

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

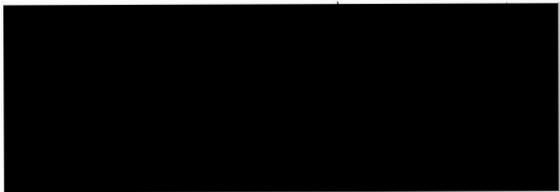
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000,
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE: [REDACTED] SRC 06 161 50031

Office: TEXAS SERVICE CENTER

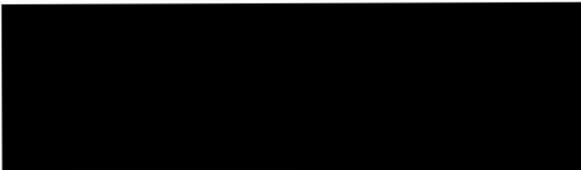
Date: DEC 03 2007

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a truck body repair company. It seeks to employ the beneficiary permanently in the United States as a truck body repairman. As required by statute, a ETA Form 9089, Application for Permanent 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, provides additional evidence and maintains that the petitioner has demonstrated that the beneficiary's work experience meets the requirements of the approved 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 nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(1)(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 9089 was accepted for processing on January 4, 2006.¹

Part 5 of the Immigrant Petition for Alien Worker (I-140), which was filed on April 24, 2006, indicates that the petitioner was established in 1917, incorporated on January 11, 1939, and currently employs eighty-five workers.

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.

Part K of the Form 9089, signed by the beneficiary on April 6, 2006, lists one prior job as the beneficiary's qualifying experience. He claims that he worked for [REDACTED] Seoul, Korea, from December 1, 1993 until November 8, 2004. It is described as a motor vehicle body repair business and the beneficiary's last job title is described as the Chief in Painting. His job duties were described as "repair of collision-damaged sheet metal; painting of motor vehicles after repair."

Part H of the Form 9089 describes the education, training and experience that an applicant for the certified position must have. In this matter, it states that no formal education is required, but an applicant must have 24 months of work experience² in the job offered as a truck body repairman or 24 months experience in auto body repair. The duties of the certified job are reflected as the "repair of collision-damaged trucks and trailers, including some painting."

In support of the beneficiary's prior qualifying work experience, the petitioner provided a Certificate of Employment in Korean, together with a certified English translation. The certificate is dated July 15, 2005 and indicates that it is from [REDACTED] the president of JungIn Motors in Seoul, Korea. It identifies the beneficiary, his registration number, and his address in Seoul. The certificate then summarizes the beneficiary's employment as follows:

Position: A chief in Painting

This is to certify that the person mentioned above has been employed from 01 Dec, 1993 to 08 Nov, 2004

On June 14, 2006, the director requested additional evidence of the beneficiary's qualifying two years of work experience as a truck body repairman or two years of experience in auto body repair. The director advised the petitioner that the evidence should be in the form of letters from the beneficiary's former employers and current employer verifying the beneficiary's job title, specific duties performed, and the dates of employment.

In response, the petitioner provided an additional document, only in English, sworn to be correct, which is dated July 26, 2006, and identified as a "Certificate of Employment Supplement." It reflects a signature in Korean that is reflected as belonging to [REDACTED]. It gives the beneficiary's name, registration number and address, and contains the following information:

Position: (as of 08 Nov 2004) : A chief in Painting

This is to certify that [the beneficiary] joined this company as an auto body repair person in December 1993. He started as a basic mechanic being trained in collision repair of automobiles and light trucks. By approximately June of 1994, he was sufficiently skilled to be a full repairman, responsible for removing damaged body and mechanical parts, determining what could be repaired and what had to be replaced, repairing repairable body parts, fitting new and repaired parts to the automobile, testing mechanical operation (steering, door closing, watertightness,

² For the purpose of the skilled worker preference classification, 24 months will be considered to equate to two years of employment experience.

etc.), and then painting and final quality checking. Tools used include all regular mechanic tools, air-power tools, and special sheet metal shaping tools. [The beneficiary] also operated the paint sprayer after preparing surfaces, set up the paint booth, and cleaned and maintained the spray painting equipment and booth.

In 1996, he was promoted to the position of Chief of Painting Department, which held until he left the company. While head of the Painting Department, [the beneficiary] continued to work with body parts, restoring them to 'Like new' condition and preparing them for painting.

On September 22, 2006, the director denied the petition, determining that the two documents submitted to verify the beneficiary's experience did not corroborate that the beneficiary had acquired two years of qualifying work experience as of the priority date. The director noted that the supplemental certificate of employment failed to indicate the date of the beneficiary's promotion in 1996 and appeared to question how Mr. [REDACTED] would be competent to authorize an employment verification letter expressed only in English when a year earlier, the verification had been certified in the Korean language.

On appeal, counsel submits another sworn document, which is dated July 26, 2006. It is also identified as a Certificate of Employment Supplement, signed by Mr. [REDACTED] and is accompanied by a Korean document and a certified English translation that is dated October 24, 2006. The English translation contains identical language to the one submitted to the underlying record except for a spelling error and the alteration of the date stated in the last paragraph. Instead of stating that "in 1996, he was promoted to the position of Chief of Painting Department, which he held until he left the company," this certificate claims that the promotion date was "Jul, 1 2006."

Counsel asserts that the certificate of employment provided to the underlying record does not purport to be anything more than a certificate confirming that the beneficiary worked at [REDACTED] for eleven years and that his final position was 'Chief of Painting.' Counsel maintains that the letter supplied to the director in response to the request for evidence was absolutely consistent with the Form ETA 9089 and the first letter and established that the beneficiary possessed six months of apprenticeship, more than two years as a full, general repairman and then another eight years in the paint department, where he continued to work with auto body parts.

Counsel's assertions are not persuasive in this matter. It is noted that the Certificate of Employment dated July 15, 2005 does not establish that the beneficiary's final position was as a chief in painting. Rather it plainly states that he was a chief in painting and employed from December 1, 1993 to November 8, 2004.

The English only Certificate of Employment Supplement, dated July 26, 2006, and provided in response to the director's request for evidence, is also misleading in that it appears to be a translation submitted without the original Korean document and suggests that the signer may not have been aware of the contents in English. It is noted that counsel does not address the Korean/English translation issue on appeal.

Finally, the Certificate of Employment Supplement of the same July 26, 2006 date submitted on appeal now claims July 1st, 2006, as the date of promotion and fails to address the other items raised in its identical statements that are noted above and are raised in the first Certificate of Employment Supplement.

In *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the Board states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

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 Id.*

It is noted that the director had sufficient cause to question the validity of the beneficiary's employment experience as a truck body repairman or auto body repairman as of the priority date as reflected by the evidence provided to the record. The director raised valid questions in rejecting the employment verification documents that were submitted in support of the beneficiary's employment history. The document submitted on appeal raises further questions as noted above. Those questions have not been resolved on appeal.

Based on a review of the record and the evidence provided, we must conclude that the petitioner has not established that the beneficiary possessed the requisite qualifying work experience as of the priority date. 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.