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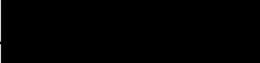
U.S. Citizenship  
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Office: CALIFORNIA SERVICE CENTER

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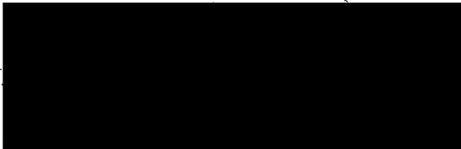
Petitioner:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition approval was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical clinic. It seeks to employ the beneficiary permanently in the United States as a medical assistant/medical secretary, Tagalog/English. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not responded to the Notice of Intent to Revoke upon findings of fraud. The director revoked the petition approval 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 nature, for which qualified workers are not available in the United States.

The regulation at 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.

(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.

The petitioner must demonstrate 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).

Here, the Form ETA 750 was accepted on July 25, 1994.<sup>1</sup> The proffered wage as stated on the Form ETA 750 is \$10.00 per hour (\$20,800.00 per year). The Form ETA 750 states that the position requires two years experience and the completion of a six-month course as a medical assistant.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, and, financial statements of petitioner.

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<sup>1</sup> It has been approximately 12 years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."



Years/Months

2/ Blank

The beneficiary set forth her work experience on Form ETA-750B, dated the form on June 30, 1994 and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. In pertinent part, the Application for Alien Employment Certification, Form ETA-750B, item 15, sets forth work experience that an applicant listed for the position of medical assistant/medical secretary, Tagalong/English.

15. WORK EXPERIENCE

\* \* \*

b. NAME AND ADDRESS OF EMPLOYER

[REDACTED] East Washington Blvd [REDACTED]

NAME OF JOB

Medical assistant/medical secretary

DATE STARTED

Month - 11 [November] Year - 1991

DATE LEFT

Month - 12 [December] Year - 1993

KIND OF BUSINESS

Medical clinic

DESCRIBE IN DETAIL DUTIES...

Perform combination of the following: duties under direction of physician ...

NO. OF HOURS PER WEEK

40

In this case the job experience noted above was falsified as affirmed by the beneficiary's own signed declarations, and, by information received from [REDACTED] office staff. On appeal, the petitioner confirmed the fact that the beneficiary submitted fraudulent documents to obtain an immigration benefit, a visa.

Counsel also submitted a letter from the petitioner dated April 13, 2005, that the beneficiary was employed there as a medical assistant/medical secretary from November 1991 until February 2003 but not stating her job duties. The beneficiary on form ETA-750, Part B, Section 15. a., stated that she was employed by the petitioner from January 1994 to present (i.e. June 30, 1994). These two statements are mutually inconsistent.

We are unable to determine if either term of employment, one commencing in 1991 and the other commencing in 1994 with the petitioner, is correct. Counsel submitted no explanation for this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

There are multiple inconsistencies in information provided by the beneficiary, and, there is a lack of credible evidence of the occupation or its term from prior employers as recounted above. *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." *Matter of Ho*, 19 I&N Dec. at 591-592 also states: "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.”

The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 205.2 entitled “Revocation on notice” states:

(a) General. Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) Notification of revocation. If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). *See* Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

We find that the Revocation Referral Memorandum and its findings by the CIS Los Angeles District Office mentioned above, the statement dated June 12, 1997, by the office manager of ██████████ transmitted to CIS, and the written declarations to CIS dated June 12, 1997, and on April 20, 2000, by the beneficiary that she never worked for ██████████ constituted good and sufficient cause according to the regulation. As found in the record of proceedings, the investigation conducted by the CIS Los Angeles District Office dated May 6, 2002 revealed that the employment experience with Dr. ████████ and sworn statements submitted by the beneficiary were fraudulent. The beneficiary was accorded ample opportunity to rebut the report's findings but she did not provide objective independent evidence to do so.

No credible probative evidence establishes that the beneficiary has two years of experience as a medical assistant/medical secretary, Tagalog/English. No trainers or employers affidavit, document, letter, or pay stub contained in the record of proceeding establishes that the beneficiary was employed for two years in an employment capacity with duties similar to the duties of the proffered position on the priority date of the labor certification.

Beyond the decision of the director, there is an issue concerning the petitioner's ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition evident from a review of the record of proceeding.

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 not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

As proof of the ability to pay the proffered wage, the petitioner has submitted a U.S. form 1120 tax return for tax year 1995 stating net income (i.e. Line 28) of \$14,256.00, a compiled financial statement for the period ending December 31, 1995, stating an income loss of <\$4,494.00> for year 1995, and pay statement showing earnings to March 31, 1997, of \$7,505.56, and, earnings to April 14, 2000 of \$7,718.75. There are Wage and Tax statements (W-2) issued by the petitioner to the beneficiary stating wages paid of \$19,021.56 and \$5,213.00 for tax years 1997 and 1999.<sup>2</sup> According to the information submitted for year 1995, there was insufficient net income to pay the proffered wage of \$20,800.00 per year per year, and, by the wage information submitted, the petitioner had not paid the beneficiary the proffered wage.

There is no independent objective evidence presented by the petitioner through an examination of her tax return or through wages paid to the beneficiary that the petitioner had the ability to pay the proffered wage from the priority date. See 8C.F.R. § 204.5(d).

Counsel's contentions cannot be concluded to outweigh the evidence presented in the corporate tax return as submitted by petitioner that shows that the petitioner has not demonstrated its ability to pay the proffered wage from the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted does not demonstrate credibly that the beneficiary had the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit

<sup>2</sup> The beneficiary's tax return for 1996 found in the record of proceeding was falsified according to a statement the beneficiary made to CIS officers. The beneficiary amended her tax returns for 1995 and 1996.

sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The petition is dismissed.