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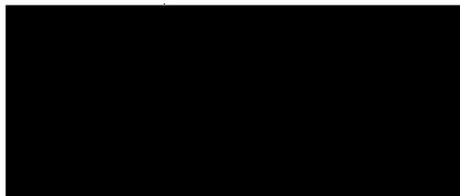
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE:



WAC-05-098-52025

Office: CALIFORNIA SERVICE CENTER

Date: APR 05 2007

IN RE:

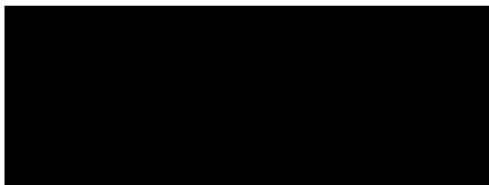
Petitioner:



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 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 petitioner operates an adult assisted living home. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's August 24, 2005 denial, the case was denied based on the petitioner's failure to demonstrate that the beneficiary met the requirements of the certified ETA 750.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

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

The petitioner has filed to obtain permanent residence and classify the beneficiary as a professional or a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2) provides that a third preference category professional is a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." The regulation at 8 C.F.R. § 204.5(l)(2), and 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. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor ("DOL"). *See* 8 CFR § 204.5(d). The petitioner must also demonstrate 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

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

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).

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on June 23, 2003. The proffered wage as stated on the Form ETA 750 is \$2,545 per month, 40 hours per week, which is equivalent to \$30,540 per year. The labor certification was approved on February 3, 2004. The petitioner filed an I-140 Petition for the beneficiary on February 22, 2005. Counsel listed the following information on the I-140 Petition related to the petitioning entity: established: December 1998; gross annual income: \$282,000.00; net annual income: \$69,000; and current number of employees: 7.

The director issued a Request for Evidence ("RFE") on June 11, 2005 requesting that the petitioner provide documentation regarding the beneficiary's experience to show that she met the requirements of the certified ETA 750, including letters from prior employers stating her title, duties, dates of employment, and hours worked; college, or university transcripts, along with a foreign credentials evaluation; evidence of the petitioner's ability to pay for the years 2003 and 2004, along with Quarterly Wage payment forms. The petitioner submitted a response; however, following review, the director determined that the petitioner failed to demonstrate that the beneficiary met the requirements of the labor certification, and denied the petition. The petitioner appealed and the matter is now before the AAO.

We will examine the information in the record, and then address the information provided on appeal. In evaluating the beneficiary's qualifications, Citizenship and Immigration Services ("CIS") must look to the job offer portion of the alien 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). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

On the Form ETA 750A, the "job offer" states that the position requires two years of experience in the job offered, as an accountant, or two years in a related occupation involving accounting functions, with duties including:

Responsible for the overall operation of analyzing accounting records. Prepare financial statements including balance sheets, profit and loss. Review and verify corporate financial records and report to management concerning financial conditions and recommendations. Implement and administer accounting systems to provide management with detailed financial data. Inventory control and purchasing, responsible for administration of personnel including establishing job classification, fringe benefits, entitlements, and other administrative functions of personnel.

The petitioner listed educational requirements in Section 14 as: 4 years of college and a B.S. or foreign equivalent in Accounting, and listed special requirements for the position in Section 15 as: knowledge of P.C.'s, Windows, and any word processing system.

On the Form ETA 750B, signed on May 26, 2003, the beneficiary listed her prior work experience as: (1) the petitioner, from February 2002 to present, accountant; (2) Financial Administration Cluj-Napoca, Cluj-Napoca, Romania, October 1999 to February 2001, specialty inspector; and (3) S.C. Andrimus S.R.L., Cluj-Napoca, Romania, October 1998 to September 1999, accountant.

For the individual beneficiary to qualify for the certified labor certification position, the petitioner must demonstrate the beneficiary's prior experience to qualify the individual for that position, and that the beneficiary obtained the experience by the time of the priority date. Evidence must be in accordance with 8 C.F.R. § 204.5(l)(3), which 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.

To document the beneficiary's experience, the petitioner submitted the following letters:

1. Letter from [REDACTED] S.C. Andrimus S.R.L., Cluj-Napoca, Romania
Title: Economist;
Dates of employment: October 1998 to September 1999;
Job Duties: not listed.
2. Letter dated May 21, 2003 from the Director, ec. [REDACTED], Ministry of Public Finances, Revenue Office of Town Cluj-Napoca.
Title: Specialized Inspector;
Dates of employment: October 1999 to April 2001;
Job Duties: not listed.

The director requested additional information as the letters above were vague, did not list the beneficiary's job duties, and would not demonstrate that the beneficiary had the required two years of accounting experience, or two years of experience in "accounting functions."

The petitioner submitted more extensive letters in response to the RFE:

1. Letter dated July 14, 2005 from [REDACTED] Manager, S.C. Andrimus S.R.L., Cluj-Napoca, Romania
Title: accountant;
Dates of employment: October 1998 to September 1999, forty hours per week;
Job Duties: bookkeeping, cashbook, salaries, monthly registrations, and "drawing the terminal and annual financial reports."

2. Letter dated July 14, 2005 from the Administrative Deputy Chief, [REDACTED] Ministry of Public Finances, Revenue Office of Town Cluj-Napoca.
Title: Specialty Inspector;
Dates of employment: October 1999 to April 2001, full-time, forty hours per week;
Job Duties: checked and controlled the monthly, quarterly and annual reports of "the economic agents regarding the payment in due time of the taxes owed to the state budget;" checked and registered state budget debtors; organized and monitored budgets and revenue collection; monitored the establishment of deductions from debtor's revenue, "sequestered third parties, as well as banks and deduction companies, establishing, if needed the legal measures for their execution; checked registered tax payers and monitored their insolvency."

In the director's decision, the director questioned that the beneficiary's experience with SC Adrimu Impex S.R.L. and found the experience to be more in the nature of bookkeeping, and that the ETA 750A job offer required instead accounting skills, and would require the beneficiary to provide "quantitative information about economic entities."

On appeal, counsel provided two additional letters, which further expanded on the beneficiary's prior experience. Counsel contends that these letters exhibit that the beneficiary's experience is as an accountant, rather than a bookkeeper:

1. Letter dated September 12, 2005 from [REDACTED] Manager, S.C. Andrimus S.R.L., Cluj-Napoca, Romania.
Title: accountant;
Dates of employment: October 1998 to September 1999, forty hours per week;
Job Duties: accounts payable and receivable, payroll taxes, general ledger, journal entries, and cash projection; prepared monthly, quarterly and year-end reports; analyzed financial statements; assisted the General Manager with budget submission; helped with forecasting and developed an action plan to meet the operating budget; aided in the transition to electronic records; proposed accounting software; evaluated and implemented internal control procedures; "demonstrated high level of computer literacy and technological savvy."
2. Letter dated September 14, 2005 from the Administrative Deputy Chief, [REDACTED] Ministry of Public Finances, Revenue Office of Town Cluj-Napoca.
Title: Specialty Inspector, auditor and accountant;
Dates of employment: October 15, 1999 to April 9, 2001, full-time, forty hours per week;
Job Duties: checked and controlled the monthly, quarterly and annual reports of "the economic agents regarding the payment in due time of the taxes owed to the state budget;" checked and registered state budget debtors; organized and monitored budgets and revenue collection; analyzed monthly records for the Ministry; prepared financial reports in accordance with reporting standards; monitored the establishment of deductions from debtor's revenue, checked registered tax payers and monitored their insolvency; analyzed business operations, trends, costs, revenues, financial commitments, and obligations; projected future revenues and expenses; obeyed internal rules of conduct; report to management regarding finances; develop, maintain, and analyze budgets; prepared periodic reports comparing budgets to actual costs.

In order to determine whether the beneficiary meets the two years of experience as an accountant, or that she worked in a related occupation handling accounting functions, we will examine the DOL Occupational

Information Network (O*Net)² definition of accountant.³ The O*Net provides that an accountant performs the following tasks:

- Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards.
- Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements.
- Report to management regarding the finances of establishment.
- Establish tables of accounts and assign entries to proper accounts.
- Develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs.
- Develop, implement, modify, and document recordkeeping and accounting systems, making use of current computer technology.
- Prepare forms and manuals for accounting and bookkeeping personnel, and direct their work activities.
- Survey operations to ascertain accounting needs and to recommend, develop, or maintain solutions to business and financial problems
- Advise management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts.

Further, the O*Net provides the following tasks for a Bookkeeping, Accounting, and Auditing Clerk,⁴ a position that might utilize “accounting functions”⁵:

- Check figures, postings, and documents for correct entry, mathematical accuracy and proper codes.
- Operate computers programmed with accounting software to record, store, and analyze information.
- Comply with federal, state, and company policies, procedures, and regulations.
- Debit, credit, and total accounts on computer spreadsheets and databases, using specialized accounting software.
- Classify, record, and summarize numerical and financial data to compile and keep financial records, using journals, ledgers or computers.
- Calculate, prepare, and issue bills, invoices, account statements, and other financial statements according to established procedures.

² The O*Net was developed for the U.S. Department of Labor by the National Center for O*Net Development. According to the website, the O*Net system serves as “the nation’s primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations.” See [REDACTED] accessed as of March 28, 2007.

³ The O*Net code for an accountant is [REDACTED] and the position summary is available at: [REDACTED] accessed as of March 7, 2007.

⁴ The O*Net code for a Bookkeeping, Accounting, and Auditing Clerk is [REDACTED] and the position summary is available at: [REDACTED] accessed as of March 7, 2007.

⁵ We note that the Form ETA 750A is vague as drafted in terms of listing an alternative experience requirement of two years in a related occupation of “accounting functions.” Accounting functions describe job duties that the individual may have carried out, but is not an occupation.

- Compile statistical, financial, accounting or auditing reports and tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, and profits and losses.
- Code documents according to company procedures.
- Access computerized financial information to answer general questions as well as those related to specific accounts.
- Operate 10-key calculators, typewriters, and copy machines to perform calculations and produce documents.

In examining the O*Net defined tasks for an accountant, and a bookkeeping or accounting clerk against the work experience letters that the beneficiary's prior employers provided, both her prior positions with the Ministry of Public Finances, Revenue Office of Town Cluj-Napocaa, and with S.C. Andrimus S.R.L., Cluj-Napoca, Romania, confirm that the beneficiary performed some of the tasks of an accountant in each position. Further, we note that the related occupation allows for "accounting functions," and her experience with C. Andrimus S.R.L. would encompass that she performed accounting functions. Additionally, we note that "accounting functions," although vague, might allow for lower level bookkeeping or accounting clerk activities.⁶ The petitioner submitted the beneficiary's resume with the initial filing. The beneficiary's resume lists the same expanded job duties as provided in the third letter supplied, which assists in confirming her prior work experience.

The letters accurately document the beneficiary's work experience, conform to the applicable regulatory requirements, and the beneficiary's prior job duties are sufficiently similar to the position offered to serve as qualifying experience to meet the two years of experience listed on the certified ETA 750. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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

⁶ The ETA 750A also requires that the individual have knowledge of P.C.'s, Windows, and any word processing system. The letter from S.C. Andrimus S.R.L. references the beneficiary's use of accounting software. Additionally, we note that the beneficiary's transcripts from her degree provide that she took the following computer courses: Basics of Computer Science, Office Automation, Programming, Design of Management Information Systems, and Accounting Information Systems. Based on the experience letter and her computer courses the beneficiary would have "knowledge of P.C.s," and additional computer skills.