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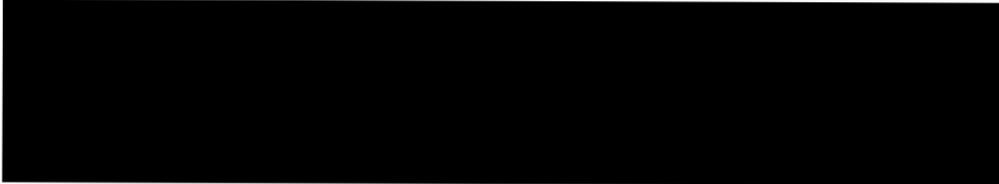
U.S. Department of Homeland Security  
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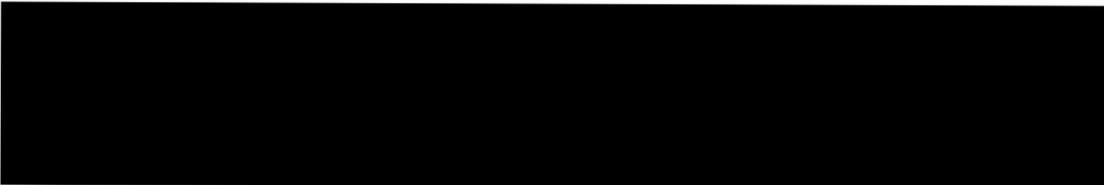
**JUN 05 2007**

FILE: WAC 04 008 50706 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 case will be remanded for further investigation and entry of a new decision.

The petitioner is a Chinese restaurant. It seeks to employ the beneficiary permanently in the United States as a Chinese specialty cook. 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 October 9, 2001.<sup>1</sup> The ETA 750B, signed by the beneficiary on September 27, 2001, does not indicate that he has worked for the petitioner.

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<sup>1</sup> 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 requires that the applicant possess two years of work experience in the job offered of Chinese specialty cook.

The beneficiary's work history, as stated on the ETA 750B (item 15), lists one previous job. From July 1991 to November 1993, the beneficiary claims that he worked 48 hours per week as a Chinese specialty cook for the [REDACTED] at [REDACTED] Yunnan, China.

To establish that the beneficiary has obtained two years of qualifying work experience, the petitioner initially provided a "Verification," dated March 9, 2001, from the [REDACTED] (Three Stars)." The English translation does not indicate that an individual signed the verification. It states that the beneficiary was employed at Yunnan Province [REDACTED] from the period of July 1991 to November 1993.

On August 10, 2004, 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 advised the petitioner that the submitted employment verification failed to state the number of hours worked per week, the alien's duties and the identity of the person supplying the information.

In response, the petitioner, through counsel, provided the original of the previously submitted verification. The petitioner also provided another employment verification, dated September 7, 2004. It is signed by [REDACTED] as general manager, and affirms that the beneficiary was employed at the [REDACTED], Yunnan Province as a Grade 1 Chef from July 1991 to November 1993, working 48 hours per week.

On September 30, 2005, the director issued a notice of intent to deny the petition. He stated that an overseas investigation conducted on August 23, 2005 by the United States Citizenship and Immigration Services (USCIS) Beijing sub-office had found that there was no record that the beneficiary had worked for the [REDACTED]. The investigation showed that the officer had contacted a "general manager surnamed [REDACTED] by telephone." This individual said that the [REDACTED] was founded in 1996. "It is impossible that the subject person worked in [REDACTED] during the period of July 1991 to November 1993." The officer also states that the manager checked the human resources records and did not find any chef with the beneficiary's name that had worked for the hotel. The officer concluded that the certificate of working experience was counterfeit.

The petitioner was afforded thirty (30) days to provide additional evidence or argument in rebuttal to the director's notice of intent to deny.

In response to the intent to deny, counsel requested an additional fifteen (15) days to respond because employment verification documents were being notarized in China and it would take approximately ten days to express mail this material.

The director denied the petition on November 9, 2005. Citing the regulation at 8 C.F.R. § 103.2(b)(8) which does not permit additional time beyond the stated twelve (12) weeks to respond to a request for evidence, the director concluded that the evidence failed to credibly establish that the beneficiary possessed the requisite two years of experience in the offered position of Chinese specialty cook as of the priority date of October 9, 2001.

On appeal, counsel provides an additional employment verification document from China. He asserts a copy of this document had also been provided in response to the director's notice of intent to deny and should have been reviewed. The original has been provided on appeal. It is a "certificate" signed by [REDACTED] of the [REDACTED] [REDACTED] states:

This is to certify that [the beneficiary] was an employee of [REDACTED] [REDACTED] China who worked at the said restaurant as a Grade One Chef from July 1991 to November 1993. [REDACTED] was established in 1990.

In 1996 [REDACTED] established [REDACTED] [REDACTED] At the same time, "[REDACTED] was altered to [REDACTED]

For [the beneficiary] had been stayed aboard [sic] for a long time, and the later employees of our hotel had no acquaintance with his stay in our hotel, there existed some misunderstanding.

Please allow me to repeat: the work certificate issued to [the beneficiary] by [REDACTED] [REDACTED] on September 7, 2004 is authentic and true.

Counsel states on appeal that the time allotted to respond to the director's notice of intent to deny was 30 days rather than the 12 weeks allowed for a response to a request for evidence. He maintains that there was no deliberate misrepresentation of the facts although the beneficiary should have listed the [REDACTED] as his previous employer rather than the reorganized [REDACTED]

Upon review of the documents submitted to the record, and in the interests of fairness, the AAO will remand this case to the director for further investigation of the employment verification certificate provided on appeal. It is recommended that any additional communication with the relevant Chinese individuals should establish the mode of communication, identity and position held by person interviewed, duration that he has held his position, the basis of his knowledge about the alien's employment, existence of any personal acquaintance or family ties, and any other information pertinent to the persons that have already provided employment-related information to the record.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to conduct further investigation and request any additional evidence from the petitioner pursuant to the requirements of Section 203(b)(3)(A)(i) of the Act. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

The burden of proof in these proceedings remains solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner shall be certified to the AAO for review.