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JUN 06 2005

FILE: [REDACTED]
WAC 03 080 55118

Office: CALIFORNIA SERVICE CENTER Date:

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: SELF-REPRESENTED

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 sustained.

The petitioner is a furniture design and manufacture business. It seeks to employ the beneficiary permanently in the United States as a supervisor, packing/wrapping. 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 met the experience requirements as stated on the Form ETA 750. The director denied the petition accordingly.

On appeal, the petitioner 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 regulation at 8 C.F.R. § 204.5(l)(3) states, in pertinent part:

(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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.

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. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is January 12, 1998.

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In this case, Block 14 contained the only information appearing in these sections. This information appears as follows:

Education
Y

College Degree Required
0

Experience Job Offered
2Yrs.

Related Occupation
0 Yrs.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of supervisor, packing/wrapping must have two years of experience as a supervisor, packing/wrapping.

With the initial petition, the petitioner failed to provided any evidence of the beneficiary's prior employment. On April 30, 2003, the director requested evidence that the beneficiary met the two-year experience required by the labor certification before the date of filing the petition, January 12, 1998. The petitioner was informed that evidence of prior experience should be submitted in letterform on the employer's letterhead showing the name and title of the person verifying the information. The verification should state the beneficiary's title, duties, and dates of employment/experience and number of hours.

In response, the petitioner submitted a letter from the beneficiary's prior employer stating that it employed the beneficiary from 1990 to 1994. The letter described the beneficiary's position and duties, but did not give the number of hours the beneficiary worked for the prior employer each week.

The director determined that the evidence submitted did not establish that the beneficiary met the experience required by the labor certification, and denied the petition on November 19, 2003. The director pointed out that the letter from the beneficiary's prior employer did not identify the title of the person that signed the letter and that the letter failed to state the number of hours worked per week by the beneficiary. The director also stated that the letter is in conflict with the dates the petitioner claims to have employed the beneficiary (from September 13, 1993 to the present).

On appeal, the petitioner submits a new letter from the beneficiary's prior employer, signed by [REDACTED] proprietor, and dated December 17, 2003 that states:

Please note that Ms. [REDACTED] was employed with us, fulltime, (40 hrs) from October 1990 until July 1991, in the capacity of Shipping Clerk. As the shipping clerk her duties included packing and shipping orders. Preparing special packing and shipping instructions for special handling, as per orders and customer requirements. She prepared shipping orders and documented all quality control procedures. Ship prepared shipping vouchers and bills of laden. She coordinated shipping routes with C&F agents and reported to the shipping, Packing and Receiving supervisors. In August of 1991 she was promoted to Shipping and Packing Supervisor.

Ms. [REDACTED] worked for us as our fulltime (40hr/wk) Shipping and Packing Supervisor from 08-1991 to 09-1993. She then went on to a part-time basis from September 1993 until December 1994, working an approximate 20-hour week. During this period she even helped train our existing shipping clerk progress to shipping and packing department supervisor.

Kindly note that Ms. [REDACTED] was employed on a cash basis and was paid cash during her 4 years of employment with us. As such we cannot entertain her request of W-2 forms, as were not issued.

Please further note that our business has now been shut down due to my acute health problems that have led to my complete disability. Nevertheless, I am preparing this certification to ensure that a loyal employee, as Ms. [REDACTED] is not penalized for my business being shut down.

The more detailed experience letter submitted by the beneficiary's prior employer on appeal clearly shows that the beneficiary had obtained the experience required by the labor certification, namely from August 1991 to September 1993, until she began part-time employment. While the director states that the dates of employment conflict with those given by the petitioner (began employing the beneficiary on September 13, 1993), the AAO does not conclude that the statements given by either employer is untrue or inconsistent. It is conceivable that the beneficiary could have worked a twenty-hour week for the prior employer and still worked a forty-hour week with the petitioner. The AAO has found no evidence that either statement by the petitioner or the prior employer has been misleading or untruthful.

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 met that burden.

ORDER: The appeal is sustained.