

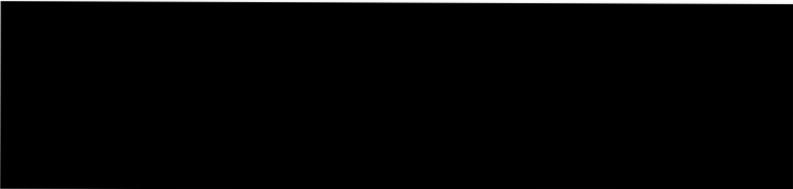


U.S. Citizenship
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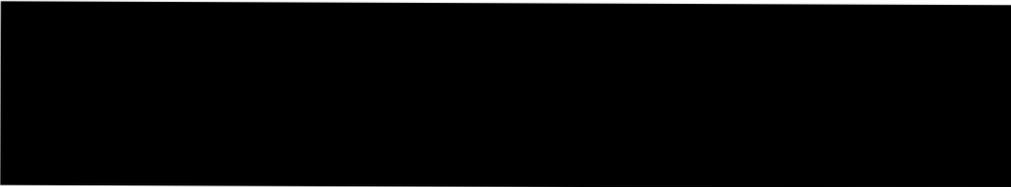
Office: CALIFORNIA SERVICE CENTER

Date: JUN 14 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, 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 appeal will be sustained. The petition will be approved.

The petitioner is a computer parts and peripheral sales firm. It seeks to employ the beneficiary permanently in the United States as a full charge bookkeeper. 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, asserts that the director erred in determining that the petitioner had failed to establish that the beneficiary possessed the required two years of 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 April 25, 2001.¹ The ETA 750B, signed by the beneficiary on August 6, 2002, indicates that she has worked for the petitioner since February 2002.

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.

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 provides that an applicant must have two years of work experience in the job offered as a full charge bookkeeper. CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Other than the petitioner, the beneficiary lists two other jobs on the ETA 750B. She states that from March 1997 to May 1999, she worked as a full-time, full charge bookkeeper for [REDACTED] in Batangas, Philippines. The beneficiary also states that she from June 1999 to March 2001 she also worked for this employer as an accountant.

Relevant to the beneficiary's past qualifying work experience, the petitioner initially provided two documents identified as "Certification of Employment and Compensation." They are printed on the letterhead of [REDACTED] and are signed by [REDACTED] as president. The first certification is dated August 1, 2001, and is signed by [REDACTED] as president. She states that the beneficiary was employed as an accountant from March 1997 to March 2001. The second letter, dated July 30, 2002, confirms that the beneficiary was employed as a bookkeeper from March 1997 to May 1999.

The petitioner also supplied copies of the beneficiary's diploma indicating that she had received a Bachelor of Science in Tourism in 1996 from the University of the Philippines and a copy of her grade transcript.²

In response to the director request for additional clarification and evidence of the beneficiary's jobs and dates of employment with [REDACTED] the petitioner submitted an additional certification from [REDACTED], signed by [REDACTED] and dated February 22, 2003. [REDACTED] identifies herself as the beneficiary's grandmother and confirms that the beneficiary worked first as a bookkeeper from March 1997 to May 1999, and as an accountant from June 1999 to March 2001, inclusive.

The director denied the petition on November 10, 2005. The director observed that the beneficiary's formal education had only included one course in accounting and determined that the petitioner had not sufficiently documented the beneficiary's requisite qualifying two years of experience as a full charge bookkeeper. He questioned the beneficiary's acquisition of sufficient experience to be promoted to an accountant's position at [REDACTED]

On appeal, counsel asserts that the director's analysis of the beneficiary's formal education and completion of accounting classes was not necessary as the requirements for the labor certification were only two years in the job offered. He maintains that the additional letter provided in response to the director's request for evidence provided sufficient clarification of her past job experience.

The AAO concurs with counsel. The beneficiary's college education is not relevant to the determination of whether she possesses the requisite work experience in the certified position. The petitioner need only demonstrate that she possessed two years as a full-charge bookkeeper as of the visa priority date. The letters

² Her transcript indicated that the beneficiary completed two courses in accounting.

provided by [REDACTED] are sufficiently detailed to reasonably conclude that the beneficiary attained at least two years of experience as a full charge bookkeeper.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.