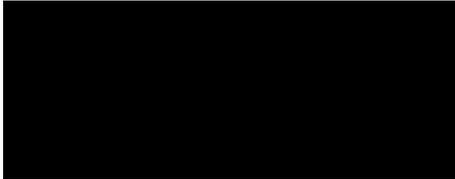




U.S. Citizenship
and Immigration
Services

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Office: NEBRASKA SERVICE CENTER

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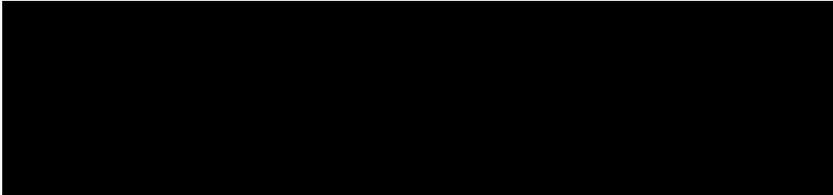
Petitioner:

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 employment-based visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an assisted living residence. It seeks to employ the beneficiary permanently in the United States as a staff accountant. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 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.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on April 25, 2001. The labor certification states that the position requires one year of experience in the job offered (staff accountant), four years of college, and a bachelor's degree in "Business or related field or foreign equivalency." [sic] This office notes that the Form ETA 750 states that one year of experience as a staff accountant is a prerequisite for the job. The Form ETA 750 does not indicate that one year of experience in another occupation, even a related occupation, will suffice.

On the Form ETA 750 Part B the beneficiary stated that she had worked as an underwriter from 1996 to 1998 at Philamagen Nuva Reyes Agency, in Cabanatuan City, Philippines. The beneficiary further stated that she

had worked as an administrator for [REDACTED] Assisted Living in American Fork, Utah from April 1999 until at least February 27, 2001, the date she signed that form. Although that form requests that the beneficiary report all employment during the past three years and all employment related to the proffered position, no other employment was listed on that form.

With the petition counsel submitted a letter, dated December 23, 2002, from the petitioner's president stating that the beneficiary has over five years of experience in the proffered position. That letter states that the beneficiary worked as an accountant for a retail company in the Philippines beginning in 1973, and that she was promoted to Treasurer/Comptroller in 1976, which position the letter states she held for over five years. The letter also restates the beneficiary's claim of employment as administrator for Mira Vista Assisted Living. Counsel submitted no other evidence pertinent to the beneficiary's employment claims.

Because the evidence submitted did not satisfactorily demonstrate that the beneficiary has the requisite year of work experience, the Nebraska Service Center, on July 10, 2003, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. § 204.5 (1)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from employers giving the name, address, and title of the employer, and a description of the dates and specific duties of the beneficiary's employment.

In response, counsel submitted a letter, dated September 29, 2003, from the agency manager of the Philippine American Life and General Insurance Company of Manila, Philippines, stating that the beneficiary worked for that company as a "Bookkeeper and Sales Underwriter" from March 1, 1996 to July 31, 1998. That letter provided no further description of the duties of the beneficiary in that employment.

This office notes that the beneficiary claimed, on the Form ETA 750 Part B, that she had worked as an underwriter from 1996 to 1998 at Philamagen Nuva Reyes Agency in Cabanatuan City, Philippines. Whether that is an agency of the Philippine American Life and General Insurance Company of Manila, Philippines is unclear. Counsel provided no explanation for that discrepancy.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

On March 5, 2004, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite year of experience as a staff accountant.

On appeal, counsel observes that the beneficiary stated, on the Form ETA 750, Part B, that her duties with Philamagen Nuva Reyes Agency included financial reporting, cost analysis, cash flow, and profit review. Counsel asserts, but provides no evidence to demonstrate, that in the Philippines a "bookkeeper" position calls for a degree in accounting, finance, or the equivalent. Counsel urges that the employment verification letter from the Philippine American Life and General Insurance Company of Manila, Philippines, and the beneficiary's own description of her duties with the Philamagen Nuva Reyes Agency, taken together,

demonstrate that the beneficiary has the requisite experience. Counsel does not address the name discrepancy.

In a brief filed subsequently to supplement the appeal, counsel asserts that during seven years at Kabukiran Marketing Corporation the beneficiary carried out accounting and supervisory duties, directing all financial reporting, general accounting, and internal accounting, and performing budget forecasting, cash management, long-term financial projection, and profit planning duties, thus demonstrating her ability to perform as staff accountant in the proffered position.

Counsel states that during her employment at Mira Vista Assisted Living the beneficiary also demonstrated her accounting skills.

Counsel also argues that the director failed to correctly consider the evidence, and that, "Although her position title at Philam Life was Bookkeeper, she carried out much more advanced duties, [including financial reporting, cost analysis, cash flow and profit review] **in keeping with the norm in the Philippines.**" (Emphasis in the original.) Counsel provides no evidence in support of his assertion that bookkeepers in the Philippines perform duties more advanced than those of bookkeepers in the United States or elsewhere.

Counsel asserts that one of the supporting documents submitted with the petition, an advertisement of the proffered position, indicated that one year experience performing certain duties could be substituted for one year of experience as a staff accountant. Counsel urges that, therefore, the Form ETA 750 should not be construed to require one year of experience as a staff accountant.

The approved Form ETA 750 labor certification, however, clearly states that the proffered position requires one year of experience as a staff accountant. The petitioner must demonstrate that the beneficiary is qualified for the proffered position pursuant to the terms of the approved labor certification. Citizenship and Immigration Services (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). Counsel may not now alter the terms of the approved labor certification as necessary to qualify the beneficiary for the proffered position.

Counsel does not address the fact that the beneficiary, on the Form ETA 750B, claimed employment as an underwriter for Philamagen Nuva Reyes Agency in Cabanatuan from 1996 to 1998, whereas her employment documentation states that she worked as a bookkeeper and sales underwriter for Philippine American Life and General Insurance Company of Manila during that same period. Because this discrepancy was not cited in the decision of denial, however, this office will not base today's decision on that ground.

This office is aware that, on the Form ETA 750, Part B the beneficiary stated that her duties for Philamagen Nuva Reyes Agency included financial reporting, cost analysis, cash flow, and profit review. In the July 10, 2003 Request for Evidence the Service Center requested evidence in support of that assertion. The evidence submitted to support that assertion states that the beneficiary worked for the Philippine American Life and General Insurance Company of Manila, Philippines a Bookkeeper and Sales Underwriter, but provided no

other description of her duties. That evidence does not support the assertion that the beneficiary's duties, at whichever company employed her, if either, corresponded to the duties of the proffered staff accountant position. No other evidence has been submitted to support the proposition that the beneficiary's duties with one or the other company qualifies her for the proffered position. The evidence is therefore insufficient to demonstrate that the employment at one or the other of those insurance companies is qualifying, and it will not be considered in the determination of the beneficiary's qualification for the proffered position.

The December 23, 2002 letter from the petitioner's president states that the beneficiary worked as an accountant for a retail company in the Philippines beginning in 1973, and that she was promoted to Treasurer/Comptroller in 1976, which position the letter states she held for over five years. Notwithstanding that the Form ETA 750, Part B requested that the beneficiary list all experience related to the proffered position, that experience was not listed.

On appeal, counsel states that during seven years at Kabukiran Marketing Corporation the beneficiary carried out accounting and supervisory duties, directing all financial reporting, general accounting, and internal accounting, and performing budget forecasting, cash management, long-term financial projection, and profit planning duties, thus demonstrating her ability to perform as staff accountant in the proffered position. Again, this experience, apparently the same claim to which the petitioner's president's December 23, 2002 letter alluded, is not listed, as required, on the Form ETA 750, Part B. Consistent with the requirements of 8 C.F.R. § 204.5(1)(3)(ii), the petitioner was obliged to support that employment claim with a letter from the employer giving the name, address, and title of the author of the letter, the dates of the employment, and the beneficiary's duties in that position, unless it demonstrated that such an employment verification could not be obtained. The petitioner did neither. The alleged experience at Kabukiran Marketing or the "retail company" during 1973 will not be considered in the determination of the beneficiary's qualifications.

The remaining claim of qualifying employment experience is for employment as administrator for Mira Vista Assisted Living in American Fork, Utah. The Form ETA 750 states that in that position the beneficiary was required to "[a]dminister the fiscal operations such as budget planning and accounting[;] [e]stablish rates for health care services[;] [d]irect, hire and train personnel[;] [c]oordinate nursing activities of the nursing and administrative staff and services[;] and d]evelop policies and procedures for various established activities."

This office will assume, *arguendo*, that the described duties would qualify the beneficiary for the proffered position. Even if they would, however, the petitioner is still obliged to submit evidence, consistent with 8 C.F.R. § 204.5(1)(3)(ii), that the beneficiary held that position and performed those duties.

Therefore, the Service Center issued the July 10, 2003 Request for Evidence, requesting that the petitioner submit letters from employers giving the name, address, and title of the employer, and a description of the dates and specific duties of the beneficiary's employment. The petitioner has not submitted any such employment verification for the claim of experience at Mira Vista, and that employment claim will not be considered in the determination of the beneficiary's qualifications

The evidence submitted is insufficient to show that the beneficiary has any qualifying experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.