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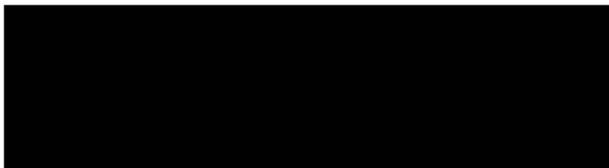
FILE: WAC 03 005 54818 Office: CALIFORNIA SERVICE CENTER Date: MAR 30 2006

IN RE: 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, Director  
Administrative Appeals Office

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

The petitioner is a printing company. It seeks to employ the beneficiary permanently in the United States as an assistant press operator. 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 brief 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.

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.

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 12, 2001. The labor certification states that the position requires two years of experience in the job offered.

On the Form ETA 750 labor certification the beneficiary indicated that he worked for the petitioner as an assistant press operator from August 2000 until at least February 21, 2001, the date the beneficiary signed that form. The beneficiary also indicated that he worked for [REDACTED] in Zapopan, Jalisco, Mexico as an assistant press operator from November 1992 to December 1996.

With the petition counsel submitted a letter in Spanish and an English translation, dated February 21, 2001, from a general manager at [REDACTED] in Mexico. The translation indicates that the beneficiary worked for that company operating all types of printing presses from 1992 to December 1996.

On April 9, 2003 the California Service Center requested additional evidence in this matter. The subject matter requested was not directly relevant to the beneficiary's employment history. In response to that request, however, the petitioner provided copies of California Form DE-6 Wage Reports, employee earnings records prepared by its payroll service, and Form W-2 Wage and Tax Statements.

The wage reports submitted show that the petitioner employed the beneficiary during all four quarters of 2002. The employee earnings records confirm that the petitioner employed the beneficiary during that same period. The W-2 forms submitted show that the petitioner employed the beneficiary during 2000, 2001, and 2002 and paid him \$8,888.15, \$23,071.80, and \$23,647.56 during those years, respectively.<sup>1</sup>

On June 2, 2003 the California Service Center issued another request for evidence in this matter. The service center requested, *inter alia*, evidence to establish that the beneficiary has the required experience.

In response, counsel submitted a letter, dated July 8, 2003, from the general manager of Best Internacional attesting to the same facts as the February 21, 2001 letter.

In response to a CIS request the American Embassy in Mexico City, Mexico investigated the beneficiary's claim of employment in Mexico. The governmental agency in charge of business registration revealed that [REDACTED] began business on August 22, 1997, before which it did not exist. Further, the general manager of [REDACTED] corroborated that information and also stated that he did not recognize the beneficiary's name as that of a former employee. Finally, the investigating officer attempted to confirm through Instituto Mexicano de Servicios Sociales (IMSS), the Mexican social security system. That agency was unable to confirm the beneficiary's employment.

On August 20, 2004 the California Service Center issued a Notice of Intent to Deny informing the petitioner of the evidence adverse to the petition, the report of the embassy investigator.

In response counsel submitted a letter, dated September 6, 2004, in Spanish from the general manager of [REDACTED] of Zapopan, Jalisco, Mexico and an English translation. That letter states that [REDACTED] began operations in January 1996 rather than August 22, 1997.

That letter further states that the beneficiary worked for [REDACTED], the predecessor of [REDACTED] from 1992 to 1996, when [REDACTED] began operations and the beneficiary went to work for that company. The letter does not state in which capacity the beneficiary

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<sup>1</sup> Those 2000 W-2 form appears to indicate that the beneficiary worked for the petitioner during the last four months of 2000. Therefore the evidence indicates that the beneficiary worked for the petitioner for approximately six months prior to the priority date.

worked for that other company.<sup>2</sup>

Finally, the letter states that [REDACTED] has changed its name to [REDACTED] and that “engineer [REDACTED]” who provided the previous employment verification letters, no longer works for the company.

On September 29, 2004 the Director, California Service Center denied the petition, stating that the petitioner had not demonstrated that the beneficiary has the requisite two years of experience. In that decision the director noted that the people identified as the general managers of [REDACTED] and [REDACTED] on the letters provided are not the same person identified as [REDACTED]’s general manager in the investigative report.<sup>3</sup>

On appeal, counsel submits (1) a letter dated November 10, 2004 from [REDACTED] general manager of [REDACTED] (2) other documents in Spanish without the requisite English translations and certifications, and (3) a brief.

In his November 10, 2004 letter [REDACTED] states that the embassy investigator never contacted him. He also states that the untranslated documents support his version of the history of [REDACTED] and [REDACTED] and of the beneficiary’s employment history.

In his brief counsel asserts that the November 10, 2004 letter and the untranslated evidence support the assertion that the beneficiary gained at least two years of experience in the proffered position working for [REDACTED]

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).

AAO will not consider foreign language documents submitted without the English translation required by 8 C.F.R. § 103.2(b)(3). Accordingly, although counsel asserts that the untranslated Spanish documents submitted constitute independent evidence from a reliable source that supports the beneficiary’s version of his

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<sup>2</sup> The instructions to the Form ETA 750, Part B require a beneficiary to “list all jobs related to the occupation for which the alien is seeking certification. That the beneficiary did not list his employment for [REDACTED] indicates that the employment was not related to the proffered position.

<sup>3</sup> The investigative report states that [REDACTED] was the general manager of [REDACTED] company when the investigator interviewed him.

employment history, the evidence is not probative and will not be accorded any weight in this proceeding.<sup>4</sup>

A letter reiterating the beneficiary's claim of qualifying employment does not qualify as independent and objective evidence. Absent the translations of the alleged government documents the record contains no independent and objective evidence to challenge the accuracy of the embassy investigator.

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.

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.

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<sup>4</sup> This office notes, however, that one of the documents is a certificate from the Mexican Social Security Administration purporting to show that the beneficiary worked for [REDACTED] beginning on August 2, 1995. That document states that the beneficiary's position with that company was *Aydante General*, which translates, "General Helper/Laborer." That document, if properly before this office, would constitute very poor support for the beneficiary's alleged employment history, which states that he worked as a printing press operator for [REDACTED] from 1992 through December 1996. Because that document is not before this office, however, it forms no part of the basis of today's decision.