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U.S. Citizenship  
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FILE:



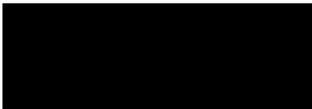
Office: CALIFORNIA SERVICE CENTER

Date: APR 04 2007

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IN RE:

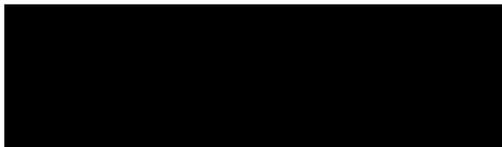
Petitioner:



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 Director, California Service Center, denied the third preference immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant chain. It seeks to employ the beneficiary permanently in the United States as a cook. 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 has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

The record shows that the appeal was properly and timely filed<sup>1</sup> and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's decision of denial the sole issue in this case is whether or not the petitioner has demonstrated that the beneficiary has the requisite experience as specified in the approved Form ETA 750 labor certification.

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.

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<sup>1</sup> The I-290B form appeal was initially received on September 28, 2005. On that day the fee for filing an appeal increased from \$110 to \$385. The service center rejected the appeal as ostensibly filed with an insufficient fee. Counsel responded with a letter dated October 8, 2005 in which he noted, quoting from the Final Rule at 70 Fed. Reg. 50954 (Aug. 29, 2005), that the increased fee applies to appeals, "mailed, postmarked, or otherwise filed, on or after September 28, 2005." Counsel provided the envelope in which the appeal was originally mailed, which is postmarked September 27, 2005. This office finds that the appeal was timely submitted.

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. [REDACTED] 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 April 17, 2001. The labor certification states that the position requires two years of experience as a cook.

The Form I-140 petition in this matter was submitted on June 27, 2003. On the Form ETA 750, Part B, signed by the beneficiary on May 21, 2003 the beneficiary<sup>2</sup> stated that she had worked 40 hours per week as a cook at the [REDACTED] Restaurant in Taipei, Taiwan from January 1996 to March 2000. The beneficiary did not claim to have worked for the petitioner and did not claim any other employment.

The instructions to the Form ETA 750B require that the beneficiary "List all jobs held during the past three (3) years [and] any other jobs related to the occupation for which the [beneficiary] is seeking certification . . . ." The beneficiary listed no other employment experience on that form. The beneficiary stated that she had been unemployed since March 2000.

The AAO reviews *de novo* issues raised in decisions challenged on appeal. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all evidence properly in the record including evidence properly submitted on appeal.<sup>3</sup>

In the instant case the record contains (1) an employment verification letter dated April 22, 2003 from the owner of the [REDACTED] Restaurant in Taipei, Taiwan, (2) an employment verification letter dated October 5, 2004, also from the owner of the Jen-Jee Restaurant, (3) a G-325A Biographic Information form, (4) a facsimile message dated October 28, 2004 from the Fraud Prevention Unit of the American Institute in Taiwan, Taipei Office, (5) a letter dated February 28, 2005 from the beneficiary's sister, and (6) a March 2, 2005 letter from a Taiwanese travel agency. The record does not contain any other evidence relevant to the beneficiary's qualifying employment experience.

The April 22, 2003 letter from the owner of [REDACTED] Restaurant states that the beneficiary began working for the restaurant as a meat and vegetable buyer in January 1996, that she became a chef sometime during 1997 and lead chef sometime during 1998, in which position she remained until she left the petitioner's employ during March 2000. The October 5, 2004 letter from the owner reiterates that employment history.

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<sup>2</sup> The instant beneficiary is not the beneficiary for whom the Form ETA 750 was originally filed, but was substituted for that original beneficiary.

<sup>3</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The G-325A Biographic Information form, which the beneficiary signed on June 9, 2003, states that the beneficiary had been unemployed since March 2000. This is consistent with the beneficiary's statement on the Form ETA 750B.

The fax from the American Institute states that (1) Taiwan labor law requires that an employee's labor insurance must be registered by the employer's company, and that the insurance record can therefore be used to verify a person's profession, (2) an investigator contacted [REDACTED] owner of the [REDACTED] Restaurant, and requested any official record of the beneficiary's employment at that restaurant, (3) [REDACTED] was unable to provide any such record, (4) the beneficiary's sister stated that [REDACTED] Restaurant paid the beneficiary in cash, (5) the beneficiary's labor insurance record, provided by the beneficiary's sister, showed employment at a travel agency but did not show employment for [REDACTED] Restaurant, (6) [REDACTED] Restaurant's official certificate, provided to the American Institute by the restaurant's owner, shows that the restaurant was registered on January 8, 2002, and (7) the American Institute is unable to confirm that [REDACTED] Restaurant existed from January 1996 to March 2000, when the beneficiary claims to have worked there.

The beneficiary's sister's February 28, 2005 letter states that the beneficiary worked for a travel agency beginning during 1991. The letter further states that the beneficiary took the position at [REDACTED] Restaurant during 1996, while retaining her job with the travel agency in order to retain labor insurance benefits.

The March 2, 2005 letter from the Taiwanese travel agency states that it employed the beneficiary as a full-time travel agent from March 1991 to June 2000, but that, beginning in 1996, "for personal reasons," the beneficiary took a cook position with [REDACTED] Restaurant and worked for the travel agency only part-time.

The director denied the petition on August 30, 2005. On appeal, counsel asserted,

[CIS] based its decision on totally erroneous facts supplied from [the American Institute] at Taiwan. The owner of the business in Taiwan was contacted only by telephone. She informed the officer that the individual in question did in fact work for the restaurant. However she explained that she was not on the payroll and could not supply payroll records for her. She was asked no other questions. The officer at AIT submitted a report to [CIS] but we have not been able to see what was reported. The decision was arbitrary and capricious. Also [CIS] never referenced the letters from Taiwan as to the beneficiary's work status and affidavits that were supplied.

The evidence provided by the American Institute shows that, not only can the beneficiary's employment claim not be verified with the appropriate government agency, but that agency reports that she was employed by a travel agency as a travel agent, rather than at a restaurant as a cook.

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).

The beneficiary's response was to provide statements from her sister and the travel agency that the restaurant paid her in cash and that no records exist of her employment. Those statements, although plausible explanations, are not the "independent objective evidence" required by *Matter of Ho*, 19 I&N Dec. 582. Under these circumstances, the statements are insufficient to sustain the burden of proof.

Further, the letter from the travel agency indicates that it employed the beneficiary until June 2000. That version of the beneficiary's employment history contradicts the beneficiary's own version of her employment history, as stated on the G-325 Biographic Information form, on which the beneficiary stated that she had been unemployed since March 2000. It also contradicts the version of her employment history she gave on the Form ETA 750B, that she had held not worked, except for the Jen-Jee Restaurant, during the three years prior to her placing her signature on that document on May 21, 2003.

The evidence submitted does not demonstrate credibly 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 petition was correctly denied on this ground, which has not been overcome on appeal.

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.