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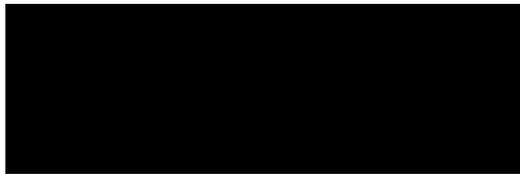
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005
WAC 96 188 51202

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 Director, California Service Center, revoked approval of the preference visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an import/export company. It seeks to employ the beneficiary permanently in the United States as an export manager. 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.

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 unavailable in the United States.

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.

The regulation at 8 C.F.R. § 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.

(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.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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 June 27, 1994. The labor certification states that the position requires a bachelor's degree in management and four years of experience in the proffered position.

With the petition the petitioner's previous counsel submitted a letter, dated December 15, 1997,¹ from the petitioner's general manager stating that the petitioner had employed the beneficiary since January 1997 as an export manager. In support of that proposition counsel provided the petitioner's California Form DE-6 wage reports for the first and third quarters of 1997 showing that the petitioner paid the beneficiary \$7,500 during each of those quarters.

Because the priority date of the instant petition, however, is June 27, 1994, evidence pertinent to the beneficiary's employment during subsequent years cannot demonstrate that she was qualified for the proffered position on the priority date, as is required by *Matter of Wing's Tea House, supra*.

The petitioner's previous counsel also provided a letter, dated March 8, 1994, from [REDACTED] signing as the owner of the [REDACTED] Store. That letter states that the beneficiary worked for that company as its marketing manager from March 1985 to June 1989. This office notes that the family name contained in the store's name is the same as the beneficiary's family name.

The petitioner's previous counsel provided a third letter. That letter, dated February 25, 1994, purports to be from [REDACTED] Metro Manila, Philippines. The letter states that the beneficiary worked for that company as a marketing manager during an unstated period. That letter is on letterhead showing that the address of [REDACTED] Pasay [REDACTED] It purports to be signed by [REDACTED] as General Manager of [REDACTED] Marketing.

The petitioner's previous counsel also provided copies of the beneficiary's 1995 and 1996 Form 1040 U.S. Individual Income Tax Returns. The proposition those tax returns were provided to support is unknown to this office.

On July 30, 1996, the California Service Center approved the petition.

On March 30, 2004 the Director, California Service Center, issued a Notice of Intent to Revoke approval of the visa petition in this matter. The Notice of Intent to Revoke stated that the beneficiary's responses, at a December 17, 1997 interview at the Los Angeles District Office, led the CIS officer conducting the interview to question the veracity of the beneficiary's employment claims and, therefore, the authenticity of her employment verification documents. The notice further stated that the phone number provided as that of the petitioner was actually that of the beneficiary. Further still the notice stated that the District Office requested that the United States Embassy in Manila, Philippines conduct an investigation of the beneficiary's employment history.

¹ The date on that letter is presumably in error, as the letter appears to have been submitted with the petition on June 22, 1996.

The Notice of Intent to Revoke states that the investigation revealed (1) that the address given by the beneficiary as the business address of [REDACTED] was an apartment occupied by the beneficiary's parents, (2) that the beneficiary's mother stated that [REDACTED] never occupied that address, (3) that the beneficiary's mother stated that [REDACTED] who signed the beneficiary's February 25, 1994 employment verification from [REDACTED] as its General Manager, was a family friend, (4) that no evidence exists of a current or former business known as [REDACTED] Family General Merchandise Store located in the Pasay City Public Market, and (5) that the beneficiary's mother stated that [REDACTED] family did not have and never had a business called Po Family General Merchandise Store in the Pasay City Public Market or anywhere else.

Finally, that notice accorded the petitioner 30 days to respond to the adverse evidence revealed by the Embassy's investigation.

In response, the petitioner's present counsel submitted a cover letter, dated April 27, 2004, in which he stated that the beneficiary's employment history is well established, and that the adverse evidence is insufficient. Counsel further stated that the information provided in the Notice of Intent to Revoke was insufficiently specific. Counsel noted that the name [REDACTED] Marketing was misspelled [REDACTED] Marketing in the Notice of Intent to Revoke and states, "This and other errors may have compromised the investigation."

With that letter counsel submits a statement, dated April 27, 2004, that purports to be signed by [REDACTED]. That statement avers (1) that [REDACTED] was the manager and co-owner of [REDACTED] Marketing, now defunct, that was located at [REDACTED] Pasay, Metro Manila, and (2) that [REDACTED] Marketing employed the beneficiary from November 1989 to April 1991 as the company's Marketing Manager.

Although counsel characterized that statement as a notarized affidavit, the statement itself bears no indication that it was notarized other than the typed caption, "NOTARIZED:" at the bottom. An "All-Purpose Acknowledgement" that accompanied that statement, ostensibly notarized by [REDACTED] of Los Angeles County, California, on April 27, 2004, indicates that [REDACTED] presented himself to her and executed an unidentified instrument. The space on that form for [REDACTED] thumbprint was left blank.

This office notes that the purported signature of [REDACTED] on the April 27, 2004 statement is significantly different from the purported signature of [REDACTED] on the beneficiary's April 25, 1994 employment letter verifying employment at [REDACTED] Marketing. The difference suggests that the documents were signed by two different people and, therefore, that at least one of them was not signed by [REDACTED].

Counsel also provided what purports to be a blank [REDACTED] marketing delivery receipt with the same address shown on the beneficiary's February 25, 1994 employment verification letter. Finally, counsel submitted 16 receipts for 75 pesos each showing that [REDACTED] tendered that amount to the city treasurer of Pasay City as a market fee on behalf of [REDACTED]. Two of those receipts are dated May 30, 1991; one is dated June 29, 1991, two are dated July 30, 1991; one is dated August 27, 1991; one is dated September 30, 1991; one is dated October 31, 1991; two are dated December 12, 1991; two are dated December 30, 1991; two are dated January 30, 1992; and two are dated February 29, 1992.

² In the Notice of Intent to Revoke, the name of Wil-Lex Marketing was misspelled Wel-Lex.

In his April 27, 2004 letter, counsel stated that the additional documentary evidence further supports the beneficiary's employment claim. Counsel states that the market fee receipts show that [REDACTED] Family General Merchandise Store made regular rent payments for the Pasay City Market location.

On June 3, 2004 the Director, California Service Center revoked approval of the instant visa petition, finding that the evidence submitted on the petitioner's behalf did not overcome the evidence adverse to the beneficiary's claim of qualifying employment, and that the petitioner had not, therefore, shown that the beneficiary had the requisite employment experience on the priority date.

On appeal, counsel again asserts that the evidence demonstrates that the beneficiary's employment claims are valid. Counsel further asserts that CIS unnecessarily delayed terminating approval of the visa petition, which prejudiced the petitioner's case, and that the petitioner was not accorded sufficient time to respond. Counsel asserts that other possible explanations exist for the beneficiary's mother stating that [REDACTED] Marketing had never occupied her apartment, but does not provide evidence in support of any of those hypothetical explanations. Counsel asserts that the beneficiary's mother's statements should be accorded no evidentiary weight. Counsel again asserts that the misspelling of [REDACTED] in the Notice of Intent to may indicate that errors compromised the investigation. Finally, counsel asserts that the additional documentary evidence submitted in response to the Notice of Intent to Revoke rebuts the assertions in that notice.

Counsel asserts, but provides no evidence to demonstrate, that the petitioner was prejudiced by the delay in terminating approval of the visa petition. Counsel does not demonstrate that all available witnesses to the existence of [REDACTED] and the beneficiary's employment have died or otherwise become unavailable. Counsel does not demonstrate that rental records or other evidence that [REDACTED] occupied the premises in question are now unavailable. Counsel merely asserts that the delay prejudiced the petitioner in some unspecified way.

The assertions of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. If counsel wished to prevail based on prejudice to the petitioner's case occasioned by delay, he was obliged to demonstrate that prejudice, rather than merely allege it.

Similarly, counsel asserts, but provides no evidence to substantiate, that the 30-day period accorded to the petitioner to respond to the Notice of Intent to Terminate was insufficient. Counsel did not state what, if any, evidence the petitioner sought but was unable to obtain because of the limited time allowed for a response. Again, merely alleging that the procedure employed prejudiced the petitioner's case is insufficient.

Counsel's assertion that other explanations may exist for the beneficiary's mother's statements is insufficient to overcome those statements. The petitioner is obliged, not only to assert a specific explanation, but to demonstrate that the explanation asserted is likely true. Further, counsel did not address the chain-of-events that might have led the beneficiary's mother to occupy the premises that the beneficiary claimed was the business location of [REDACTED] Marketing.

Counsel's assertion that the misspelling of [REDACTED] in the Notice of Intent to Terminate may indicate that the misspelling or other errors tainted the investigation merely raises an abstract possibility and is, again, insufficient. The petitioner is obliged to show that the investigation was flawed, rather than alleging that, in for some ill-defined reason, it may have been. Further, given that the address referenced as that of Wel-lex in the investigative report, [REDACTED], is substantially the same as that given by beneficiary as the address of Wil-lex on the Form ETA 750, [REDACTED] this office does not perceive any possibility of prejudicial confusion.

The remaining issue is whether the evidence in this case, that submitted with the petition and that submitted in response to the Notice of Intent to Terminate, taken as a whole, overcomes the adverse evidence in this case.

With the petition the petitioner's previous counsel submitted the March 8, 1994 letter, signed by Go Sio Ti, stating that the beneficiary worked for Po Family General Merchandise Store from March 1985 to June 1989. Previous counsel also submitted the February 25, 1994 letter, purportedly signed by [REDACTED] stating that the beneficiary worked for [REDACTED] Marketing during an unstated period. Because that letter did not state the period during which [REDACTED] employed the beneficiary, it cannot, in itself, demonstrate any period of employment.

The adverse evidence consists of (1) the finding by the investigator that the address the beneficiary gave as that of her former employer, [REDACTED] Marketing was actually her parents' address, (2) the beneficiary's mother's statement that [REDACTED] Marketing never occupied that address, that [REDACTED] was a family friend, and that the [REDACTED] family had never had a business called the [REDACTED] Family General Merchandise Store, and (3) the investigator's assertion that, no evidence exists of the present or previous existence of the Po Family General Merchandise Store.

That the beneficiary's mother occupies the premises that the beneficiary states were the business location of [REDACTED] her former employer, is an important discrepancy that counsel declined to address. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In addition to counsel's hypothetical explanations found insufficient above, counsel also submits documentary evidence on appeal.

In response to the statement that [REDACTED] was not General Manager at [REDACTED] counsel submitted a statement purporting to be from [REDACTED]. Because the signature on that document differs so markedly from that on the previous employment letter, also alleged to be from [REDACTED], however, causes it not to support the beneficiary's employment claims, but to significantly detract from it. It raises the possibility, even the near certainty, that at least some of the employment verification documents submitted in support of the instant petition are fraudulent. Once again, this causes this office to doubt the reliability of the remaining evidence in this case, pursuant to *Matter of Ho, supra*.

Especially under these circumstances, with some of the evidence provided having been shown, almost beyond doubt, to be forged, the blank [REDACTED] marketing delivery receipt, which could easily be produced for a non-existent company, is insufficient to overcome the evidence adverse to the beneficiary's claim of employment for [REDACTED]. The petitioner has failed to show that the beneficiary worked for that company as claimed.

As additional support for the beneficiary's claim of employment for the [REDACTED] Family General Merchandise Store counsel submitted receipts showing that Carlos Ong, through Alfonso Tin Go, paid market fees to the city treasurer of Pasay City. Those receipts do little to confirm the existence of Po Family General Merchandise Store or to show that, if it existed, the beneficiary worked for it as she claimed. Especially in the instant case, where other evidence submitted is apparently fraudulent, those receipts are insufficient to overcome the adverse evidence and demonstrate the veracity of the beneficiary's claim of qualifying employment for Po Family General Merchandise Store. The petitioner has failed to demonstrate that the beneficiary worked for the company as claimed.

The petitioner has failed to show that the beneficiary has any of the requisite work experience as stated on the approved Form ETA 750 labor certification. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position and approval of the visa petition was therefore correctly terminated on that ground.

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.