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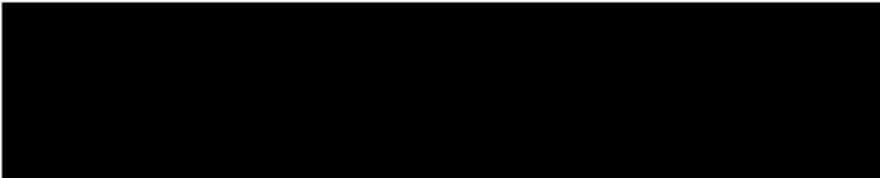
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 19 2006**
WAC-03-188-52961

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:

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 sustained. The petition will be approved.

The petitioner is a law office. It seeks to employ the beneficiary permanently in the United States as a paralegal. 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 was qualified for the proffered position.

On appeal, the petitioner submits additional evidence and a brief statement.

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 issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is November 14, 1997¹. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). With the petition, the petitioner submitted a Form ETA 750B with information pertaining to the qualifications of the new beneficiary. On the Form ETA 750B, signed by the beneficiary on June 5, 2003, the beneficiary did not claim to have worked for the petitioner

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of paralegal. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|-------|
| 14. Education | |
| Grade School | C |
| High School | C |
| College | Blank |
| College Degree Required | Blank |
| Major Field of Study | Blank |

¹ The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, Immigration and Naturalization Service, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).

The applicant must also have two years of experience in the job offered which, according to Item 13 of the Form ETA 750A, include researching law, investigating facts and preparing documents to assist lawyer, assisting in preparing cases, delivering subpoenas, and filing pleadings with a court clerk. Item 15 does not list any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked for the following employers:

- a. Unemployed from June 2002 to the date of signing the Form ETA 750B;
- b. Philippine Ports Authority (Port District Office of Southern Mindanao) in Davao City, Philippines, as Government Corporate and Legal Counsel, from April 1999 through May 2002 for 40 hours per week;
- c. Department of Trade and Industry (Regional Office XI) in Davao City, Philippines, as Legal Officer III, from August 1998 through March 1999 for 40 hours per week;
- d. [REDACTED] A member firm of Price Waterhouse Coopers, U.S.A.) in Makati City, Philippines, as Tax, Corporate & Legal Consultant, from January 1998 through July 1998 for 40 hours per week; and
- e. Magsaysay TBA Enterprise in Davao City, Philippines, as Chief Accountant & Officer-in-Charge, from January 1993 through December 1997 for 40 hours per week.

The beneficiary's resume was also submitted with the initial petition that included an additional prior employment experience representation:

- f. Lorilai Marketing Corporation in Davao City, Philippines, as Accounting Clerk & Full-Charge Bookkeeper, from May 1, 1987 through December 31, 1992.

The beneficiary's resume also reflects that he attended law school from 1993 through 1997. The record of proceeding also contains Form G-325, Biographic Information sheet, signed by the beneficiary on October 3, 2003 above a penalty for knowingly and willfully falsifying or concealing a material fact. Under the beneficiary's represented employment history, the facts detailed largely conform to the facts delineated on the Form ETA 750B and the beneficiary's resume except that he stated that he was a paralegal for Joaquin Cunanan & Co. instead of a Tax, Corporate and Legal Consultant. He also explained on that form that he was studying to take the California state bar exam and that explained his period of unemployment commencing in June 2002.

With the initial petition, the petitioner submitted a letter on Philippine Ports Authority letterhead, signed by the Port District Manager, corroborating the beneficiary's employment experience as Chief Government Corporate & Legal Counsel (Legal Affairs Division Manager) from April 1, 1999 to the date the letter was issued, which was December 10, 2001. That letter contained a description of duties that included legal research and provision of legal services to the employer. The petitioner also submitted certificates illustrating the beneficiary's attendance at and/or completion of various training courses. Certificates from the University of the Philippines's Institute of Judicial Administration and the Integrated Bar of the Philippines Davao City Chapter certified the beneficiary's attendance at their General Law Practice Institute in October 1999 and December 2000 (16 hours); a credential evaluation describing the beneficiary's educational achievements; a copy of the beneficiary's membership with the Supreme Court of the Philippines's Bar in May 1998; a copy of the beneficiary's license to be a certified public account issued by the Board of Accountancy in Philippines in 1997; and transcripts and diplomas of the beneficiary's completion of a bachelor's degree in commerce in 1992 and a law degree at Davao University in 1997.

On January 8, 2004, the director issued a request for additional evidence. The director requested a letter corroborating the beneficiary's qualifying employment experience that conformed to the regulatory requirements delineated at 8 C.F.R. § 204.5(l)(3).

In response to the director's request for evidence, the petitioner submitted another letter from Philippine Ports Authority, signed by the Port District Manager, corroborating the beneficiary's employment experience as Chief Government Corporate & Legal Counsel (Legal Affairs Division Manager) from April 1999 to May 2002 for 40 hours per week and provided a different description of duties from the first letter including the items summarized above and adding litigation experience. The petitioner also submitted a letter on Department of Trade & Industry (dti) letterhead that certified the beneficiary's employment as an Attorney III from August 1998 to March 1999 for 40 hours per week, provided a detailed description of duties including litigation and arbitration experience, the investigation of facts and law, and delivery of subpoenas, and was signed by the regional director. The petitioner also submitted a letter corroborating the beneficiary's experience as a Chief Accountant & Officer-in-Charge for Magsaysay TBA Enterprise from January 2, 1993 through December 31, 1997 with a description of duties and signature by the officer manager. The petitioner submitted a certification from the Integrated Bar of the Philippines Davao City Chapter verifying that the beneficiary is a member and in good standing as of January 2, 2003. The petitioner resubmitted previously submitted evidence as well.

After issuing an additional request for evidence not pertaining to the beneficiary's qualifications, the director denied the petition on October 5, 2004, stating that the evidence in the record of proceeding was insufficient to establish that the beneficiary was qualified to perform the duties of the proffered position because the beneficiary worked as an accountant from January 1, 1993 to December 31, 1997 and as an accounting clerk from May 1, 1987 to December 31, 1992.

On appeal, counsel states that the beneficiary performed "more than two (2) years of experience from April 1994 to January 1997 working as a Legal Assistant/Legal Aid in the legal aid office for indigent clients of the Integrated Bar of the Philippines [(IBP)], Davao City Chapter" in order to meet requirements of the IBP's legal aid program and the Philippine Supreme Court's Law Student Practice Rule. Counsel states that a new employment verification certificate was "inadvertently and fortuitously" omitted from submission in response to the director's request for evidence. The petitioner submits a certification from IBP dated January 23, 2004 stating that the beneficiary "rendered legal assistance/legal aid services for at least 40 hours flexi-time every week in the legal aid office for indigent clients of [IBP] from April 1994 to January 1997, in meeting the requirements of the IBP Legal Aid Program and as required in the Philippine Supreme Court's Law Student Practice Rule." The letter provided a description of the beneficiary's duties which included researching and analyzing law, investigating facts and law of cases, preparing legal documents, mediation aid, and assisting lawyers with visits and interviews to detainees and preparation of litigation documents.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(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 AAO overturns the director's decision. A review of IBP's website at <http://www.ibp.org.ph/> reflects the beneficiary's membership as well as the membership of individuals who signed the letters for IBP. IBP's legal aid program is detailed on the website although it does not specifically mention volunteerism of law students or coordination with law schools. The beneficiary represented that he was Chief Accountant & Officer-in-Charge for Magsaysay TBA Enterprise in Davao City, Philippines from January 1993 through December 1997 for 40 hours per week while he worked 40 hours per week for IBP's legal aid program and attended law school full-time during the same time period. The beneficiary's transcript from Davao University's law degree program reflects one practicum in the final semester but other courses that might include volunteerism with a local legal aid office. Such omission is not conclusive since it has not been represented that the beneficiary's legal aid work had to do with completion of his law school program. The beneficiary did not represent that he became a member of IBP until 1998 on his resume but that does not mean that he could not undertake volunteer work as a legal aid for their legal aid program prior to his actual membership date. Certificates of attendance and completion of various courses through IBP were not issued until 1999 and 2000 but none of them involve legal aid work.

Without derogatory information to the contrary, the AAO concludes that the preponderance of evidence weighs in favor of determining that it is more likely than not that the beneficiary worked full-time, studied full-time, and volunteered full-time from 1993 through 1997, considering the nature of the attorney profession. Additionally, the AAO notes that the beneficiary's employment verification letters from Philippine Ports Authority and dti largely corroborate that the beneficiary had at least two years of experience performing duties similar to, if not even more advanced and superior to, the duties of the proffered position, however, they post-date the priority date. Finally, the AAO notes that under the definition of "skilled worker" set forth at 8 C.F.R. § 204.5(l)(2), "[r]elevant post-secondary education may be considered as training." Thus, the beneficiary's law school training is considered relevant post-secondary education towards qualifying to perform the duties of paralegal as they are described on the Form ETA 750A. Therefore, the AAO finds that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position of paralegal as those requirements are delineated on the Form ETA 750A.

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.