

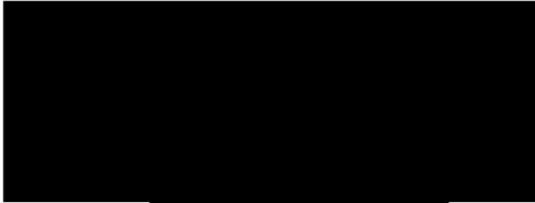
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FILE:



Office: CALIFORNIA SERVICE CENTER

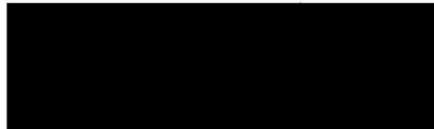
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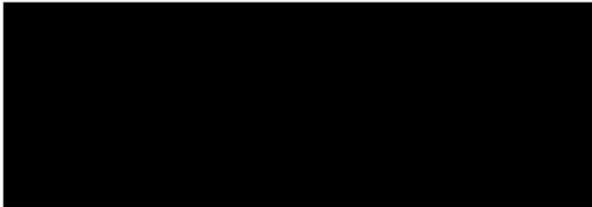
Petitioner:

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 dismissed.

The petitioner is a horse ranch. It seeks to employ the beneficiary permanently in the United States as a horse breeder and trainer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite qualifying work experience as of the visa priority date and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and contends that the petitioner has established that the beneficiary possesses the required work experience.

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 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 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 January 23, 2004.¹ The ETA 750B, signed by the beneficiary on January 14, 2004 does not indicate that he has worked for the petitioner.

¹ 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.

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 high school is required, and that an applicant must have four years of work experience in the job offered as a horse breeder and trainer. The job duties of a horse breeder and trainer are described in item 13. They are described as the caring, breeding, breaking and preparation of horses using traditional Peruvian training considering the age, sex and quality of each horse to train for riding, showing and competition.

The beneficiary's work history, as stated on the ETA 750B includes employment as a horse breeder and trainer for [REDACTED] in Tucson, Arizona from April 1999 until May 2003. The beneficiary also states that he was a Peruvian horse trainer at the "Communal Cooperative of Workers San Miguel Ltd., in Catacaos, Peru from [REDACTED]

To establish that the beneficiary has obtained four years of qualifying work experience, the petitioner initially provided a "Certificate of Work," dated November 11, 2003, from [REDACTED] an ex-manager of the Communal Cooperative of Workers San Miguel Limited in Catacaos, Peru. [REDACTED] certifies that the beneficiary worked for this employer from [REDACTED] as a Peruvian Horse trainer.

The petitioner also provided another letter, dated January 5, 2004, from [REDACTED] of Amite, Louisiana. He states that he is a carded judge with the Peruvian Paso Horse Registry of North America (PPHRNA), a native of Peru and an American citizen. [REDACTED] states that he has known the beneficiary for over 30 years and has met him over the years when he and the beneficiary have exhibited their Peruvian Paso horses. He has continued to meet the beneficiary after 1989 at such events where [REDACTED] states that the beneficiary has been employed by renowned breeders such as [REDACTED] and [REDACTED]

On June 16, 2005, the director requested additional evidence. Relevant to the beneficiary's employment verification, the director requested corroboration in the form of letters from former employer(s) verifying the beneficiary's job duties, dates of employment/experience, and number of hours worked each week. He also requested any contracts, pay stubs or wage records that would support such employment.

The petitioner did not provide any further employment verification letters.

The director denied the petition on October 20, 2005. He noted that the letters provided by the Communal Cooperative of Workers of San Miguel Limited and [REDACTED] did not specify the beneficiary's hours or whether he worked full-time or part-time.

On appeal, counsel provides the following documents:

- 1) A second letter, dated November 15, 2005, from [REDACTED] a judge of Peruvian Paso horses stating that the average workweek in Peru is 45 hours per week. He provides a detailed discussion of the training process of Peruvian Pasos and opines that the beneficiary meets and exceeds four years of experience.
- 2) A letter, dated November 1999, from [REDACTED] stating that the beneficiary worked as a horse trainer of the Peruvian show horse breed since 1988 to the present.
- 3) A duplicate copy of the November 11, 2003 letter from [REDACTED]
- 4) A "declaration of employer" from [REDACTED] ex-supervisor" stating that the beneficiary "worked for the Administrative Provisional Commission EX Hacienda San Miguel from January 1,

1971 to June 30, 1973; year in which the Corporate Community of Laborers San Miguel Ltd. founded on. From [sic] July 1, 1973 to September 30, 1991, in condition of Social Worker.”

5) A document entitled “Certificate No 2,” which represents minutes of a reunion of the “Counsel of Administration of Corporate Community of Laborers San Miguel Ltd.”

It is noted that the document (4) doesn't mention any horse training activity and document (5) doesn't mention the beneficiary. Further, as referenced by the director in his request for evidence, there appear to be some inconsistencies relating to the beneficiary's employers and dates of employment. We note that an earlier ETA 750B contained in the record which was completed by the beneficiary when he was sponsored by [REDACTED] states that he was employed full-time at the [REDACTED] Ranch in Peru between March 1973 and December 1975. This does not appear to be consistent with his 1970-1991 employment with the [REDACTED] Limited organization in Peru, and doesn't coincide with the years of employment recounted by [REDACTED] in his November 1999 letter. Further listed on this previous ETA 750B is full-time employment with the Tungasuca Ranch belonging [REDACTED] in Piura, Peru between December 1995 and April 2000, which also doesn't appear to correspond to the listed employment with Mr. Ruesta.

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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Although [REDACTED] opinion as to the beneficiary's competence is recognized, as set forth in his letters, it does not represent first-hand documentation that the beneficiary has specifically accrued four years of full-time experience as a horse breeder and trainer as set forth on the ETA 750. In this case, the petitioner has not resolved those doubts and has failed to establish that the beneficiary has acquired the requisite four years of qualifying work experience set forth on the ETA 750 pursuant to the requirements of 8 C.F.R. § 204.5(l)(3). As the record currently stands, the petition may not be approved.

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.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.