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U.S. Citizenship
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Services

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FILE: WAC 03 141 54014 Office: CALIFORNIA SERVICE CENTER Date:

MAY 16 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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

CC: [Redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and, it is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the owner and licensee of a residential care home. It seeks to employ the beneficiary permanently in the United States as a caregiver/household domestic helper¹. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The priority date of the Alien Employment Certification was the date it 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 December 16, 1999. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification, submitted with the petition, and, he denied the petition accordingly.

Section 203(b)(3)(a)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

8 CFR § 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.

8 CFR § 204.5(l)(3)(ii)(D) states:

- (D) *Other workers.* If the position is for unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and *experience*, and other requirements of the labor certification. [Emphasis added]

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certificate. In evaluating the beneficiary's qualifications, CIS must look to the ETA Form 750A to determine the requirements for the occupation. *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).

¹ During the petitioner's interactions with the U.S. Department of Labor to obtain certification of the occupation as listed on the ETA Form 750 Alien Labor Certification Application as caregiver/household domestic helper, the petitioner amended the job duties description and apparently the job title, although not on the face of the Form ETA 750. There is a memo last dated July 16, 2002 in the case file relating to a re-advertisement of the occupation that is entitled "Draft advertisement." Therein the subject occupation is entitled "Nurse Asst/Live-in (uncert.)." There is no evidence, as submitted by petitioner in the record, that relates to the education, training or experience of the beneficiary as a Nurse Asst/Live-in (uncert.).

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 alien labor certification states that the position requires three months experience as a caregiver/household domestic helper.

The director transmitted two Requests for Evidence to petitioner dated July 12, 2003 and October 17, 2003 requesting, among other evidence, a job verification letter as a caregiver/household domestic helper. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(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 work experience of the alien.

According to the director in his decision dated January 30, 2004, the beneficiary stated "... her only relevant experience as a "Caregiver/Household Domestic Helper" was with the household of [REDACTED] in Canada. Unfortunately, the beneficiary can no longer locate her former employers, and, she will not be able to present any evidence that shows her former employers and [beneficiary] will not be able to present any evidence that shows prior employment with the household of [REDACTED] in Canada."

With the petition, and later in response to two Requests For Evidence made by the California Service Center, the petitioner submitted the following evidence: an employment contract between petitioner and beneficiary last dated July 16, 2002; copies of the petitioner's Form 1040 U.S. Individual Income Tax Returns and related schedules\returns for 1999 through 2001; copies of the beneficiary's Form 1040A U.S. Individual Income Tax Returns and related schedules\returns for 2000 through 2002; a copy of the beneficiary's W-2 Wage and Tax Statements for 2001 and 2002; a copy of petitioner's Form DE-6, Quarterly Wage and Withholding Report for March 31 to April 1, 2003; a copy of petitioner's business license; a copy of beneficiary's un-translated public school diploma; a copy of a certificate concerning the beneficiary's attendance at a four hour first aid course; a copy of the beneficiary's "Health Screening Report" dated December 25, 1999; a copy of a "No Criminal History Applicant Clearance" application from the State of California; and, a copy of a letter signed by the beneficiary recounting her personal and work history.

On appeal, the petitioner submits additional evidence. This evidence is as follow: eight empty envelopes post marked and addressed to the beneficiary; a copy of a Canadian Form T4-1985 Statement of Remuneration Paid; a copy of a voided personal check of Beneficiary with the Beneficiary's former Canadian address; a copy of beneficiary's student academic record from Seneca College of Applied Arts and Technology; a copy of correspondence that is a verification of volunteer service contributed by Beneficiary to Providence Villa Hospital, Scarborough, Canada; a copy of Beneficiary's California identification card [REDACTED] copies of pages from the beneficiary's Philippines passport; a copy of beneficiary's foreign birth registration; a copy of Beneficiary's a marriage certificate; and, a copy of beneficiary's abstract of marriage.

There is no independent verification of the beneficiary's job experience in the occupation of caregiver/household domestic helper (nor as noted above Nurse Asst/Live-in (uncert.)). Although the Canadian Form T4-1985 mentioned above shows that [REDACTED] paid the beneficiary, it does not show her occupation, nor, how

many hours beneficiary worked in the occupation for [REDACTED]. There is no relevant evidence of the beneficiary's experience in any item submitted by petitioner in its petition, in response to two Requests for Evidence above noted, and, in the appeal of the director's decision except the beneficiary's own statement. There are no letters from trainers or employers giving the name, address, and title of the trainer or employer, and no description of the training received by the beneficiary or the prior experience of beneficiary as caregiver/household domestic helper as required by regulation.

Based upon the evidence submitted, or in this case requested evidence not submitted, we concur with the director that the petitioner has not established that the beneficiary had the previous experience prior to the priority date of Form ETA 750 as a caregiver/household domestic helper.

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.