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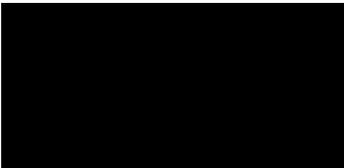
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FILE: WAC 02 202 51435 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 2005**

IN RE: Petitioner: 
Beneficiary: 

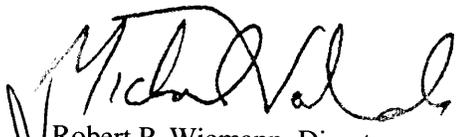
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 on appeal. The matter will be remanded to the director.

The petitioner is a garment manufacturing and wholesale company. It seeks to employ the beneficiary permanently in the United States as a pattern maker. 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 and 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 unavailable in the United States.

8 CFR § 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.

(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.

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 August 12, 1998. The labor certification states that the position requires two years experience as a pattern maker.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, and, copies of documentation concerning the beneficiary's qualifications as well as other documents.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience, the California Service Center, denied the petition on April 9, 2004.

The director stated the following:

The Department of Labor accepted Form ETA 750 on August 12, 1998. In Parts 13 [sic 15] of the form, the beneficiary does not possess prior experience. The Service sent a request for an employment verification investigation to verify the beneficiary's employment experience. The result of the investigation stated that the beneficiary ... does not work for [REDACTED] in South Korea because [REDACTED] closed its business about five years ago.

On appeal, counsel asserts that ETA 750B "Question" 15 is the relevant section of the form. He explains that ETA 750B Section 15 (b) correctly states the DMSK work experience to be from January 1991 to May 1996. Counsel is correct. The [REDACTED] period of work experience stated in the Form ETA Part B, Section 15 (b) information coincides with the investigation findings.

However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

There is no other substantiation in the record of proceedings such as wage statements, work certifications, company brochures or product information to substantiate beneficiary's claim of employment with [REDACTED] company.

Also, in a prior passport application made by the beneficiary¹ on December 2, 1993, he stated under penalty of perjury that he was the general manager of the [REDACTED] instead of an employee of [REDACTED]. Upon investigation the Service has learned that he was the owner of that company from 1980 to 1996 during the same time period he states he worked for the [REDACTED] company. Under the case precedent *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 Regulation at 8 C.F.R. § 103.21 entitled "Access by individuals to records maintained about them" requires the disclosure of the results of an investigation that reveals facts that would be the basis of a denial. The petitioner will be given the opportunity to present evidence to rebut the results of the above investigation. Therefore, the AAO will remand the case to the director and the director can undertake any procedural mechanisms or request any additional information or evidence as deemed necessary.

¹ The beneficiary is also wanted by the Seoul, South Korea police on an outstanding criminal warrant.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration.