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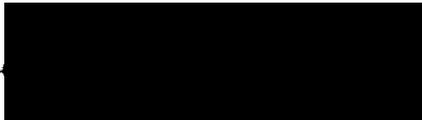
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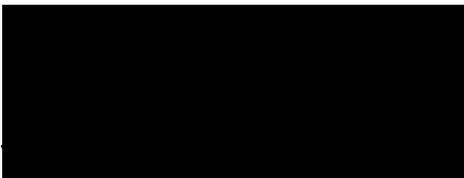
FILE: WAC 03 247 51657 Office: CALIFORNIA SERVICE CENTER Date: JUN 07 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Other Worker pursuant to § 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(iii).

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.

A handwritten signature in black ink, appearing to read "Michael Valdez".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a residential care facility. It seeks to employ the beneficiary permanently in the United States as a nurse assistant. 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 statement 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 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.

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.

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.

(D) *Other workers.* If the petition is for an 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.

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 March 2, 2001. The labor certification states that the position requires three months of experience in the job offered.¹

On the Form ETA 750B the beneficiary stated that he had worked as a caregiver for the Golden Haven care home in Granada Hills, California from January 2000 to September 2000. With the petition, however, the petitioner submitted no evidence that the beneficiary has the requisite three months experience. Therefore, on April 16, 2004 the California Service Center requested, *inter alia*, evidence pertinent to that requirement. Consistent with 8 C.F.R. § 204.5(l)(3)(ii), the Service Center requested that the petitioner submit an employment verification letter on the beneficiary's previous employer's letterhead and give the name, address, and title of the person verifying that employment, as well as a description of the training received or the experience of the alien.

In response, the petitioner submitted a letter, dated June 8, 2004, from the beneficiary. That letter states that the beneficiary's previous employer no longer operates the care home and that he is unable to find the owners of that company. The beneficiary stated [REDACTED] his alleged coworker at Golden Haven who also worked as a caregiver there, is able to confirm the beneficiary's employment at the Golden Haven care home. [REDACTED] also signed that affidavit. The petitioner submitted no other evidence of the beneficiary's claimed qualifying employment experience.

The California Service Center, on August 16, 2004, issued another request for evidence. The subject matter of that request, however, is unrelated to the subsequent basis of the decision denial.

On November 15, 2004, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite three months of salient work experience.

On appeal, counsel provides an affidavit, dated December 5, 2004, from [REDACTED] an alleged coworker of the beneficiary at Golden Haven. The affiant states that she tried to assist the beneficiary in finding the beneficiary's previous employer but that the business is closed and they could not locate the previous owner. The affiant states that she worked at Golden Haven from 1993 to October 2002 when the business, after a

¹ Although the proffered position does not appear to require any college education or degree, the Form ETA 750 specifies "Major Field of Study BSC-Accounting." The meaning of that notation is unclear.

name change, closed and declared bankruptcy. The affiant further states that the beneficiary worked there from January 2000 to March 2000 and that she and he were the only caregivers at the home during that time.

Counsel asserts that the beneficiary had no work permit and social security number when he worked for Golden Haven, and that as a result he has no Form W-2 Wage and Tax Statements or other pay records. Counsel implies that, because no such records are available and the beneficiary's former employer is out of business and its former owner unavailable, the beneficiary's statement and the coworker affidavit should be sufficient to show that the beneficiary has the claimed qualifying experience.

On the Form ETA 750B the beneficiary stated that he worked for Golden Haven from January 2000 to September 2000. The December 5, 2004 coworker affidavit states that the beneficiary worked at Golden Haven from January 2000 to March 2000. None of the evidence or argument submitted addresses that discrepancy.

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).

Further, in his June 8, 2004 letter the beneficiary stated that he [REDACTED] worked at Golden Haven as caregivers. The December 5, 2004 coworker affidavit, however, states that the affiant, Gloria Uchi, worked with the beneficiary as the only caregivers at Golden Haven. [REDACTED] claims to have worked for Golden Haven from 1993 until the business closed in October 2002, those statements are apparently irreconcilable.

The beneficiary's claim of employment at Golden Haven from January 2000 to September 2000 is contradicted by his coworker's assertion that he only worked there from January 2000 to March 2000. The June 8, 2004 letter states that the beneficiary and [REDACTED] worked together at Golden Haven as caregivers. The December 5, 2004 affidavit of [REDACTED] that she and the beneficiary were the only caregivers at Golden Haven during his employment there. In view of the contradictions between the beneficiary's employment claim and the two pieces of evidence submitted in its support, the evidence in support of the beneficiary's claim of qualifying employment experience is deemed unreliable.

The evidence submitted does not demonstrate that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position and the petition was correctly denied.

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.