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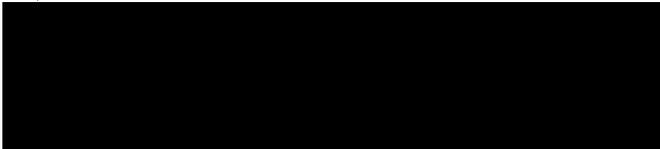
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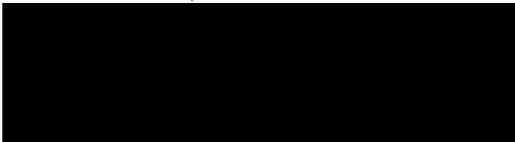


FILE: WAC-02-139-50650 Office: CALIFORNIA SERVICE CENTER Date: APR 13 2005

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:



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 travel agency. It seeks to employ the beneficiary permanently in the United States as a travel agent. 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 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 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 January 14, 1998. 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 travel agent. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
- Grade School N/A
- High School N/A
- College N/A
- College Degree Required N/A
- Major Field of Study N/A

The applicant must also have two years of experience in the job offered in order to perform the job duties listed in Item 13, which states "Plans itineraries, arranges accom[m]odations and other services for customers of travel agency. Provides travel information such as local customs, points of interest, special events, foreign county regulations. Prints

or requests transportation carrier tickets, using computer print system. Will supervise guides for tours." Item 15 indicates that there are no special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his 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, he listed the following:

- a. Arya Tour, in Tehran, Iran, as a tour organizer from March 1987 through March 1989, for which he did the following: "Planned trips and tours, made booking by computer and telephone."

With the initial petition, the petitioner submitted no evidence of the beneficiary's qualifications for the proffered position.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on August 23, 2002. Pursuant to the requirements set forth at 8 C.F.R. § 204.5(1)(3), the director requested a letter from the beneficiary's prior employers with details conforming to the regulatory requirements.

In response to the director's request for evidence, the petitioner submitted a letter from Arya Tour, dated January 13, 1998, that stated the following: "TO WHOM IT MAY CONCERN, This is to certify that [the beneficiary] has been [sic] employee in this agency since March 1987 till [sic] March 1989. Thank you for your kind attention. [REDACTED] MANAGING DIRECTOR." (Emphasis in original).

The director denied the petition on June 7, 2003 stating that the letter was deficient since it failed to state the hours worked by the beneficiary, the beneficiary's title or position held, or description of duties performed during the employment.

On appeal, counsel asserts that the beneficiary meets the minimum qualifications and submits a new letter, stating that an original version would be mailed within 30 days. The appeal was filed in July 2003 and to date, nothing further has been received in this matter.

The letter submitted on appeal is from Arya Tour, is dated June 28, 2003, and states the following:

TO WHOM IT MAY CONCERN. This is to certify that [the beneficiary] has been working in our Group at the ticketing, sales & passenger reservation department as an Assistance [sic] from March 1987 till [sic] March 1989 as a full time (48 hours a Week) employee. Thank you in advance for your kind attention. Sincerely Yours, [REDACTED] Directing Manager.

(Emphasis in original).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

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.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision.

Additionally, 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.

The AAO concurs with the director's decision. The letter submitted in response to the director's request for additional evidence failed to conform to the regulatory requirements set forth at 8 C.F.R. § 204.5(1)(3), despite the director's detailed information about what type of letter would be sufficient. On appeal, the letter also fails to meet the regulatory requirements for failure to provide a description of the duties performed by the beneficiary while he was employed at Arya Tour. The letter is also deficient because it provides inconsistent information from prior representations made in this matter. The beneficiary stated that he was a tour organizer for Arya Tour on Form ETA 750B, but the letter from Arya Tour submitted on appeal states that he was an "Assistance" for them. Presumably the author of the letter meant "assistant," but regardless, the letter failed to provide a description of the training the beneficiary received there other than working in a particular area of the business as an assistant. An assistant is not the same as a tour organizer or a travel agent actually engaging in duties such as those listed on Item 13 of the Form ETA 750A. An assistant type of position could involve duties ranging from clerical and menial to errand running and moving boxes. As an example, a requirement of knowledge of "foreign country regulations," which is set forth as a duty of the proffered position on Item 13 of the Form ETA 750A, suggests a level of sophistication that is not typical of an assistant. The letter lacks sufficient details and seems to provide inconsistent information. Thus, the letter fails to corroborate that the beneficiary has two years of experience either operating tours as he claimed on the Form ETA 750B or in the proffered position as a travel agent.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988) 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 petitioner has failed to provide sufficient evidence that the beneficiary is qualified for the proffered position with two years of experience as delineated as a requirement on the ETA 750A.

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.