

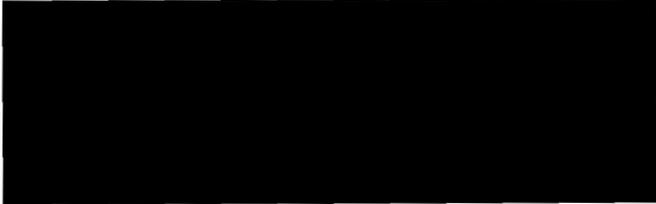
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Services

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FILE: WAC 03 075 50633 Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2006

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a residential care home. It seeks to employ the beneficiary permanently in the United States as a housekeeper-nurse assistant for elderly patients. 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, the petitioner submits additional evidence.

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.

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.

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 May 15, 2000. The labor certification states that the position requires three months experience.

With the petition, the petitioner on December 23, 2002, submitted:

- An original approved ETA 750.¹

The director on June 3, 2003, issued his first Request For Evidence (RFE) pertinent to the beneficiary's work experience. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the director requested that the evidence be in the form of 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.

In response, on August 12, 2003, the petitioner submitted:

A letter from the beneficiary dated July 30, 2003, stating she could not locate [REDACTED] her former employer in Hong Kong, to verify her prior experience, but the beneficiary asserted she had worked as a domestic helper from October 10, 1997, to November 4, 1999; and,

¹ A handwritten ETA 750 attachment the beneficiary signed on July 3, 2000, states that the beneficiary was a live-in domestic helper for [REDACTED] in Hong Kong from July 1999 until April 2000.

- A two-year employment contract signed on October 13, 1997, by which the beneficiary agreed to work for Ms. [REDACTED] in Hong Kong starting when she arrives in Hong Kong;
- The beneficiary's letter dated July 30, 2003, stating she worked as a domestic helper from July 7, 1995, to July 7, 1997, for a Hong Kong resident whom she could not currently locate.

The director on September 15, 2003, issued a second RFE pertinent to the ETA 750's special training requirements, including knowledge about spoken and written English, nutrition, First Aid and other health skills, as well as a willingness to be fingerprinted and to be available to be called to work on a 24-hour basis.

The beneficiary responded in a timely manner.

On February 11, 2004, the director issued a third RFE pertaining to the beneficiary's job experience.

The petitioner submitted its response, on May 14, 2004, after the May 5, 2004 response deadline.

On July 5, 2004, the director issued a fourth RFE, with a September 27, 2004 response deadline, pertaining to the beneficiary's job experience.

In response on September 27, 2004, the petitioner submitted:

- The beneficiary's statement, notarized April 26, 2004, stating she worked as a live-in domestic helper from October 1997, to November 4, 1999, but that the beneficiary could not make contact with Ms. [REDACTED]
- The Hong Kong employment contract between the beneficiary and Ms. [REDACTED] signed October 13, 1997; and,
- The April 13, 2004 affidavit of [REDACTED], a Filipino household domestic worker who worked in Hong Kong while the beneficiary worked for Ms. [REDACTED], stating she worked there from October 1997 to November 1999.

On September 7, 2004,² 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, the petitioner did not submit a brief but did submit the following:

The Beneficiary's letter of September 22, 2004, stating she worked, from December 1, 1999 to March 31, 2000, as a caregiver for the elderly husband of [REDACTED] aka [REDACTED]

A letter, notarized on September 20, 2004, by [REDACTED] aka [REDACTED] confirming that the beneficiary had provided full-time nursing care for [REDACTED] husband, [REDACTED] from December 1, 1999, to March 31, 2000;

A marriage certificate showing Mrs. [REDACTED] and V [REDACTED] were married in Utah on January 12, 1998;

Mrs. [REDACTED] duplicate July 16, 2002 U.S. naturalization certificate;

- A duplicate San Diego County death certificate for [REDACTED] who died on November 21, 2001, at the age of 80, listing [REDACTED] ([REDACTED]) as surviving spouse; and,

² It is noted that the decision preceded the September 27, 2004 response deadline to the July 5, 2004 RFE. The AAO will review all evidentiary submissions.

Mrs. [REDACTED] September 20, 2004 letter confirming the beneficiary had worked in McGuffin's home "in the United States, which is at [REDACTED] San Diego CA 9112, from December 1, 1999 to March 31, 2000."³

It is noted that some inconsistencies exist between documents in the record of proceeding and those submitted on appeal. The handwritten attachment to the ETA 750, which the beneficiary signed on July 3, 2000, states that the beneficiary was a live-in domestic helper for Ms. [REDACTED] in Hong Kong from July 1999 until April 2000. The beneficiary's September 22, 2004 letter, submitted on appeal, states that she had worked in San Diego from December 1, 1999, to March 31, 2000, for Mrs. [REDACTED]. It is not likely that the beneficiary could have worked full time, simultaneously, in both Hong Kong and San Diego.

A comparison of the documents shows the following:

- Ms. [REDACTED] statement, submitted on appeal, notarized on September 20, 2004, certifies that the beneficiary worked in San Diego as a caregiver of her late husband from December 1, 1999, to March 31, 2000.
- The beneficiary's statement, in response to the fourth RFE, notarized on April 26, 2004, affirms that she resided in Hong Kong from October 10, 1997 to November 4, 1999;
- The beneficiary's two-year employment contract with Ms. [REDACTED] submitted in response to an earlier RFE, would have started as early as October 13, 1997 but does not provide a termination date for such employment; The beneficiary's September 22, 2004 letter, submitted on appeal, saying she had worked for room and board for Ms. [REDACTED] from December 1, 1999, to March 31, 2000;
- Ms. [REDACTED] statement notarized on September 20, 2004, that the beneficiary worked as her husband's caregiver from December 1, 1999, to March 31, 2000. Included with the petitioner's response to the fourth RFE, the April 13, 2004 [REDACTED] affidavit states the beneficiary worked in Hong Kong from October 1997 to November 1999; and,

By contrast, only the following is inconsistent with the beneficiary's claim of having worked in San Diego only after her job ended in Hong Kong:

- The handwritten attachment to the ETA 750 that the beneficiary signed on July 3, 2000, stating that the beneficiary lived in Hong Kong as a domestic helper with Ms. [REDACTED] from July 1999 to April 2000.

It is noted that *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) 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.

We find the one inconsistency does not detract from the reliability or accuracy of the beneficiary's claims of working both in Hong Kong and, subsequently, in San Diego. The typed portions of the ETA 750 are consistent with the rest of the evidence in the record of proceedings. Only the handwritten attachment to the ETA 750 is inconsistent. However, in a document with two mutually contradictory statements, one will necessarily be incorrect. In the instant case, the preponderance of the evidence suggests that that the statements in the typed portion of the ETA 750, i.e., the dates of the beneficiary's employment in Hong Kong, are correct, since they are consistent with the rest of the evidence in the record of proceedings, and in particular, with Mrs. [REDACTED] statements that the beneficiary worked for her in San Diego from December

³McGuffin states she has lived in the Philippines since April 2004.

1, 1999, to March 31, 2000. Thus, the inconsistency is resolved by independent and objective evidence in the record.

The director also found that much of the beneficiary's job experience history did not match the ETA's requirements for job experience for a caregiver. The evidence submitted on appeal, however, adequately documents that the beneficiary spent four months caring for the elderly husband of Ms. [REDACTED] thus, meeting the job experience requirement stated in the ETA 750.

The preponderance of the evidence submitted credibly demonstrates that the beneficiary has met the requisite prior job experience by having worked for four months as both a caregiver and housekeeper. Therefore, the petitioner has established that the beneficiary is eligible and qualified for the proffered position.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.