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U.S. Citizenship  
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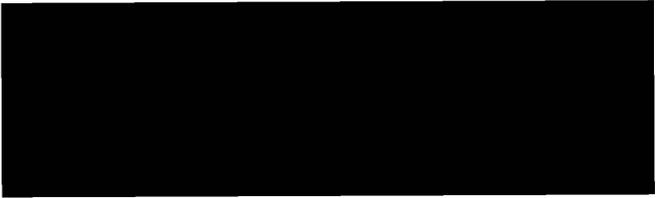


FILE: WAC 04 227 50992 Office: CALIFORNIA SERVICE CENTER Date: JAN 16 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a dental laboratory. It seeks to employ the beneficiary permanently in the United States as a dental technician. 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 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 employment experience to qualify for the proffered position.

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.

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. *Matter of Wing's Tea House*, 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 12, 2001. The labor certification states that the position requires two years experience in the job offered.

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>1</sup>

In the instant case the record contains a Verification of Career in Korean dated June 20, 2004. That document was accompanied by an English translation, and a translator's certification that he is qualified to translate from Korean to English and that the translation he provided is accurate.

The record also contains a Verification of Career in Korean dated May 2, 2005. That document was accompanied by an English translation, and a translator's certification that he is qualified to translate from Korean to English and that the translation he provided is accurate.

The record does not contain any other evidence relevant to the beneficiary's claim of qualifying employment experience.

The June 20, 2004 Verification of Career states that the beneficiary worked for \_\_\_\_\_ as a Part Manager (Dental Lab Technician) from February 1, 1998 to December 25, 2000. That employment verification letter does not identify the individual who signed it or what affiliation, if any he or she has with

\_\_\_\_\_

Because that employment verification letter was insufficient to demonstrate that the beneficiary has the requisite two years of qualifying employment experience the California Service Center, on April 4, 2005, issued a request for evidence in this matter. The service center requested, *inter alia*, additional evidence in support of the beneficiary's employment claim.

Specifically, the request for evidence stated,

**Evidence of Experience:** Submit proof of the beneficiary's employment history. Provide letters, contracts, and pay statements to verify that the beneficiary worked for the listed employer(s). Provide a name, address and telephone number at which [CIS] or other U.S. Government agency can contact ALL foreign employer(s). . . . Experience earned should be submitted in letterform on the employer's letterhead showing the name, address, phone number and title of the person verifying this information. This verification should state the beneficiary's **title, duties, and dates of employment/experience and number of hours worked per week.**

[Emphasis in the original.]

As to the evidence previously provided the service center noted,

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<sup>1</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 employment certificates submitted were insufficient. They did not include a full list of duties performed by the beneficiary. The beneficiary was also employed as a Manager. Please specify the percent of time the beneficiary performed managerial duties and the percent of time the beneficiary performed duties as a Dental Lab Technician. The letter was not signed by the beneficiary's supervisor and is not accompanied by contracts and pay statements to verify the beneficiary worked for the listed employer.

In response the petitioner submitted the May 2, 2005 Verification of Career. That document states that the beneficiary worked 50 hours per week for [REDACTED] in Seoul, South Korea as a dental technician from February 1, 1998 to December 25, 2000 and as a parts manager from July 1, 2000 to December 25, 2000.

The director denied the petition on July 21, 2005. In that decision the director noted that the employment verification letters were not on company letterhead as the April 4, 2005 request for evidence requested, were not signed by the beneficiary's former supervisor, and that the response to the April 4, 2005 request for evidence was not accompanied by the requested supporting evidence as it requested.

The director further stated that the employment verification letter "contradicts Form ETA 750 that states that the beneficiary has been employed since 1996."<sup>2</sup> This office notes that, although a Form ETA 750 showing the beneficiary's employment history should have been provided with the Form I-140 petition, the record does not contain a Form ETA 750B pertinent to the instant beneficiary. The only Form ETA 750B in the record pertains to the beneficiary for whom the petitioner originally petitioned. The petitioner has substituted the instant beneficiary for that original beneficiary. This office believes that the director mistakenly believed that the employment history on the ETA 750B in the record pertained to the beneficiary. This office will not further address the alleged contradiction cited in the decision of denial.

Further, the director stated that the beneficiary had not met the requirement of two years of employment experience on the priority date of the instant petition. This office notes that, if the evidence submitted is believed, the beneficiary worked as a dental lab technician from February 1, 1998 to December 25, 2000, and had thus worked in the job offered for more than the requisite two years prior to the April 12, 2001 priority date. The remaining issue pertinent to the evidence submitted is whether it is sufficiently reliable.

On appeal, counsel asserted that (1) although the employment verification letters submitted were not on letterhead as requested they contained all of the information typically found on company letterhead, and (2) although the employment verification letters were not signed by the beneficiary's supervisor they were sealed with the company's official stamp. Counsel submitted on appeal an additional career verification document which is dated May 2, 2005, the same date as the career verification document submitted in response to the director's request for evidence, but which is a different document in that it provides greater detail regarding the specialties of the dental lab technician position discussed in the document.

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<sup>2</sup> The Form ETA 750B in the record, which contains information pertinent to the original beneficiary, not the instant beneficiary, specifies that the original beneficiary was *unemployed* from 1996 until that form was signed in 2001. The director erred when he indicated that the form stated the original beneficiary was employed during this period. That form makes no statement pertinent to the instant beneficiary.

The regulations at 8 C.F.R. § 204.5(l)(3)(ii)(A) and (B) state that employment verification letters should be provided by a beneficiary's supervisor but do not specifically state that they must be signed by that supervisor. The request for evidence stated that the previous employment verification letter was not signed by the beneficiary's supervisor, but did not explicitly require that a signed employment verification letter be submitted. Further, the custom in Korea may be to seal official company correspondence with a company seal, rather than for the individual writer to personally sign it. Under these circumstances this office finds that the fact that the employment verification letters submitted are unsigned does not cast doubt on their reliability or veracity.

The letters were not, however, on letterhead as required by the director's April 4, 2005 request for evidence. The second employment verification letter was submitted in response to that request for evidence. That second employment verification letter, at least, should have been on letterhead and, if it was not, the petitioner or counsel should have explained why it was not. The same is true of the career verification document submitted on appeal. Instead, counsel implies that the career verification letters should be acceptable notwithstanding that they do not conform to the director's request that they be on letterhead, because the documents contain the information one would expect to find on company letterhead.

The request for an employment verification on letterhead was not made so that the service center could refer to the information on the letterhead. Rather, letterhead was requested as an additional indication that the company for which the beneficiary claims to have worked is an actual, existing company. That the second employment verification letter and the verification letter submitted on appeal are not on letterhead and counsel did not explain why they are not does cast doubt on the reliability and veracity of the beneficiary's employment claim.

The request for evidence also requested that the author of the employment verification letter be identified by name and position and that contact information including a phone number be provided for that individual. Although a phone number was provided with the verification of career document submitted in response to the request for evidence and submitted on appeal, the author of the employment verification letter is unidentified. This causes the information in the letters to be more difficult to investigate and casts additional doubt on the reliability and veracity of the beneficiary's employment claim.

The request for evidence also requested ". . . letters, contracts, and pay statements to verify . . ." the beneficiary's employment claim. Counsel provided no such documents in response, nor on appeal. He did not explain why he did not provide such documents. This casts additional doubt on the reliability and veracity of the beneficiary's employment claim.

In the face of the petitioner's failure to provide requested documentation and, when provided, its failure to submit sufficiently verifiable and detailed documentation this office does not find the employment verification letters submitted sufficiently reliable to demonstrate that the beneficiary has the requisite two years of qualifying 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 ground has not been overcome on appeal.

The record suggests an additional issue that was not addressed in the decision of denial.

The petitioner failed to provide “. . . letters, contracts, and pay statements to verify . . .“ the beneficiary’s employment claim as requested in the April 4, 2005 request for evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Not only does the failure to provide requested evidence cast doubt on the veracity and reliability of the beneficiary’s claim of qualifying employment, it is a basis for denial in itself. The petition should have been denied on this additional basis. Because this issue was not raised in the decision of denial, however, and the petitioner has not been accorded an opportunity to address it, this office declines to base today’s decision, in whole or in part, on that ground. If the petitioner attempts to overcome today’s decision on motion, however, it should address this issue.

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.