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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2005
WAC 02 287 52699

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

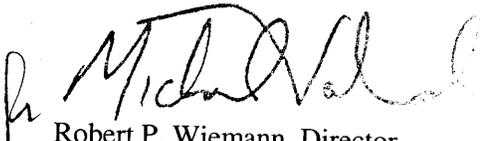
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 on appeal. The appeal will be dismissed.

The petitioner is a textile and garment manufacturer. It seeks to employ the beneficiary permanently in the United States as a garment sample 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 or seasonal nature, for which qualified workers are unavailable in the United States.

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.

(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 January 10, 2000.

The labor certification states that the position requires two years of experience in the proffered position. On the Form ETA 750, Part B, the beneficiary claimed to have worked as a self-employed garment sample maker since January 1995. With the petition counsel submitted portions of the beneficiary's 1997, 1998, 1999, 2000, and 2001 Form 1040 U.S. Individual Income Tax Returns. On each of those returns the beneficiary listed his occupation as "self-employed." Schedules SE included with each of those returns confirm that the beneficiary was self-employed during each of those years. Those returns do not state the nature of the

business in which the beneficiary employed himself during those years. Counsel submitted no other evidence pertinent to the beneficiary's claim of qualifying employment experience.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience in the proffered position, the California Service Center, on January 6, 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 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.

In response, counsel submitted IRS printouts of data from the beneficiary's 1998, 1999, 2000, and 2001 tax returns. Those documents confirm some of the figures from the previously submitted tax returns, but do not state the nature of the beneficiary's business. Counsel also provided a declaration, dated January 24, 2003, from the beneficiary. The beneficiary declares that he has been self-employed as a garment sample maker since January 1995.

On June 2, 2003, the director denied the petition, finding that the evidence submitted did not reliably demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, counsel observes that 8 C.F.R. § 204.5(g)(1) states that if an employment verification letter from a previous employer is unavailable other evidence of the beneficiary's claimed employment history will be considered. Counsel notes that the beneficiary claims to have been self-employed and that, therefore, the beneficiary's January 24, 2003 declaration is the best available evidence of the beneficiary's qualifying employment. Counsel cites various authorities, including 8 C.F.R. § 204.5(g)(1), for the proposition that the beneficiary's declaration should be considered. Further, counsel notes that the Schedules SE filed with the beneficiary's tax returns show that he was self-employed.

With the appeal, counsel submitted a copy of the beneficiary's 2002 Form 1040 U.S. Individual Income Tax Return. On that return, the beneficiary states his occupation as "S/E – Garment Sample Maker." Again, that return includes a Schedule SE showing that the petitioner was self-employed.

Based on the evidence submitted, counsel argues that the beneficiary has clearly established that he was self-employed. Counsel is correct. The issue raised in the decision of denial, however, is not whether the beneficiary has established that he was self-employed, but whether he has demonstrated, with clear and convincing evidence, that he has the requisite two years of experience as a garment sample maker.

Prior to the instant appeal, the primary evidence in the file in support of the proposition that the beneficiary has worked as garment sample manufacturer for two years was the beneficiary's own declaration. Such a declaration does not suffice. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal in order to provide documentary evidence of the beneficiary's attestation, the petitioner submitted a second attestation and the beneficiary's 2002 income tax return containing a statement that he was self-employed as garment sample maker during that year. On the second attestation, the beneficiary lists the

contact information for three garment manufacturers and attests that these businesses were clients. Additionally, counsel contends that the beneficiary's previous years tax returns which indicate, via Schedule SE, that the beneficiary was self-employed, constitute further documentary evidence of the beneficiary's claim that to have two years experience as a garment sample maker.

This office has considered the both the beneficiary's self-certifications of his employment experience in conjunction with his new statement on his tax return that he is a self-employed garment sample maker and finds them insufficient to demonstrate that the beneficiary has the requisite two years of experience as a garment sample maker. The record remains devoid of documentary evidence supporting this collection of statements. While the prior years tax returns do indicate that the beneficiary was self-employed, there is no documentary evidence that the beneficiary was self-employed as a garment sample maker (as opposed to self-employment in any other field). The record contains no receipts from garment manufacturers, no letters from clients, or other such evidence that would substantiate this aspect of the beneficiary's attestation. Therefore, the petitioner has not established that the beneficiary has the requisite two years of experience and as such, that the beneficiary is eligible for the proffered position.

The dismissal of this appeal is without prejudice to the filing of a new petition by the petitioner, based on the same approved ETA 750 labor certification. Any such petition must be supported by evidence on each of the issues discussed above. *Cf. Matter of Dow Steam Specialties, Ltd.*, 19 I&N Dec. 389 (Commissioner 1986); *Matter of Darwish*, 14 I&N Dec. 307 (BIA 1976).

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.