

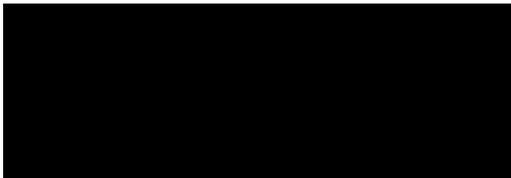
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U.S. Department of Homeland Security
20 Mass. Ave. NW, Rm. A3042
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U.S. Citizenship
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Services

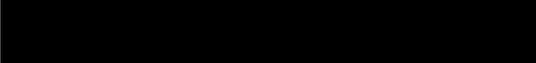
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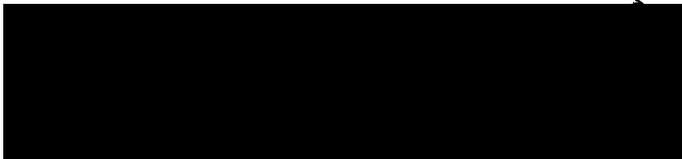
MAR 08 2005

FILE:  Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 129 55589

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

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 janitorial services company. It seeks to employ the beneficiary permanently in the United States as a supervising janitor. 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(1)(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 April 11, 2001. The labor certification states that the position requires two years experience.

With the petition counsel submitted the original approval of the labor certification, with wage and work-experience amendments; the petitioner's March 7, 2003 letter in support of the petition; and the petitioner's Form 1120S tax return for 2002.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience, or that the petitioner possessed the ability to pay the proffered wage, the California Service Center, on June 3, 2003, requested pertinent evidence in a request for evidence (RFE). The service center requested that evidence of the beneficiary's experience be in the form of state quarterly wage reports for all quarters of 1998 through 2000, for 2002 and for the first quarter of 2003.

On June 20, 2003, counsel responded by submitting:

- An undated, handwritten letter from the petitioner's president stating that the beneficiary had worked "since 1998 under the name of [REDACTED] and,
- Copies of the requested quarterly reports by the petitioner for the first quarter of 2003, for all quarters in 1999, 2000, 2001 and 2002, all of which refer only to [REDACTED] rather than to the beneficiary.¹

On July 24, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience. In particular, the documentary evidence upon which the beneficiary's work experience is relying consists of the work history of someone named [REDACTED]. The petitioner had contended both that beneficiary acquired his work experience while identifying himself as [REDACTED] and had truthfully identified himself to the petitioner by his real name. The director determined that the documentary evidence, which might establish that [REDACTED] work experience would fulfill the qualifications set forth in the Form ETA 750 labor certification but that the evidence did not prove that the beneficiary is the same as [REDACTED]. The evidence moreover failed to show that the beneficiary began his employment with the petitioner in March 1998. Rather, the evidence established that a person named [REDACTED] had begun working for the petitioner in the first quarter of 1999. The director concluded, accordingly, "[N]o evidence has been submitted to show that the beneficiary and [REDACTED] is one and the same person."

On appeal, counsel asserts that the evidence does indeed show that the beneficiary is one and the same as the worker the two employers carried under the name [REDACTED] an alias by which Sunshine Cleaning had known him during his entire tenure of more than six years as the company's supervising janitor. Counsel states the petitioner has always known the beneficiary by his correct name. Counsel thus contends that the service center erred in finding the evidence does not establish that the beneficiary and [REDACTED] refer to the same person, and erred in finding that the beneficiary failed to satisfy the two-years work experience requirement.

The evidence in the record that the beneficiary is the same person as the individual known as [REDACTED] does not convince the AAO. Thus, the record contains no evidence of the beneficiary's experience. Other than the statements of the petitioner and one handwritten note, there is no competent, objective evidence that demonstrates the truth of the petitioner's claims. 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).

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Ho states further, at 591-592:

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.

¹ A handwritten note on one of the reports states that quarterly reports were not kept for 1998 and earlier.

Among the factual inconsistencies in the record raising doubts about the petitioner's assertions are the following:

- The petitioner knew the beneficiary's real name "from the first instants" [sic] even while using [REDACTED] Social Security number on various tax and business forms; and,
- The beneficiary's employment with the petitioner allegedly began in 1998 while the first record of [REDACTED] starting work appeared on the petitioner's employer's quarterly return in the first quarterly return for 1999.

While the practice of undocumented aliens working under false names in the United States may be a commonplace, particularly close to one of the country's borders,² in visa petition proceedings the use of a false identity automatically raises a credibility issue for both the petitioner and the beneficiary. Here, counsel and the business owners' bare assertions that the beneficiary is the [REDACTED] named in their business and tax records do not rise to the level of evidence necessary to overcome the doubt on the part of the AAO.

Counsel has failed to reconcile critical information needed to support a petition. Without documents proving the petitioner's claim of the beneficiary working for both the petitioner and Sunshine Cleaning, the record does not credibly demonstrate that the beneficiary has the requisite two years experience to make him eligible for the proffered position. Therefore, the petitioner has not established the beneficiary's qualifications 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. The AAO will dismiss the appeal and will deny the petition.

ORDER: The appeal is dismissed. The petition is denied.

² Subject to certain exceptions and hardship waivers, section 212(a) (6)(C)(i) of the Act states: "Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.