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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 28 2005
LIN-03-180-51736

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

PETITION: 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a province of a Catholic religious order. It seeks to employ the beneficiary permanently in the United States in a mission office as a religious publications marketing coordinator. 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 had the experience required on the Form ETA 750, and denied the petition accordingly.

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 not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 30, 2001.

The Form ETA 750 states that the position of religious publications marketing director requires a Bachelor of Arts degree in business administration or marketing and six months of experience in the offered position or in the related occupation of "marketing/sales assistant or secretary." (Form ETA 750, block 14).

On the Form ETA 750B, signed by the beneficiary on April 30, 2001, the beneficiary claimed to have worked for the petitioner beginning in October 1999 and continuing through the date of the ETA 750B.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) of trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The I-140 petition was submitted on May 9, 2003. On the petition, the petitioner claimed to have been established on January 8, 1900 and to currently have 24 employees in the mission office where the beneficiary is to work. In the items on the petition for gross annual income and for net annual income, the petitioner wrote the words "not for profit." With the petition, the petitioner submitted supporting evidence.

In a request for evidence (RFE) dated September 10, 2003, the director requested additional evidence pertaining to the beneficiary's work experience and requested evidence clarifying the beneficiary's date of birth.

In response to the RFE, the petitioner submitted additional evidence.

In a decision dated March 5, 2004, the director determined that two letters in the record from the same hotel in the Philippines corroborating the beneficiary's claimed work experience with that hotel contained contradictory information. The director therefore denied the petition.

On appeal, counsel submits a brief and additional evidence. Counsel states on appeal that no contradiction exists in the language of the two letters from the hotel for which the beneficiary claimed to have worked. Counsel further states that additional evidence submitted on appeal in the form of affidavits from persons with personal knowledge of the beneficiary's prior employment provides further corroboration of the beneficiary's claimed past employment.

The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). Where a petitioner fails to submit to the director a document which has been specifically requested by the director, but attempts to submit that document on appeal, the document will be precluded from consideration on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). In the instant case, however, none of the documents submitted for the first time on appeal were specifically requested by the director. Therefore no grounds would exist to preclude any documents from consideration on appeal. For this reason, all evidence in the record will be considered as a whole in evaluating the instant appeal.

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).

Concerning the requirement on the ETA 750 that the beneficiary have a Bachelor's of Arts degree in business administration or marketing, the record contains a copy of a Bachelor of Science in Business Administration degree awarded to the beneficiary in October 1997 by De La Salle University, Dasmariñas, Cavite, Philippines. The record also contains a copy of a credential evaluation report dated August 16, 1999 by World Education Services, Inc., finding that the beneficiary's Bachelor of Science degree is equivalent to a bachelor's degree in marketing management from a regionally accredited institution in the United States. The two foregoing documents are sufficient to establish that the beneficiary had satisfied the educational requirements of the ETA 750 as of the priority date.

The ETA 750 also requires that the beneficiary have six months of experience in the offered job or in the related occupation of "marketing/sales assistant or secretary." The evidence relevant to that requirement includes the following documents: a copy of a certification dated June 5, 2001 by the director of human resources, [REDACTED], submitted with the I-140 petition; and a letter dated September 19, 2003 from that same director of human resources, submitted in response to the RFE. The record also includes the following documents, submitted for the first time on appeal: an affidavit dated March 22, 2004 from the beneficiary; copies of five affidavits, each dated in March 2004, from individuals claiming knowledge of the beneficiary's work experience with [REDACTED] and copies of pages printed from the Internet Web site of the [REDACTED] the corporate owner of [REDACTED]

The certification dated June 5, 2001 from the director of human resources [REDACTED] states in relevant part as follows: "This is to certify that [the beneficiary] has been employed by [REDACTED] Plaza as temporary/seasonal Sales & Marketing Secretary at the Sales & Marketing Department. Her first recorded temporary/seasonal employment was on October 1997 and the latest was on May 1998."

The letter dated September 19, 2003 from the director of human resources, The [REDACTED] submitted in response to the RFE, states in relevant part as follows:

With this letter we confirm that our employment records reflect that [the beneficiary] was employed by the [REDACTED] as a Sales and Marketing Secretary for the Sales and Marketing Department, performing secretarial duties and assisting the sales and marketing manager with the promotion of the hotel. She was employed on a full-time basis (a minimum of 40 hours per week) from October 1997 through May 1998.

In his decision, the director found that the letter dated June 5, 2001 implied that the beneficiary's employment described in that letter was not continuous from October 1997 until May 1998, but rather was intermittent. The director based this finding on the reference in the letter to "temporary/seasonal employment," and on the use of the words "first" and "latest," which the director found implied a series of employment periods, rather than a single continuous period of employment. In considering the letter dated September 19, 2003, the director found that the reference to the beneficiary's employment as "full-time" was directly contradictory to the reference in the earlier letter to "temporary/seasonal" employment.

Notwithstanding the director's analysis, a careful reading of the two letters reveals no contradictions between the two letters. The words "temporary/seasonal" do not imply that the beneficiary's employment was intermittent. The use of the slash between "temporary" and "seasonal" appears to indicate an employment classification encompassing either temporary or seasonal work. A continuous period of employment from October 1997 to May 1998 is inconsistent neither with the word "temporary" nor with the word "seasonal." It is true that the words "first" and "latest" may suggest a series of employment periods, rather than a single period of employment. However the context of those terms in the letter appears to indicate that the director of human resources had consulted several relevant employment records, such as payroll records, finding the first record of temporary/seasonal employment in October 1997 and the last in May 1998. Moreover, the writer's use of the preposition "on" in the phrases "on October 1997," and "on May 1998," rather than the preposition "in" when referring to an entire month rather than a specific day of the month, indicates a use of English which differs from standard American English. Therefore the language in the June 5, 2001 letter does not appear to be precise enough to support the director's findings as to the implications of that language.

Although the potential ambiguities in the letter dated June 5, 2001 were perhaps sufficient to justify issuing an RFE seeking clarification, the director's analysis of the letter dated September 19, 2003 submitted in response to that RFE is not supported by the language of the September 19, 2003 letter. That second letter states that the beneficiary's employment from October 1997 to May 1998 was "full-time." That term raises no contradiction with the earlier letter, since nothing in the earlier letter asserts that the beneficiary worked part-time during that period. Moreover, the term "full-time" is not the same as the term "permanent," as the director's analysis assumes. Therefore the assertion that the beneficiary worked "full-time" during that period in no way contradicts the assertion in the earlier letter that the employment was "temporary/seasonal."

A reasonable reading of the September 19, 2003 letter is that it raises no contradictions with the earlier letter, and that it in fact clarifies the possible ambiguities in the earlier letter.

For the foregoing reasons, the analysis of the director that the evidence submitted prior to the director's decision failed to establish that the beneficiary had the six months of experience required by the ETA 750 was incorrect, and the director's decision to deny the petition was therefore also incorrect, based on the evidence then in the record.

On appeal, the petitioner submits an affidavit of the beneficiary, copies of five affidavits from individuals claiming personal knowledge of the beneficiary's work experience from October 1997 to May 1998 with The [REDACTED] and copies of printouts from the Internet Web site of [REDACTED] and [REDACTED] the corporate owner of [REDACTED]. The information in the documents submitted on appeal is consistent with the information in the two letters from the human resources director, [REDACTED] which are discussed above. The affidavit from the beneficiary explains in narrative form her education and work experience, and the affidavits from associates, friends and family members of the beneficiary contain information which is consistent with the other evidence in the record. The printouts from the Internet Web site of [REDACTED] provide background corporate information indicating the nature of the business of [REDACTED] and other hotel brands owned by or affiliated with [REDACTED] as focused on the luxury and upscale segment of the hotel and resort industry.

For the reasons discussed above, the assertions of counsel on appeal and the evidence newly submitted on appeal are sufficient to overcome the decision of the director.

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. The petition is approved.