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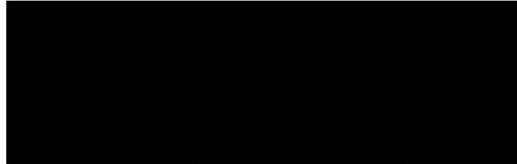
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 30 2007
WAC 04 102 52435

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:
[REDACTED]

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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a finish carpentry construction firm. It seeks to employ the beneficiary permanently in the United States as a finish/molder carpenter. 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 determined that the petitioner had not established that the beneficiary had acquired the necessary qualifying employment experience as of the priority date of the visa petition and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary obtained the qualifying work experience. On the notice of appeal, counsel requests an additional thirty days to submit a brief and/or evidence to the AAO.

As of this date, more than sixteen months later, nothing further has been received to the record.¹ This decision will be rendered on the record as it stands.

Section 203(b)(3)(A)(i) of 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 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

¹ No response has been received to a recent facsimile inquiry from this office.

158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on October 10, 2001.² The visa preference petition was filed on February 24, 2004.

The ETA 750B, signed by the beneficiary on September 26, 2001, indicates only that he has been unemployed from 1998 until the present (Sept. 26, 2001) and that he worked as a finish carpenter for "Kustica" at Calle Emillo Caranza in Oaxaca, Mexico from February 1996 until November 1998. The same unemployment and employer are shown on the beneficiary's G-325, Biographic Information form, submitted with his application for permanent residence and signed by the beneficiary on December 12, 2003.

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 states that two years of work experience is required in the job offered, described in item 9 as "carpenter finish/molder."

In support of the beneficiary's qualifying past work experience, the petitioner provided a letter from [REDACTED] of Oaxaca, Mexico, dated May 2, 2001. The letter is on a letterhead reflecting the firm's name as "[REDACTED]". The letter is accompanied by an uncertified English translation. [REDACTED] job title is not identified but he affirms that he has known the beneficiary for several years since the period between February 1996 and November 1998 when he and the beneficiary worked together. The letter does not mention the beneficiary's employment at a company named [REDACTED].

The director denied the petition on August 5, 2005. The director noted the inconsistencies between the employer and the address listed on the ETA 750B and the employment verification letter submitted by [REDACTED] covering the same time period. The director also stated that a check with the Mexican Social Security Institute (MSSI) had not revealed any employment with the [REDACTED] firm. The director concluded that the beneficiary had not met the minimum requirements of two years of qualifying work experience as required by the terms of the labor certification.

On appeal, counsel asserts that the beneficiary's mother went to his former workplace [REDACTED] and attempted to secure a new letter or proof of the beneficiary's employment, but was told that the former owner moved to Chiapas. Counsel states that the beneficiary worked for cash as many informal workers do and could also not secure a social security number from his employer as he was under age 18. Counsel submits a statement from the beneficiary in support of this assertion and, as stated above, requested an additional thirty days in order to obtain a letter from the beneficiary's mother explaining her failed attempts to procure an employment verification letter regarding her son's employment with [REDACTED]. Counsel also states that the listing of Kustica as the beneficiary's qualifying employment was inaccurate and was due to his office's workload and staff errors. Counsel submits declarations from two employees explaining how they inadvertently put the wrong employer's name on the beneficiary's application. Counsel also provides copies

² 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.

of several media articles discussing the Mexican economy and containing references to its formal and informal sector.

The beneficiary's unsworn declaration describes his humble background and his employment with Mr. [REDACTED] beginning when the beneficiary was fifteen years of age. He claims he was paid in cash as is customary unless employment is with a large employer, who would request a social security number for the employee if the employee were eligible and not under eighteen. The beneficiary states that he is waiting for a letter from his friend, "[REDACTED]" who has attempted to obtain another letter from [REDACTED]. The beneficiary also states that he did not know [REDACTED] and that "when I signed the letter, I did not notice the name and address typed on the form."

In this case, there are some clear evidentiary problems. First, the letter from [REDACTED] did not specifically identify him as the employer or trainer. It was not accompanied by a certified English translation, and, as such, does not comply with the terms of 8 C.F.R. § 103.2(b)(3):

Translations. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Second, the declarations from the beneficiary and counsel's two employees that have been provided on appeal are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Moreover, they are not probative of the beneficiary's qualifying work experience, as they are not the verification required by 8 C.F.R. § 204.5(l)(3).

Third, the beneficiary has to bear the responsibility to affirm the accuracy of the facts stated in the documents that he certifies. In both the ETA 750B and the G-325, signed in 2001 and 2003, respectively, he affirmed his past employment with [REDACTED] Oaxaca, Mexico, rather than with the Rendon firm.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The petitioner must demonstrate that the beneficiary's qualifying work experience was acquired as of October 10, 2001, the priority date set forth on the labor certification. The evidence contained in the record and on appeal does not corroborate the beneficiary's prior qualifying work experience as a finish carpenter and is not independent competent evidence of such experience. As the petitioner has failed to provide sufficient objective evidence resolving the inconsistency raised by the two different firms given as the beneficiary's employers in the documents designated by the beneficiary as true and correct, the AAO cannot

conclude that the director's denial of the petitioner's I-140 was erroneous. The petitioner has not demonstrated that the beneficiary acquired the requisite qualifying work experience as of the priority date and has not met the minimum requirements set forth on the labor certification.

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.