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**U.S. Citizenship
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FILE: WAC-03-052-50079 Office: CALIFORNIA SERVICE CENTER Date: **JUL 25 2006**

IN RE: Petitioner:
Beneficiary:



PETITION: 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: 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, 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 professional floor specialist. It seeks to employ the beneficiary permanently in the United States as a custom floor covering layer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary had the experience required on the ETA 750, and denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and is incorporated into this decision. Relevant details on the procedural history are given below.

As set forth in the director's October 28, 2004, decision denying the petition, which incorporates reasoning in a previous notice of intent to deny, the single issue in this case is whether the evidence establishes that the beneficiary had the experience required for the offered position by the ETA 750.

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 not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 5, 2001.

On the Form ETA 750B, signed by the beneficiary on January 22, 2001, the beneficiary did not claim to have worked for the petitioner. The ETA 750 was certified by the Department of Labor on September 22, 2002.

The I-140 petition was submitted on December 4, 2002. On the petition, the petitioner claimed to have been established in 1990, to currently have 100 employees, to have a gross annual income of \$2,001,240.00, and to have a net annual income of -\$4, 263.00. With the petition, the petitioner submitted supporting evidence.

In a request for evidence (RFE) dated May 5, 2003, the director requested additional evidence relevant to the petitioner's ability to pay the proffered wage and additional evidence relevant to the beneficiary's work experience. The director also requested evidence related to the petitioner's business.

In response to the RFE, the petitioner submitted additional evidence. The petitioner's submissions in response to the RFE were received by the director on July 28, 2003. Among the documents submitted in response to the RFE was a letter dated July 31, 1998 from the owner of a floor maintenance company in Oaxaca, Mexico, stating the beneficiary's experience as a custom floor covering layer from June 1996 to July 1998.

The director issued a notice of intent to deny (ITD) dated October 8, 2003. The director stated that evidence previously supplied indicated that the petitioner was primarily a cleaning service and the director requested

evidence to establish how the position of custom floor covering layer is used in such a business. The petitioner was afforded thirty days to submit additional information, evidence or arguments in support of the petition.

In response to the ITD, the petitioner submitted a letter dated November 7, 2003 from the petitioner's owner stating that the company's business specializes in stripping and rewaxing of certain types of flooring in industrial and commercial facilities.

The non-record side of the file contains a copy of a letter dated December 23, 2003 from the director to the petitioner stating that the petition will require an in-depth review and/or an advisory opinion from another agency or organization before the petition can be properly adjudicated. The director advised the petitioner to allow an additional 120 days before making further inquiries or filing a duplicate petition.

The non-record side of the file also contains a copy of a memorandum dated May 17, 2004 from the director to the American Embassy/Consulate in Mexico City, requesting an investigation of the beneficiary's claim of experience in Mexico. The memorandum states that two previous requests had been made for such an investigation, the most recent of which was on December 23, 2003. However, the file does not contain copies of the two previous requests referenced in the director's memorandum of May 17, 2004.

The non-record side of the file also contains a printout of an electronic mail communication dated May 27, 2004 from a security officer at the American Embassy in Mexico City to an officer at the California Service Center, giving the results of the security officer's investigation, which found that the beneficiary's letter of experience was likely to be fraudulent.

The director issued a second notice of intent to deny (ITD), dated August 20, 2004. In the second ITD, the director summarized the results of the investigative report. The director again afforded the petitioner thirty days to submit additional information, evidence or arguments in support of the petition.

The record contains no indication of any response by the petitioner to the second ITD.

In a decision dated October 28, 2004 the director noted the absence of any response to the second ITD. The director incorporated the reasoning of the ITD into his decision and denied the petition.

The instant appeal was submitted on November 30, 2004.

On appeal, the petitioner submits a letter from the petitioner's owner and a letter from the beneficiary's father.

The petitioner's owner states on appeal that the petitioner does not hire persons without at least two years of experience and that when the beneficiary applied for employment in June of 2000 he had more experience than what the company requires.

The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of Custom Floor Covering Layer. On the ETA 750A submitted with the instant petition, block 14 requires two years of experience in the offered position. The only other requirement is found in block 15 which states "Resume or Letter of Qualifications Required." (ETA 750A, block 15).

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 15, for information on the beneficiary's work experience, the beneficiary states the following:

<u>Name and Address of Employer</u>	<u>Name of Job</u>	<u>From</u>	<u>To</u>	<u>Kind of Business</u>
<div style="background-color: black; width: 150px; height: 20px; margin-bottom: 5px;"></div> [street address] Anaheim, CA 92802	Cashier	08 2000	Present	Super Market
<div style="background-color: black; width: 180px; height: 20px; margin-bottom: 5px;"></div> America [street address] Oaxaca, Mexico	Custom Floor Covering Layer	06 96	07 98	Professional Floor Specialist

As noted above, the petitioner's responses to the RFE included a letter dated July 31, 1998 from the owner of a floor maintenance company in Oaxaca, Mexico, stating the beneficiary's experience as a custom floor covering layer from June 1996 to July 1998. The name of the company on the letter is Mantenimiento de Pisos America, and the letterhead states a street address in Oaxaca, Mexico. The letter is in Spanish, and an English translation of the letter was submitted with the letter. The English translation lacks a certification by the translator, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The uncertified English translation states as follows:

Oaxaca, July 31, 1998

To Whom It May Concern;

This is to certify that [the beneficiary] worked full time as a custom floor covering layer from June 1996 to July 1998. He was a responsible and honest worker who worked forty hours per week performing duties of laying covering on floor according to designs and customer's indications, with full knowledge of concrete and its coarseness and humidity before applying any chemicals. Also, he mastered the precisely measure of chemical [sic] needed in the in the process of recoating with polyurethane finishes.

We highly recommend [the beneficiary's] services.

Very truly yours,

[name]

Owner

America Floor Maintenance.

(Uncertified translation of letter, July 31, 1998, from the Owner, American Floor Maintenance).

As mentioned above, the non-record side of the file also contains a printout of an electronic mail communication dated May 27, 2004 from a security officer at the American Embassy in Mexico City to an officer at the California Service Center. The communication states as follows:

In regards to the [beneficiary's] case, his employment for America Floor Maintenance 06/1996 to 07/1998 could not be corroborated. No listing could be found in the Oaxaca telephone directory for that business. The other suspicious thing is that the recommendation letter does bear the company's business address, which is unusual. The wording of the letter is not the way a standard recommendation letter from a Mexican company would be written. From all appearances, I suspect that the recommendation letter is a fake.

(Electronic mail communication from American Embassy security official, May 27, 2004)

After receiving the electronic mail communication containing the investigative report, the director issued a second notice of intent to deny (ITD), dated August 20, 2004. In the second ITD, the director states in pertinent part the following:

The USCIS is in possession of the following information: At the request of the USCIS, an investigation to verify previous employment was conducted by the American Embassy Mexico City, Mexico, Bureau of Immigration and Customs Enforcement. The investigation revealed the company Mantenimiento De Pisos America, to be non-existent with no listing in the Oaxaca directory. In addition, the investigating officer indicates the recommendation letter dated July 31, 1998 appears to be fraudulent as this is not the wording used in a standard recommendation letter from a Mexican company.

(ITD, August 20, 2004, at 1).

The August 20, 2004 ITD misstates the actual content of the investigative report, for the report made no finding that Mantenimiento De Pisos America is non-existent, but only that the investigator was unable to corroborate the beneficiary's employment with that company and that no listing for that company could be found in the Oaxaca telephone directory for that business. Nonetheless, the ITD is a sufficiently accurate summary of the information in the investigative report to satisfy the requirements of the regulation at 8 C.F.R. § 103.2(b)(16)(i) that the petitioner be informed of derogatory information unknown to the petitioner.

The record contains no indication of any response by the petitioner to the ITD dated August 20, 2004. The decision of the director to deny the petition was correct, based on the evidence in the record before the petitioner.

On appeal, the petitioner submits a letter dated November 19, 2004 from the petitioner's owner and a letter dated November 18, 2004 from the beneficiary's father.

In his letter dated November 19, 2004, the petitioner's owner states that the petitioner does not hire persons without at least two years of experience, and that when the beneficiary applied for employment in June of 2000 he had more experience than what the company requires. The petitioner's owner does not specifically address the matters raised in the ITD concerning the validity of the letter from Mantenimiento de Pisos America.

In the letter dated November 18, 2004, the beneficiary's father states as follows:

The purpose of this letter is to appeal to your decision of denying the Immigrant petition of Alien Worker filed on behalf of [the beneficiary].

We respectfully request your consideration in regards of [the beneficiary]. My name is [REDACTED] father of [the beneficiary] and I wanted to confirm to you that my father myself and my son [the beneficiary] worked together in Mexico since 1992 to 1996. My son would work with us after school and learned how to operate this kind of machinery and gained experience through the years. In June of 1996 through July 1998 we worked in Mantenimientos de Pisos America, when we lived in Oaxaca, Mexico. Unfortunately the small business closed and that is when we came to the U.S.

The only thing that the company gave us was a letter of recommendation.

Mr. [director's name] I ask you to please re-consider my son's [the beneficiary's] appeal.

Thank you for your attention to this matter.

(Letter from beneficiary's father, November 18, 2004).

The information in the letter from the beneficiary's father fails to address the matter raised in the ITD concerning the wording of the letter from Mantenimiento de Pisos America. It may be noted that some of the technical language in the letter from Mantenimiento de Pisos America is very similar to language in block 13 of the Form ETA 750, setting forth in detail the duties of the job offered. Yet the letter from Mantenimiento de Pisos America purports to have been written in July 1998, nearly three years before the April 5, 2001 priority date on which the ETA 750 was submitted. These facts also suggest that the letter is fraudulent.

For the reasons discussed above, the assertions of the petitioner on appeal and the evidence submitted on appeal fail to overcome the decision of the director.

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.