

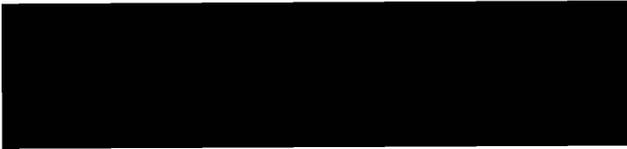
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 16 2007**
WAC 05 042 52970

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

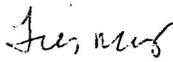
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

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 laboratory 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 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.

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 January 10, 2002. The labor certification states that the position requires two years of experience in the job offered.

The Form I-140 petition in this matter was submitted on November 9, 2004. On the Form ETA 750, Part B, signed by the beneficiary on December 18, 2001, the beneficiary claimed to have worked as a dental technician at a dental laboratory in the Philippines from July 1992 to October 1994. The beneficiary also claimed to have worked as a dental technician for the petitioner from March 2001 until at least the date he signed that form.

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 qualifying experience on that form.

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.¹

In the instant case the record contains (1) a letter dated January 12, 2001 from Dr. [REDACTED] (2) a letter dated February 26, 2005 from [REDACTED] (3) a letter dated June 19, 2005 from [REDACTED] (4) photocopies of what purport to be four paystips, and (5) a photocopy of an Individual Income Tax Return from the Philippines. The record does not contain any other evidence relevant to the beneficiary's qualifying employment experience.

Dr. [REDACTED] January 12, 2001 letter states that he employed the beneficiary as a dental technician at his dental clinic from July 8, 1990 to October 5, 1992.

In her February 26, 2005 letter [REDACTED] stated that she is the widow of Dr. [REDACTED] the author of the January 12, 2001 letter. Mrs. [REDACTED] stated that Dr. [REDACTED] had a dental clinic until his death on August 6, 2003² and that the beneficiary worked at that clinic from July 1990 to October 1992. Mrs. [REDACTED] certified those facts to be true and correct.

[REDACTED] June 19, 2005 letter states that the beneficiary worked as a dental technician from 1991 to 1995. That letter does not name the company the beneficiary allegedly worked for or its address. Further, it does not state what, if any, association [REDACTED] had with that business or her job title. The letter contains no contact information for [REDACTED]

The four ostensible paystips provided purport to show that the beneficiary was paid for working as a dental technician during pay periods from July 1, to July 15, 1991, from February 1, through February 15, 1993, from September 16 to September 30, 1993, and from January 1 to January 15, 1994. The beneficiary's alleged employer is not identified on those paystips.

The Philippine tax return shows that during 1994 [REDACTED] owned the [REDACTED]

¹ 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).

² Mrs. [REDACTED] included a copy of Dr. [REDACTED] death certificate with the letters.

The director denied the petition on May 24, 2005. On appeal, counsel asserted that the evidence provided demonstrates that the beneficiary is qualified for the proffered position pursuant to the terms of the approved labor certification.

The decision of denial was issued after the January 12, 2001 and February 26, 2005 letters were received, and noted that the employment claim they document is not for the period the beneficiary claimed, on the Form ETA 750B, to have been employed as a dental technician. The director, apparently noting that the beneficiary's family name is the same as that of his affiants, also stated that if the beneficiary is related to the people attesting to his qualifying employment experience this fact would call into question their objectivity.

The June 19, 2005 letter was received on appeal. In response to the noted discrepancy between the employment claim previously attested to by Dr. and Mrs. [REDACTED] and the beneficiary's claim of qualifying employment as stated on the Form ETA 750B, Mrs. [REDACTED] claimed, in the June 19, 2005 letter, that the beneficiary worked at Dr. [REDACTED] clinic from 1991 until 1995. This claim contradicts Mrs. [REDACTED] claim, Dr. [REDACTED] claim and the beneficiary's claim, as previously submitted. Mrs. [REDACTED] explained that the events occurred long ago and implied that her memory of the beneficiary's period of employment was therefore imperfect and consequently she misstated his period of employment on the first declaration/letter which she submitted into the record. Mrs. [REDACTED] apparently also intended to suggest that the doctor's memory of the beneficiary's period of employment was imperfect when he wrote his January 12, 2001 letter and that the beneficiary's memory of his period of employment at Dr. [REDACTED] clinic was imperfect when he completed the Form ETA 750B.

In her previous letter Mrs. [REDACTED] did not state that the beneficiary worked for her husband from, for instance, sometime during 1990 to sometime late in 1992. Rather, she specified that he worked at Dr. [REDACTED] from July 1990 to October 1992. Her husband was even more precise in his attestation, stating that he employed the beneficiary from July 8, 1990 to October 5, 1992. Mrs. [REDACTED] explanation that it was merely flawed memory which produced dates as precise as these is not convincing.

Further, the petitioner failed to adequately explain why the beneficiary stated on the Form ETA 750 that he worked as a dental technician from July 1992 to October 1994, if he in fact worked at Dr. [REDACTED] from some unstated date in 1991 to some unstated date in 1995. An assertion that the beneficiary's memory regarding his own period of employment is faulty does not explain the substantial difference between the beneficiary's claim on the Form ETA 750 and Mrs. [REDACTED] claim made on appeal.

The version of the beneficiary's employment history submitted by Mrs. [REDACTED] on appeal conflicts with the version submitted by the beneficiary and with the version submitted by Dr. and Mrs. [REDACTED] previously, which also conflict with each other. Thus, the employment claim submitted on appeal is insufficient, even with the paystips submitted in its support, to demonstrate credibly that the beneficiary has the requisite two years of experience required by the approved labor certification. 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 record suggests an additional issue that was not addressed in the decision of denial. In her July 19, 2005 letter Mrs. ██████████ stated that until his death on August 6, 2003 her husband operated the dental clinic at which the beneficiary was employed. That letter is on what purports to be letterhead of the ██████████ Clinic. Why Mrs. ██████████ is issuing employment verification letters on that company's letterhead if it is no longer in operation and she is no longer associated with it is unclear. Additional scrutiny of this anomaly would have been appropriate.

Because the decision of denial did not discuss this issue and the petitioner has not been accorded the opportunity to address it, today's decision does not rely on that issue. 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.