .**

Please note that the beneficiary . . . worked for CLINICA CHOC (Children's Hospital of Orange County) PARA NINOS as a Billing Representative/Medical Records Technician from June 1996 to August 2001. . . . It is further submitted that CLINICA CHOC (Children's hospital of orange County) *is not* a subsidiary of MEDAPHIS CORPORATION.

In addition, [the beneficiary] worked as a *Records Clerk* for the Department of Health, Office of the Secretary, Republic of the Philippines. . . . **It is submitted that the duties that were performed by [the beneficiary] during her employment with the Department of Health, Philippines, are also analogous to the duties of a Medical Records Technician.** [The beneficiary] worked for the said company from April 1977 to March 1979.

(Emphasis in original). The petitioner submitted a letter from CHOC Hospital stating that [REDACTED] formerly worked as a Billing Representative for Children's Hospital of Orange County from June 11, 1996 to August 20, 2001. Additionally, the petitioner submitted a job description for a Billing Representative at CHOC Hospital and W-2 forms issued to [REDACTED] from Childrens Hosp of Orange from 1997 to 2001, a W-2 form issued to [REDACTED] from Clinica Choc Para Ninos in 1997, and formerly submitted copies of paystubs. Children's Hospital of Orange County and Clinica Choc Para Ninos have the same employer identification number (EIN) although they list different addresses.

The petitioner also submitted a "Certification" from the Republic of the Philippines, Department of Health, Office of the Secretary, that the beneficiary "has been employed in the Bureau of Health Services in the then Ministry of Health as Clerk I from April 1, 1977 to October 8, 1978 and as Clerk II from October 8, 1978 to March 3, 1979." The duties listed in that correspondence include typing communications and reports, filing, and answering telephone calls. Finally, the petitioner submitted an original identification card and residence certificate issued to the beneficiary in the Philippines.

The director denied the petition on October 1, 2003 stating that the petitioner failed to document the beneficiary's prior employment experience as a medical records technician as all documentation related to other positions held by the beneficiary. The director determined that the beneficiary's past positions as a billing representative and clerk did not include duties analogous to the duties of the proffered position.

On appeal, substituted counsel asserts that the duties involved in the beneficiary's prior work experience are similar to the duties of the proffered position. Substituted counsel also pointed out that CIS did not invalidate the labor certificate based on a finding of fraud.

The regulation at 8 C.F.R. § 204.5(1)(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.

Additional evidence is in the record of proceeding that is pertinent to the adjudication of the beneficiary's stated qualifications for the proffered position. In connection with an application to adjust status to lawful permanent resident based upon the underlying visa petition, the beneficiary submitted Form G-325, Biographic Information

sheet. The Form G-325 has a section that elicits employment information for the past five years as well as the beneficiary's last occupation prior to coming to the United States. The beneficiary signed the form in October 2002 above a statement informing the signatory of penalties for knowingly and willfully falsifying or concealing a material fact.

On the Form G-325, the beneficiary states that she has been working as a medical biller for Per-Se Technologies, Inc. from October 1997 to the present time. Additionally, she claims experience as a "Direct Care Staff" from March 2002 to the present time for Tri Elizabeth Homes III.

The problem that arises in this case is the multiple inconsistencies in information provided by the beneficiary. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Matter of Ho*, 19 I&N Dec. at 591-592 also states: "It is incumbent on 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."

The beneficiary states that she was employed by Clinica Choc Para Ninos in Santa Ana, California as a medical record technician from August 1990 to August 1994; as an administrative assistant for Clinica Choc Para Ninos from August 1994 to the current time (March 2000); and as an administrative assistant with Medaphis Corporation in Cypress, California from October 1990 to the current time (March 2000) on her ETA 750B. However, on the Form G-325, the beneficiary states that she is employed as a medical biller for Per-Se Technologies, Inc. from October 1997 to the present time (October 2002), which overlaps her purported employment at Clinica Choc Para Ninos and Medaphis Corporation as she detailed on the ETA 750B. Additionally, she claims experience as a "Direct Care Staff" from March 2002 to the present time for Tri Elizabeth Homes III. The petitioner also provided a letter from Children's Hospital of Orange County that stated she was a billing representative from June 1996 to August 2001. These multiple inconsistencies make it impossible to determine what the beneficiary was actually doing, at what time, and for whom.

Even if the record of proceeding did not contain multiple inconsistencies, the AAO concurs with the director's determination that no document, letter, or paystub, establishes that the beneficiary has two years of experience as a medical records technician. No document, letter, or paystub contained in the record of proceeding establishes that the beneficiary was employed for two years in an employment capacity with duties similar to the duties of the proffered position. The Clerk position in the Philippines involved menial administrative work. The billing representative position involved accounting and billing work. These jobs are not analogous to the proffered position which involves using a computer to input data and generate reports relating to patients' health conditions and treatment plans and statistics.

The AAO is concerned about the beneficiary's multiple inconsistencies in connection with her fraudulent entry into the United States and continued fraudulent activity under an assumed name. There is very little evidence that the beneficiary is in fact [REDACTED]. If the beneficiary is [REDACTED] however, then she committed fraud in entering the United States and again while obtaining a social security card from the Social Security Administration, a federal government agency; state identification card from the California state government; tax records filed with the Internal Revenue Service, another federal agency; and personnel records

generated and filed with various state and federal government agencies by past employers. Fraud results in inadmissibility and permits the director to invalidate a labor certificate. See 8 U.S.C. § 1182(a)(6)(C) and 20 C.F.R. §§ 656.30(d) and 656.31(d). The beneficiary cannot be rewarded by past misconduct. The beneficiary admitted to committing fraud in a notarized and sworn affidavit, checked a box on her application to adjust status to lawful permanent resident that she used fraudulent documents or, by fraud or willful misrepresentation of a material fact, sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit. The director is entitled to invalidate the labor certificate based upon a finding of fraud.

The AAO also notes that prior to the filing of this visa petition, the beneficiary retained [REDACTED] two Philippine nationals convicted of fraud and criminal conspiracy to defraud aliens, to assist her with her immigration status. [REDACTED] and [REDACTED] devised a scheme to file fake political asylum applications to obtain A numbers for immigrants, withdrawing those applications or allowing them to be referred to immigration court, filing fake adjustment of status to lawful permanent resident applications for those immigrants, and stamping fake I-551 permanent resident status stamps into their passports. According to the notes in the record of proceeding, most immigrants were unaware of the scheme. In the instant case, the beneficiary's signature as [REDACTED] is on the asylum form and the withdrawal letter. That signature matches the signature on documents relating to the instant petition. Thus, it is unlikely that she was an unwitting participant in the fraud scheme as it pertained to her.

The AAO determines that fraud has been committed in this case and the director should reexamine the instant petition and consider invalidating the labor certificate. Thus, the AAO will remand the case to the director and the director can undertake any procedural mechanisms or request any additional information or evidence necessary to make an additional determination.

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 petition is remanded to the director for entry of a new decision.