



U.S. Citizenship
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JAN 23 2007

FILE: [REDACTED]
WAC 04 181 51004

Office: CALIFORNIA SERVICE CENTER

Date:

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 Director, California Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The petition submitted in this matter states that the petitioner, Zia Properties Incorporated is a hotel and travel service and seeks to employ the beneficiary permanently in the United States as a credit analyst. 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 required experience as stated on the approved labor certification 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 experience requisite to the proffered position as stated on the approved Form ETA 750 labor certification.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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 December 28, 2001. The labor certification states

that the position requires a bachelor's degree or equivalent in finance¹ or a related field, and one year of experience in the job offered.

On the Form ETA 750, Part B the beneficiary stated that he had worked at the Traveler Inn in Kelantan, Malaysia from January 1995 to December 1999 as a credit analyst. The beneficiary stated that he had then been unemployed from January 2000 to March 2001, and had worked as a credit analyst for the petitioner from March 2001 until December 20, 2001, when he signed that form.

This office notes that because the priority date of the instant petition is December 28, 2001 the beneficiary is only claiming eight days of experience with the petitioner before the priority date. That claim is insufficient, even if established, to show that the beneficiary has the one year of employment experience stated as a requirement for the proffered position on the Form ETA 750.

The beneficiary described the duties of his position at the Kelantan Traveler Inn as,

Responsible for evaluating user request for new or modified business program, such as analyzing business data, financial statement, risk/pricing/profit of product and inventory value for credit evaluation and control.

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.²

In the instant case the record contains the following evidence submitted to support the instant petition: (1) a letter dated December 5, 2000 on the letterhead of the beneficiary's alleged former employer, Travelers Inn in Kelantan, Malaysia, and (2) photocopies of 12 check stubs purporting to show amounts the beneficiary's former employer paid to him during each of the months of 1998.

The undated letter from Traveler Inn purports to have been signed by [REDACTED] and states that the beneficiary worked for that company from January 1995 to December 1999 as a Credit Analyst. That letter gives the hotel's telephone number as 012-9284200. That letter further states that the beneficiary's duties were,

. . . responsible for evaluating user request for new or modified business program, such as analyzing business data, financial statement, risk/prising (sic)/profit of product and inventory value for credit evaluation and control.

¹ That the beneficiary has a degree in finance or a related field has not been disputed.

² 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 record contains another Form I-140 petition for the instant beneficiary filed October 17, 2006 by another petitioner. No evidence submitted in support of that other Form I-140, however, is relevant to the beneficiary's claim of employment for Travelers Inn. That other petition as originally submitted stated that no immigrant visa petition had ever previously been submitted for the beneficiary,³ although that petition was submitted after the instant immigrant visa petition.

The U.S. Consulate General, Singapore Office, conducted an investigation of the beneficiary's claim of qualifying employment with Travelers Inn pursuant to a faxed request dated April 11, 2005. An investigative report provided for the record states that the phone number shown as that of Travelers Inn on its letterhead is a cell phone number. The person who answered the telephone at that number said that she had bought the phone second hand and that she had no knowledge of either the beneficiary or the Travelers Inn. That report further states that Travelers Inn is not listed in the local yellow pages and could not be located pursuant to a Google search.

The investigative report states that the cell phone number provided, "comes back to a hotel, Travelers INN, as the subscriber," but also states, "A check with Telekom, Malaysia's cell phone service provider, for an active number for Travelers INN – no such business exists." The report does not reconcile those two statements.

On May 23, 2005 the petitioner was informed of that adverse evidence and afforded an opportunity to respond. In response the petitioner submitted (1) a printout of information from the Companies Commission of Malaysia and an English translation, (2) a printout of web content of a site maintained by the Companies Commission of Malaysia, (3) a 1996 Census of Hotels issued by the Malaysian Department of Statistics, and photocopies of 12 monthly pay stubs.

The printout from the Companies Commission of Malaysia shows that the rights to the name Travellers (sic)⁴ Inn was awarded to a partnership and that the business address is 5603-F, [REDACTED]. A second page of that printout shows ownership information. That second page shows that the home address of two of the partners [REDACTED] and [REDACTED] is 5603-F, [REDACTED] which was also given, as is noted above, as the address of the business. The remaining partner is [REDACTED], who purportedly signed the beneficiary's employment verification letter. Finally, that printout indicates that the partnership was dissolved on February 21, 2000.

The printout of web content shows that the Companies Commission of Malaysia has various duties, including approval and registry of business names. That web content does not indicate that one of the duties of that commission is to ensure that registered business names represent actual businesses.

³ Subsequently, in response to a request for evidence, counsel admitted, in a letter dated October 23, 2006, that the beneficiary had, in fact, been the subject of the instant petition. Counsel also provided an affidavit, dated October 24, 2006, in which the beneficiary attested to that fact. Counsel stated that the incorrect information was provided on the instant petition by mistake.

⁴ Both "travelers" and "travellers" are acceptable spellings. This office notes, however, that the Companies Commission awarded the rights to the name Travellers Inn, whereas the letterhead provided shows that the name of the company is "Travelers Inn."

The 1996 census was issued by the Malaysian Government to Travellers Inn. Responses handwritten on to that census show that the Travellers Inn, a sole proprietorship at 5603-F, [REDACTED] had 15 rooms and 30 beds during that year. No indication appears on that form that it was ever submitted to the Malaysian government.

The twelve monthly pay stubs purport to show that the Traveler Inn paid a salary to the beneficiary at the end of each month of 1998.

The director denied the petition on July 14, 2005 based on the evidence uncovered by the investigation of the beneficiary's employment claim. On appeal, counsel asserted that the evidence relied upon in finding that the beneficiary's claim of qualifying employment was fabricated was insufficient. This office agrees.

That the beneficiary's alleged prior employer ostensibly conducted business on a cell phone is insufficient to show that the beneficiary's employment claim is fraudulent.

Counsel did not address the lack of a yellow pages listing for the Travelers Inn. However, that no such listing was found is also insufficient to show that the beneficiary's employment claim is fraudulent. The record contains no evidence that all, or even most, small businesses in Malaysia have yellow pages listings. Further, the Traveler Inn appears to have dissolved on February 21, 2000 and the investigation was conducted sometime after April 11, 2005.

Further, that the cell number was not being used by the individual listed as an owner of Travelers Inn in the record is not sufficient to show that the beneficiary's employment claim is fraudulent, nor is the fact that the person who currently uses that cell number has no knowledge of the business activities of the individual who previously used that cell number. Whether a Google search is a reliable method of determining the existence of a small business in Malaysia is unknown to this office.

The evidence relied upon in denying the petition was insufficient to show that the beneficiary's employment claim is false.

On the other hand, the beneficiary claims to have been employed several years as a full-time, credit analyst for a 15 room hotel. While certain, very large hotels might make use of a credit analyst, this office finds it very improbable that such a small hotel would employ a full-time credit analyst. It seems that a hotel would not have any need to analyze the credit of its individual customers.⁵ Even if this office were to assume that the beneficiary's alleged duties were to assess the credit of corporate and other business clients who proposed to have their employees stay at the hotel routinely and for which purpose they desired credit, the beneficiary's own description of his job at that hotel does not fit the position of *hotel* credit analyst. That is, the beneficiary and his alleged former employer state that he was,

⁵ If this office is mistaken on this point the petitioner may provide evidence to correct this misunderstanding.

Responsible for evaluating user request for new or modified business program, such as analyzing business data, financial statement, risk/pricing/profit of product and inventory value for credit evaluation and control.

An in-house credit analyst would not typically refer to his employer as a “user.” This office does not believe that use of the phrase “business program” would typically describe extension of credit by a hotel to a client. Valuation of inventory would generally be inappropriate to credit analysis pertinent to unsecured credit, such as one would expect that a hotel might proffer to a business entity. These apparent discrepancies in the record call into question the beneficiary's claim that he gained at least one year's experience as a credit analyst prior to the priority date.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) 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.

The matter will be remanded to the director for additional action and consideration in keeping with the points above. On remand, the director shall request a more clear description of the beneficiary's duties in his alleged position as a full-time, credit analyst for a small hotel in Malaysia. The director may make this request of the petitioner, the beneficiary and/or his alleged former employer.⁶ The director may consider whether the responses to his requests are consistent with a credit analyst position at a small hotel, and may consider whether they are consistent with the beneficiary's previous description of his duties.

The director may request additional investigation.⁷ If the evidence shows that the business at which the beneficiary claims to have been employed either did not exist or did not employ him, or otherwise fails to credibly demonstrate the veracity of the beneficiary's claim of qualifying employment as a credit analyst the petition may certainly be denied again on that same basis. The director may also consider, and request evidence relevant to, any other issues pertinent to the approvability of the instant petition.

The record suggests additional issues that were not addressed in the decision of denial which the director may, on remand, wish to consider.

Also, the evidence from the Companies Commission of Malaysia appears to indicate that the Traveler Inn dissolved on February 21, 2000. The beneficiary's employment verification letter, however, is dated December 5, 2000. The director may wish the petitioner to explain this chronology.

⁶ Although Travelers Inn appears to have dissolved, the beneficiary's December 5, 2000 employment verification letter demonstrates that he remained able to obtain additional documentation from his alleged previous employer after its dissolution.

⁷ This office might be swayed, for instance, by evidence showing that no building suitable for a 15 bed hotel existed at the address given for Travelers Inn, or that the building was there but the owners stated that it had never been called Travelers Inn during the period when the beneficiary claims to have worked there, or that Travelers Inn is there, but the owners say they did not employ the beneficiary.

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 matter is remanded for further consideration and action consistent with this decision and issuance of a new decision. In the event that the new decision is adverse to the petitioner's interests the decision shall be certified to this office for review.