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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 01 011 54826 Office: CALIFORNIA SERVICE CENTER Date: APR 02 2007

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail jewelry sales and jewelry repair firm. It seeks to employ the beneficiary permanently in the United States as a jewelry calligraphy designer and engraver. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on October 10, 2000. It was initially approved on November 1, 2000. Following an overseas investigation, the director concluded that the I-140 was approved in error and issued a notice of intent to revoke the petition on June 27, 2005. The director determined that the petitioner's claims as to the beneficiary's past employment experience appeared to be fraudulent. The petitioner was afforded thirty days to offer such evidence or argument in opposition to the proposed revocation. The petition's approval was subsequently revoked on September 7, 2005, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

On notice of appeal, the petitioner, through counsel, asserts that the overseas investigation was flawed and that it requested an additional sixty days in order to submit a brief and/or additional evidence. An accompanying letter from counsel indicates that the documents from Vietnam are being sought including copies of business licenses and/or permits in the name of the previous and current owner(s) of the business.

As of this date, more than sixteen months later, nothing further has been received to the record.<sup>1</sup> This decision is rendered on the record as it stands.

Section 205 of the Act, states: "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Section 203(b)(3)(A)(i) of 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.

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

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<sup>1</sup> No response has been received to a recent facsimile inquiry from this office.

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 petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on July 13, 1998.<sup>2</sup> The ETA 750B, signed by the beneficiary on June 15, 1998, indicates that he worked for "Dat Loi Jewelry" in Vietnam, as a jewelry engraver/carver from October 1992 to the present (June 15, 1998).

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that three years of work experience in the job offered described in item 9 as "jewelry calligraphy designer engraver." The beneficiary's employment with Dat Loi Jewelry is the only employment experience listed on the ETA 750B.

In support of the beneficiary's qualifying past work experience, a document titled "Acknowledgment" was submitted by the petitioner. According to the certified English translation, it is signed by [REDACTED] who is identified as the owner of [REDACTED] Ca-Mau Province. [REDACTED] certifies that the beneficiary and another individual "all residing at [REDACTED] longtime-experienced jewelers specializing in carving Chinese characters on rings." This acknowledgement is dated May 12, 1998 and also contains a "verification from the local authorities" from two other individuals stating [REDACTED] is active at the address listed above and that the two jewelers working for [REDACTED] are true.

The record contains a memorandum from the U.S. consulate indicating that on March 20, 2001, it called the address belonging to the [REDACTED] shop. The memo states:

The address of the shop is not registered under the business name but rather to a person named [REDACTED] (the phone number is [REDACTED]). The investigator spoke with [REDACTED] who is the son of [REDACTED] the author of the job letter. [REDACTED] indicated that the Jewelry shop was established on 15 January 1999 and that he is the only person who

<sup>2</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

works as a silversmith. [REDACTED] also indicated that his brother [REDACTED] was issued a business license for the shop.

The memo observes that the [REDACTED] job letter did not specifically confirm that the applicant had ever worked at the [REDACTED] jewelry shop and that based on a conversation with [REDACTED] son, [REDACTED] the jewelry shop was not even in existence at the time the Labor Certification and job letter were completed.

On June 27, 2005, the director issued a notice of intent to revoke the petition, informing the petitioner of the consulate's investigation and questioning the validity of the beneficiary's work experience with the [REDACTED] Jewelry shop. The petitioner was afforded thirty days to respond with additional evidence or argument in support of the petition.

The director revoked the petition on September 7, 2005. Noting that no response from the petitioner was received, he determined that the consulate's investigation revealed that the beneficiary was not eligible for the benefit sought based on the information offered regarding his alleged work experience at the [REDACTED] shop. The director concluded that "employment verification letter appears to be fraudulent" and that the beneficiary had not met minimum requirements at the time the labor certification was filed.

On the notice of appeal, counsel asserts that the consulate investigation was flawed in that the investigator never went to the business location or spoke to the previous or current business owner who is the son of the previous owner.

In this case, although it is noted that the consulate investigation could have been more detailed, the petitioner has not provided any persuasive evidence to rebut [REDACTED] specific information that the shop was not established until January 15, 1999. [REDACTED] while not identified as an owner of the shop, is identified as a silversmith and one of [REDACTED] sons. His information is inconsistent with the beneficiary's claim of employment at this shop since 1992. *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.

The petitioner must demonstrate that the beneficiary's qualifying work experience was acquired as of the July 13, 1998, priority date set forth on the labor certification. As the petitioner has failed to provide any objective evidence resolving the inconsistency raised by [REDACTED] statement that the shop was not established until January 15, 1999, the AAO cannot conclude that the director's revocation of the approval of the petitioner's I-140 was erroneous. The petitioner has not demonstrated that the beneficiary acquired the requisite qualifying work experience as of the priority date and has not met the minimum requirements set forth on the labor certification.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

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.