

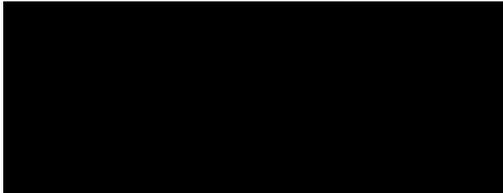
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 05 2006
WAC 03 206 52278

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, Chief
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 appeal will be dismissed.

The petitioner is a restaurant/retail gift shop. It seeks to employ the beneficiary permanently in the United States as a bookkeeper. 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 established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

On appeal, the counsel submits an explanatory letter 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 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 31, 2000. The proffered wage as stated on the Form ETA 750 is \$15.54 per hour (\$32,323.20 per year). The Form ETA 750 states that the position requires two years experience.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, income tax returns of petitioner, one copy of documentation concerning the beneficiary's qualifications, specifically a "Certificate of Employment" from Breman (Philippines) Inc. dated April 23rd (with no year stated) as well as other documentation.

The I-140 petition was filed July 1, 2003. A CIS Form G-235A is in the record of proceeding signed by the beneficiary on April 22, 2003. In the section of the form that requested information concerning the beneficiary applicant last five years of employment, that section of the form was left blank. A Request for Evidence was issued by August 16, 2004 by the director. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the

15. WORK EXPERIENCE

A. NAME AND ADDRESS OF EMPLOYER

Unemployed

NAME OF JOB

Blank

DATE STARTED

Month – 09 [September] Year - 1998

DATE LEFT

To Present

KIND OF BUSINESS

Blank

DESCRIBE IN DETAIL DUTIES ...

Blank

NO. OF HOURS PER WEEK

Blank

B. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB

ECG Supervisor

DATE STARTED

Month – 08 [August] Year - 1982

DATE LEFT

Month – 08 [August] Year- 1998¹

KIND OF BUSINESS

Full service hospital

DESCRIBE IN DETAIL DUTIES ...

Directed and supervised the activities of 17 personnel. Assigned schedules and duties to workers. Inspected work and performance to ensure conformance to hospital procedures and standards. Requisitioned for supplies, equipment repair, etc. Participated in training programs of the PSCC cardiac Technicians.

NO. OF HOURS PER WEEK

40

C. NAME AND ADDRESS OF EMPLOYER

BREMAN (Philippines), Inc.

Philippines

NAME OF JOB

Bookkeeper

DATE STARTED

Month – 03 [March] Year - 1979

DATE LEFT

Month – 05 [May] Year- 1982

KIND OF BUSINESS

¹ According to the employer's certificate dated August 22, 1999, in the record of proceeding, the beneficiary's employment period ended August 22, 1999.

Trading

DESCRIBE IN DETAIL DUTIES ...

Verified, entered and entered [sic] financial records of the company. Consolidated details in separate files and transferred data to general ledger. Reconciled and balanced accounts. Compiled reports and other financial information regarding operation of business. Calculated employees wages. Computed, prepared and sent invoices and other bills to clients.

NO. OF HOURS PER WEEK

40

In this case the job verification statement, specifically a "Certificate of Employment" from Breman (Philippines) Inc. dated April 23rd (with no year stated), submitted with the petition to prove the beneficiary's work experience as bookkeeper stated:

"This is to certify that ... [the beneficiary] has been an employee of Breman (Philippines) Inc. holding the position of bookkeeper since March 1979 to May 1982."

The above statement was submitted upon copy paper, on a computer generated letterhead, without a corporate stamp, undated and not notarized. There is no statement, as found in the ETA 750B (c) section above, of the beneficiary's duties, hours, or indication of a supervisor. Although requested by the director, to submit a letter on letterhead giving the dates of employment/experience giving the name, address, and title with telephone numbers, and a description of the experience of the alien, none was submitted. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner has submitted a confirmation receipt denoted CB RCO-02-03 from the Central Bank of the Philippines, and a letter from Warne Chemical Company dated November 5, 2004. According to the letter, 24 years prior, the beneficiary was employed as a bookkeeper from May 1980 to May 1982, describes her duties and states that the beneficiary was employed 44 hour per week. The confirmation receipt was a bank deposit statement.

The petitioner has also submitted a certificate from Glendale Community College, that the beneficiary has taken training in a bookkeeping/accounting workshop for 12 hours in 2001.

The problem that arises in this case is the inconsistencies in information provided by the beneficiary, and, the lack of credible evidence of the occupation from prior employers. *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." As the director has already pointed out, the beneficiary's job verification experience terms of employment overlap (Warne/Breman above stated), and, they are not credible without competent objective evidence. While it would be possible for the beneficiary to have two concurrent bookkeeper jobs, it is not likely. Therefore, CIS requested additional proof to support this premise.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner has not met that burden.

ORDER: The petition is dismissed.