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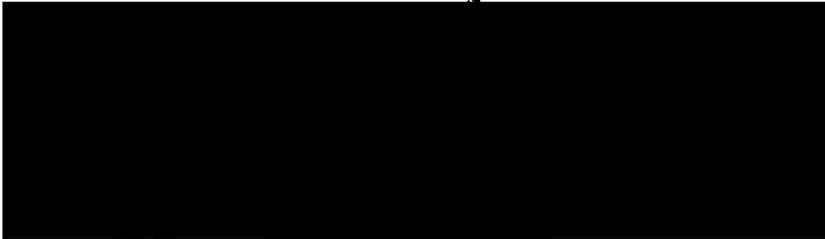
U.S. Department of Homeland Security
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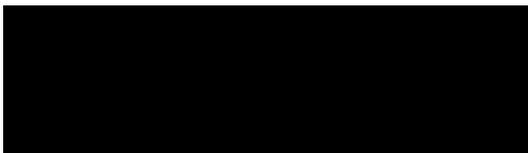


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 25 2005
WAC 03 064 56254

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

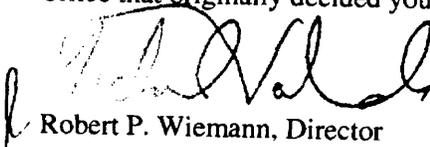
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 (AAO) on appeal. The petition will be remanded to the director for further investigation and entry of a new decision.

The petitioner is a home health firm. It seeks to employ the beneficiary permanently in the United States as a utilization review 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 failed to establish that the beneficiary had the requisite one-year experience required by the offered position.

On appeal, counsel submits additional evidence and asserts that it establishes the beneficiary's eligibility for the position offered.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 30, 2001.

The visa petition, filed December 18, 2002, indicates that the petitioner was established in 1994 and currently employs twenty-seven workers. On Part B of the ETA 750, signed by the beneficiary on April 18, 2001, the beneficiary claims to have worked 40 hours per week for the petitioner since November 1999 as a utilization review coordinator. The beneficiary also states that she worked as a government medical officer IV in Malaybalay, Bukidnon, Philippines from May 1990 to 1999.

As noted on Part A, item 14 of the approved labor certification (ETA-750), the beneficiary must have one year of experience in the job offered as a utilization review coordinator. The beneficiary must also have completed four years of college culminating in a Bachelor of Science degree with a major field of study in health sciences. Item 13 describes the duties of the certified position:

Analyzes patient records to determine legitimacy of admission, treatment, and length of stay to comply with government and insurance company reimbursement policies. Compares inpatient medical records to establish criteria and confers with medical and nursing personnel and other professional staff to determine legitimacy of treatment and length of stay. Assists review committee in quality assurance reviews. Coordinates activities of utilization review staff.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that "evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or 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 regulation at 8 C.F.R. § 204.5(1)(3) also provides in relevant 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.

With the petition, the petitioner initially submitted a letter, signed by [REDACTED] administrator, describing the petitioner's facility, financial health and the position offered. [REDACTED] also affirms that the beneficiary obtained a doctor of medicine degree from the Gullas College of Medicine in the Philippines and a bachelor of science in nursing from Medina College in the Philippines. [REDACTED] then states that the beneficiary has worked for the petitioner since 1999 as a utilization review coordinator.

The petitioner also initially provided copies of the beneficiary's diplomas and transcripts confirming that the beneficiary received her doctor of medicine degree in 1984 and her BSN in 1999. A certification, dated January 7, 1999, from the Filipino Department of Education, Culture and Sports and issued for the purpose of the beneficiary's travel abroad states that the beneficiary is a bona fide employee of the school division in Cagayan de Oro City

The director requested additional evidence from the petitioner on April 7, 2003. In addition to documentation related to the petitioner's ability to pay the proffered wage of \$41,000 per year, the director instructed the petitioner to submit evidence verifying the beneficiary's qualifying prior experience as specified on the ETA 750A. The director advised the petitioner that the evidence of prior experience should be provided on the employer's letterhead, showing the title and name of the author, as well as the beneficiary's job title, duties, dates of employment and hours worked per week.

In response, besides submitting its federal tax returns to support its ability to pay the proffered wage, the petitioner submitted copies of the beneficiary's Wage and Tax Statements (W-2s) issued by the petitioner to the beneficiary for 2000, 2001 and 2002. They show that the petitioner paid the beneficiary \$5,692.50 in wages in 2000, \$10,284 in 2001, and \$12,467 in wages in 2002. In addition to this evidence, the petitioner provided a letter, dated May 7, 2003, from [REDACTED], Administrative Officer III of Region X of the Department of Education, Culture and Sports in Cagayan de Oro, Philippines. [REDACTED] states that the beneficiary was a "Medical Officer IV" from September 1992 until October 1999. "She has rendered medical services both to the elementary/secondary school pupils and students respectively including teaching and school administrators, forty (40) hours in a week."

In denying the petition on October 15, 2003, the director concluded that the petitioner had not established that the beneficiary possesses the requisite one-year of experience in the job offered. The director determined that the letter from [REDACTED] describing the beneficiary's duties as a government medical officer did not specifically establish that the beneficiary had performed sufficiently similar duties to that of a utilization review coordinator.

The director noted that the ETA 750A had not stipulated that the required experience could be in a related occupation.

Counsel asserts on appeal that the petitioner has employed the beneficiary for the past four years as a utilization review coordinator. Counsel also urges that the Department of Labor's approval and certification of the alien labor application supports the beneficiary's qualifications for the position offered. Counsel submits copies of various correspondence between the Department of Labor to the petitioner related to the certification process in support of this assertion. Counsel also claims that the job descriptions contained in the ETA 750A and B for a Medical Officer IV and a utilization review officer are sufficiently similar to qualify the beneficiary for the certified position. He maintains that [REDACTED]'s letter does not contradict this conclusion.

The AAO notes that the Department of Labor's function in determining whether the hiring of an alien for a certified position will adversely affect the wages and working conditions of similarly employed domestic U.S. workers does not impact the jurisdiction of CIS to review whether a petitioner is making a realistic job offer by evaluating the qualifications of a beneficiary for the job. CIS is empowered to make a de novo determination of whether the alien beneficiary is qualified to fill the certified job and receive entitlement to third preference status. *See Tongatapu Woodcraft Hawaii, Ltd. v. INS*, 736 F.2d 1305, 1308 (9th Cir. 1984).

In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. 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). In this case, as noted above, the position clearly requires a baccalaureate degree in addition to one year's experience in the job offered as a utilization review coordinator. In cases where the required experience must be determined from prior jobs, it is appropriate for CIS to look to job duties of previous employment, not just job titles. *See Matter of Maple Derby, Inc.*, 89-INA-185 (BALCA 1991) (*en banc*).

It is incumbent upon the petitioner to establish that the beneficiary obtained the requisite experience as of the visa priority date of April 30, 2001. As noted above, the relevant employer's letter must clearly establish that the beneficiary has obtained the relevant experience. The petitioner must also resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the letter submitted by Ms. [REDACTED] confirming the beneficiary's rendering of medical services in the Philippines does not provide sufficient detail to equate it with acting as a utilization review coordinator. It is further noted that while the beneficiary has been employed by the petitioner as an utilization review coordinator, her 2000 W-2 for \$5,592.50 and 2001 W-2 for \$10,284 raise a question as to whether she has acquired one year of full-time experience as of the visa priority date, based on the level of wages paid. For this reason, the case will be remanded to further clarify whether the beneficiary has accrued the requisite experience.

The director should also review the petitioner's continuing ability to pay the beneficiary's proffered wage pursuant to the requirements set forth in 8 C.F.R. § 204.5(g)(2). The beneficiary's proposed wage offer is \$41,000 per year. The petitioner must establish the ability to pay this proposed wage as of the visa priority date and continuing until the beneficiary obtains lawful permanent resident status. A brief review of electronic records

shows that the petitioner filed at least three other preference petitions in 2002. Although the petitioner's 2001 tax return shows substantial net income, the director should ensure that it represents a sufficient level to pay the proposed wages of all beneficiaries relevant to their individual priority dates.

In view of the foregoing, the director's decision is withdrawn. The petition is remanded to the director to conduct further inquiry relevant to the beneficiary's qualifying past experience. The director may also request additional documentation related to the petitioner's ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). Similarly, the petitioner may also provide any further pertinent evidence within a reasonable time to be determined by the director. Upon receipt of all evidence, the director will review the record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.