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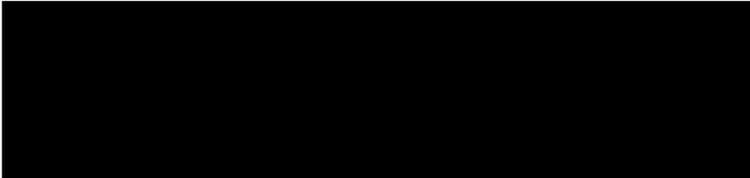
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE: [REDACTED]
WAC 97 046 51442

Office: CALIFORNIA SERVICE CENTER

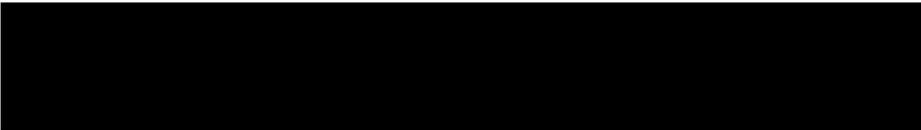
Date: **SEP 10 2007**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: the Director, California Service Center, initially approved the employment-based preference visa petition on December 12, 1996.¹ In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director sent a request to the U.S. Embassy in Beijing, China to conduct an investigation with regard to the beneficiary's claimed previous employment in China. The director then on July 9, 2005 sent a notice of intent to revoke the approval of the petition (NOIR) to the petitioner's former counsel who had previously resigned from the state of California Bar. On August 5, 2005, current counsel submitted a response to the director explaining that former counsel no longer represented the petitioner and had resigned from the state of California bar and was no longer authorized to practice law.² Current counsel asked for additional time to obtain documents from Chinese authorities with regard to the beneficiary's prior employment in China, and subsequently submitted a response to the director's NOIR dated September 26, 2005. In a Notice of Revocation (NOR), on February 9, 2006, the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner then submitted an appeal to the Administrative Appeals Office (AAO). The director's previous decision will be withdrawn and the petition remanded to the director to address the questions outlined in the proceedings with regard to the original rationale for proposing a investigation of the beneficiary's work experience and to provide the petitioner with an opportunity to further establish the beneficiary's previous work experience in China.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1155, states that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

¹ This notice contains no A number for the beneficiary but refers to the receipt number WAC 97 046 51442. The AAO notes that the action block on the petitioner's I-140 petition found in the record is not stamped.

² Current counsel also submitted excerpts from the state of California website that described the discipline summaries taken against former counsel as of September 10, 1998 for non-immigration related legal misconduct.

In order to properly revoke the approval of a petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

On July 9, 2005, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that during the course of the beneficiary's I-485 Adjustment of Status interview, she presented conflicting information that led to the director's request for an overseas investigation. The director stated that on April 12, 2000, the American Embassy in Beijing, China, conducted an investigation into the alleged employer of the alien, Pei Hsin Pastry Factory in China. Based on the outcome of the investigation, Citizenship and Immigration Services (CIS) proposed to revoke the approved I-140 petition.

The director stated that the CIS investigation conducted by the American Embassy in Beijing, China, revealed that the beneficiary was never employed with the Pei Hsin Pastry Factory, and that the individual with whom the investigator talked stated that they did not know the beneficiary. The director also stated that the investigation discovered that another individual whom the alien claimed was the factory director and who had provided her with an employment letter, was not the director, but rather a common staff employee, who also told the investigator that she did not know the beneficiary. The director stated that the findings from the overseas investigation determined that the beneficiary never worked for the employer identified on the Form ETA 750 labor certification. The director noted that the Embassy interviewing officer also pointed out that the beneficiary's passport noted her profession as an accountant; not a pastry maker. The director finally noted that the results of the overseas investigation concluded that the beneficiary may have violated section 212(a)(6)(C)(i) of the Act by submitting fraudulent documents and making false statements to CIS. Based on the investigative report, the director stated that the beneficiary was not eligible for the classification sought and that good and sufficient cause existed to deny the beneficiary the benefit sought.

On September 26, 2005, current counsel submitted a response to the director's NOIR. Counsel stated that the director's decision with regard to whether the beneficiary had the requisite two years stipulated on the Form ETA 750 as a pastry maker was based on unreliable information. Counsel notes that the Embassy investigation was conducted on April 12, 2000 by talking to an individual in a factory. Counsel notes that the director did not identify who the individual was or where the factory was. Counsel stated that the factory in question is in the city of Yanji, which is 1130 kilometers, or 702 miles from Beijing. Counsel noted that based on a conversation with an individual, the Embassy investigator concluded that the beneficiary had never worked for the bakery and that the person who signed her employment verification letter had never acted in a managerial capacity.

Counsel described the information obtained from the individual in the factory by the Embassy investigator as unreliable on its face, as it was not known for how long that individual had worked with the factory, nor was it clear that the investigator indicated that the employment question was in regard to someone who had worked at the factory ten years ago. Counsel states that the record did not indicate whether this individual referred to any documentation to refresh his or her memory. Counsel questioned why the individual with whom the investigator spoke would have remembered one employee and noted that the fact a pastry maker worked in the factory more than ten years ago was neither an outstanding nor substantial fact. Counsel further stated that most people do not work as a pastry maker as a lifetime career and change their jobs.

Counsel stated it was unreasonable and illogical to even assume that the information obtained from a worker about an event that took place ten years ago was reliable.

Counsel then submits further evidence that she describes as authenticated by the Ministry of Foreign Affairs of the People's Republic of China and by the American Consulate General in Shenyang. The documents submitted are the following:

A Translation Certification written by [REDACTED] Los Angeles, California that states that the characters listed in the Chinese language document could be translated as either Pei Hsin Pastry Factory or Bei Xin Cake Factory due to different phonetic systems and choices of words employed by translators.

A general authentication certificate³ from the U.S. consulate in Shenyang, China that accompanies three Chinese language documents. The first document has a English translation entitled "Power of Attorney" and states: "I, [REDACTED], am the manager and legal representative of Yanji City [illegible]xing Cake Factory. Because of my poor health, I hereby authorize [REDACTED] [illegible] to be a temporary acting manager of the factory from July 1998 [illegible] June 2001." A second document is a notarial certificate dated August 9, 2005 that states "this is to certify that the seal of Yanji City Beizing Cake Factory on [illegible]ached "Power of Attorney" is found to authentic", and is signed by [REDACTED] Notary. A third English language translation states that the English translation of the attached page [illegible] No. [REDACTED] is in conformity with the original [illegible]arial certificate in Chinese. The same notary from Yanbian Korean Autonomous Prefecture, Cia Jingzue signed this document dated August 9, 2005.

A second general authentication certification from the U.S. consulate in Shenyang, China accompanies a Chinese language document with English language translation that states "Business License for Individual Enterprise" and identifies a business name of Yanji City Beixing Cake Factory, and name of investor: [REDACTED], business address 29-1 Damming Hutong, Beishan Street, Yanji City, and also identifies the business as "processing and sale of cake, cookie, farm and sideline products, etc." The document is issued by Yanji City Industrial & Commercial Administration, and dated May 24, 2005. A second document is an English translation of a notarial certificate stating that the copy of the business license agrees exactly with the original business license, and is signed by notary: [REDACTED], Yanbian Korean Autonomous Prefecture and dated August 10, 2005. Finally an English language translation of a third certificate states that the English translation of the attached page is in conformity with the original notarial certificate in Chinese.

³ The AAO notes that all three authentication certificates from the U.S. Consulate in Shenyang, China states at the bottom of the page: "I assume no responsibility for the truth or falsity of the representations which appear in the annexed document." The statements by the Vice Counsel appear to first identify an official and then to certify that the official whose signature and official seal are on annexed documents was empowered to act in the official capacity described in the documents.

The third general authentication certificate from the U.S. consulate in Shenyang, China accompanies a Chinese language document with English language translation that stated "certification, I, [redacted] am the manager and legal representative of Yanji City [illegible]xing Cake Factory. I hereby certify that I [redacted] worked for the [illegible]tory from 1987 to 1991. Sincerely yours, [redacted] Cake Factory (seal) Manager: [redacted] (seal). This document is dated August 1, 2005. Two accompanying documents certify that the seal of the Yanji City Beizing Cake factory is found to be authentic, and that the English translation of the attached page No. 28934 conforms with the original certificate in Chinese. This document and the certification of seal documented are signed by Notary: [redacted], Yanbian, Korean Autonomous Prefecture. Another untranslated Chinese language document is contained in this group of documents that indicates the number 05024013 and the date August 19, 2005.

A letter in English from the Pei Hsin Pastry Factory, Yanji City, Jilin Province, dated May 11, 2000 that is entitled "Employment Certificate." The letter is signed by [redacted] director, and manager of personnel department: [redacted]. The letter notes that the beneficiary, born on August 14, 1950 worked for the factory from August 1987 to December 1991 as a Korean pastry technician and is a regular full time worker.

A final document in English is addressed to American Immigration and Naturalization Service, and states the following: "We have sent our Director of Personnel Dept. to the American Consulate in Shenyang, but they didn't interview, so we can not solve the matters of [redacted]. The only thing we can do is that a Letter of Verification is provided." The document names the Yanji City Pei Hsin Pastry Factory and contains a signature and a seal.

Counsel stated that the person who signed the beneficiary's employment verification, contrary to the Embassy description of him as a common staff, was an acting manager of the factory authorized by the manager and the legal representative of the factory to serve as manager from July 1998 to June 2001. Counsel also submits copies of the Form ETA 750, Part B, that lists the beneficiary's claimed attendance at a Peking Correspondence School, Peking, China from May 1988 to May 1990, from which the beneficiary received a diploma, her attendance at the Yen Pein Food Association Chinese/Korean Food Processing, Yen Pein, China from August 1987 to December 1987, and her attendance at the Yen Pien Scientific Technical Korean Pastry Association, Yen Pien, China from September 1985 to February 1986, from which the beneficiary received two certificates.

Part B also describes the beneficiary's claimed employment with the Pei Hsin Pastry Factory, Yen Chi City, China, from August 1987 to December 1991, a Korean pastry manufacturer, working as a Korean pastry-processing technician. The beneficiary also listed her employment with the Food Company of Yen Chi City, Yen Chi City, China from November 1986 to July 1987 preparing and cooking various food including Korean food, Korean rice cake and pastries for mass production, and earlier employment with the YenChi Food Company, Yen Chi City, China from September 1973 to October 1986, as a food processing technician with the same work duties. The beneficiary also listed her most recent employment as an accountant working from January 1992 to January 1994, at the Yen Pien City Hospital, Yen Pien, China.

Counsel also notes that the fact that the beneficiary's passport identifies her as an accountant has no legal significance, as people are allowed to change his or her career through their lifetimes. Counsel stated that the

beneficiary studied in her spare time and was able to obtain her accounting degree and become an accountant. Counsel notes that the Addendum of the Form ETA 750 Part B lists her last job before departing from China as an accountant. Counsel stated that the beneficiary wanted to become a pastry maker again because she could not qualify to work as an accountant in the United States based on her lack of English skills.

In his revocation notice dated February 9, 2006, the director reiterated counsel's assertions, and stated that CIS assumed that the investigator who conducted the interview on April 12, 2000 knew what he was doing and conducted his duties accordingly. The director stated that counsel in her response to the director's NOIR asked CIS to believe that the more recent letter of verification dated August 1, 2005 and signed by [REDACTED] is more "verifiable" than the original evidence⁴ which counsel stated should not be believed. The director stated that counsel presented a new letter from the same individual who ten years earlier claimed he or she did not know the beneficiary and that counsel asks CIS to believe the new evidence submitted and disregard the investigation report from the American embassy in Beijing, China, because it took place almost ten years after the alien worked there. The director noted that counsel now presented new evidence dated even later than what was supplied to the investigator at the American Embassy in Beijing, China, and asks that CIS accept the new evidence as fact. The director stated that the investigator from the American Embassy had sufficient evidence in which to conduct a thorough and proper interview. The director then stated that the petitioner had not established the beneficiary qualified for the classification sought because the evidence in the file and the evidence presented in response to the NOIR did not overcome the grounds of revocation.

On appeal, counsel states that the decisive factor in the revocation of the instant petition is the weight to be given to the evidence presented. Counsel states that CIS based its decision on the findings of an overseas investigation conducted from the U.S. Embassy in Beijing while the petitioner submitted evidence authenticated by the U.S. consulate in Shenyang, China, to rebut that finding. Counsel states that the adjudicating officer did not distinguish the word "unreliable" used by counsel from the word "incredible or untrustworthy." Counsel states that based on this misunderstanding, the officer dismissed the new evidence submitted by the petitioner, which is authenticated by the American consulate general in Shenyang, part of the same agency that conducted the overseas investigation.

Counsel states that the petitioner submitted official records from China in its response to the director's NOIR to support that the Chinese employer has employed the beneficiary. Counsel describes these new documents as an entirely different form of evidence from the earlier letter of work verification. Counsel states rather than submitting letters signed by the employer, the petitioner submits new evidence in the form of documents and records directly from the custodian of the records that came directly from the notary public which counsel describes as the legal custodian of public records, similar to a county record office in the United States. Counsel states that the new documents are proof that [REDACTED] the manager of the Korean Pastry factory, was also the investor of the factory. According to counsel, [REDACTED] again confirmed that the beneficiary was employed by the Korean Pastry factory from 1987 to 1991.

⁴ The AAO believes that the director referred to the evidence provided at the time of the embassy investigation rather than the original letter of work verification.

Counsel also notes that the credibility of the embassy investigator is not being challenged but rather the reliability of the evidence collected.

The record also contains a copy of the investigation report conducted on April 12, 2000. The report states in pertinent part:

[T]he writer conducted a telephone inquiry on the alleged employer of the subject, Pei Hsin Pastry Factory, Yanji City, Jilin Province. The writer called the phone number indicated on the Employment Certificate submitted by the subject and reached a staff of this factory, who stated that the director of this factory is [REDACTED], not [REDACTED] (Investigator's Note: On the English [language] Employment Certificate, the Chinese signature is [REDACTED] but the English printing is [REDACTED] which is very questionable.) The staff asked the writer to wait for a while and found [REDACTED] who asserted that she never knew the subject, and she is not the director, but only a common staff.

The writer again dialed the number and reached a woman, who stated the director [REDACTED] is not in. When the writer asked to speak to the manager of Personnel Department [REDACTED] he, she told the writer that the manager is named [REDACTED], and there was not any person named Cui Zhe in the factory. She said that she did not know the subject, either. The women refused to offer her name and title.

It appears that the subject's application for adjustment of status is questionable.

The AAO first notes that counsel's assertion that people can change their jobs during their lives within the context of the instant petition is not persuasive. The Chinese work unit system, or dan wei system, was an integral part of the Chinese communist system and only in the 1980's has the work unit system changed both in rural and urban China.⁵ The Chinese employment system at the time the beneficiary worked for a number of pastry factories was based on the concept of work units to which Chinese workers could be assigned for their entire work life.

The AAO further notes that the impetus for the legacy INS investigation by the American Embassy in Beijing in 2000 is not clearly established in the record. The record contains a memorandum for the U.S. Embassy in Beijing dated August 24, 1998 from [REDACTED], District Director, Los Angeles, California. The memo, a Request for Employment Verification, states that the beneficiary entered the United States with a B-2 visa on March 4, 1994 and that her visa indicated she was accompanying her daughter for medical treatment, and has never left the United States. [REDACTED] also indicated that the beneficiary's passport indicated her profession as an accountant. [REDACTED] then stated that according to documentation submitted by the beneficiary,⁶ "she attended school from May 1988-May 1990 and received a diploma in

⁵ See *Trends and Tensions, China : A Country Study*, edited by [REDACTED] and [REDACTED], Library of Congress, Government Printing Office, Washington 1987, countrystudies.us/china/62.htm, as of July 12, 2007.

⁶ The director apparently refers to documentation submitted by the beneficiary at her adjustment of status

Finance/Accounting. This period is during the time she claims to have been working as a Korean Pastry Technician.” The director then asked the embassy to verify if the beneficiary had ever worked for the company listed on the beneficiary’s letter of work verification, and in what capacity.

The two documents submitted to the U.S. Embassy were a notarized⁷ affidavit of translation of foreign document, from Excellent Service & Marketing, Inc, Alhambra, California, that accompanied the other two documents. The first document contains the beneficiary’s photo and states: “diploma, Certificate No.: [REDACTED] [REDACTED] l. [REDACTED], 40 years old, had registered in this school during the year between May 1988 to May 1990, studied in the School of Industrial Financial Accounting. In recognition of the fulfillment of the two years’ prescribed requirements, a certificate of graduation is hereby granted. Affixed the seal of Peking Correspondence School, President: (no name provided but translation indicates a seal) Date issued: July 1990.”

The second document appears to have a separate English translation of a Chinese language document. The English translation is a FAXed document dated July 21, 1998, and received on July 30, 1998. The document is entitled “Employment Certificate” and stated:

Re: [REDACTED]
To whom it May Concern

This letter is hereby written to certify the employment of [REDACTED]

Name: [REDACTED]
Sex: Female
D.O.B. : August 14, 1950,
Nationality: Korean⁸,
Position: Technician

The above-mentioned person has worked for our factory from August 1987 to December 1991 as a Korean Pastry Technician and is a regular full time worker.

Director: [REDACTED]
Manager of Personnel Department : [REDACTED] Yanji Pei Hsin Pastry Factory
Address: [REDACTED] Yanji City, The People’s Republic of China
Tel: [REDACTED]

interview.

⁷ The translation affidavit was notarized on December 19, 1994 and appears to be attached to the beneficiary’s certificate from the Peking Correspondence School.

⁸ The AAO notes that, based on the record, the beneficiary’s parents were born in North Korea, while she was born in China.

Thus, the director correctly determined that a possible conflict existed between the beneficiary's claimed full time employment and her simultaneous studies in a certificate program in industrial accounting in another city, and asked the Embassy to conduct an investigation as to whether the beneficiary had worked at the Yanji Pei Hsin Pastry Factory. While the Embassy staff did conduct a telephone investigation, the AAO does not consider the issue of the claimed work employment coinciding with the claimed attendance in a correspondence school, the actual motivation for the Embassy investigation, to be addressed by the Embassy investigation, or by the director in his NOIR. Thus the petitioner in its response to the NOIR also did not address the discrepancy in the beneficiary's documentation. The AAO notes that the education documentation submitted at the adjustment of status interview appears to be issued by a correspondence school in Beijing, which counsel notes is 700 miles from the beneficiary's residence. However, the AAO also notes that taking a correspondence course and working full time in another location are not mutually exclusive. However, the burden of proof in these proceedings lies with the petitioner. Prior to any revocation of the instant petition, the petitioner and the beneficiary should be provided the opportunity to address the major concern stated in the director's request for an investigation by the U.S. Embassy.

The AAO also notes that the ETA 750 Part B, submitted with the initial petition lists two additional jobs that the beneficiary held as a food processing technician that included preparation and the cooking of various food including Korean food, Korean rice cakes and pastries. The beneficiary claimed to have also held these positions prior to the priority date. The two additional positions are identified as Food Company of Yen Chi City, Yen Chi City, China, from October 1986 to July 1987, and also the Yen Chi Food Company, Yen Chi City, China, working as a food processing technician from September 1973 to October 1986. Thus, the beneficiary claimed to have in total some thirteen and a half years of experience in the mass production of food, including Korean food specialties.

The beneficiary also identified her educational credentials on item 11, Part B of the ETA 750 as both a diploma from the Peking Correspondence School, Beijing, China in Finance/Accounting, and two certificates from 1986 and 1987 from the Yen Pein Food Association, Chinese/Korean Food Processing in Yen Pien, China. The fact that she identified herself on her passport as an accountant does not preclude the beneficiary from having had the requisite two years of relevant work experience as a Korean pastry maker.

The AAO also notes on the G325 Biographic Information form submitted with her Adjustment of Status application, the beneficiary did list her last employment in China as an accountant with the Yen Pien City Hospital, Yen Pien, China, from January 1992 to January 1994, and her job duties as "performed general duties of accountant for the hospital." While the ETA 750 does state that the beneficiary received a diploma, and the record contains a translated version of the beneficiary's certificate from the Peking Correspondence School, the record does not establish that her studies were at a university level.

Further, with regard to the investigation report, the AAO does not find the results of the telephone investigation to be conclusive enough to establish that the beneficiary did not work at the Korean pastry factory in question. The investigator did not speak with anyone in authority, such as the factory manager or the personnel manager of the factory in the course of two telephone conversations with factory personnel, and one person with whom she spoke refused to identify herself. The investigator's conversation with the individual [REDACTED] is the most damaging aspect of the telephone conversations, as the person who allegedly signed the letter of work verification in lieu of the actual director, appears to have claimed that she

did not know the beneficiary, and that she was not the director but a staff member.

The AAO notes the geographic distance between the U.S. embassy in Beijing and the bakery in the Korean Autonomous Prefecture in Jilin, and acknowledges that telephone calls may be the only feasible manner of conducting such an investigation. The AAO also notes that the investigator's reference to the differences in the Chinese characters on the English language document are relevant; however, the AAO does not find this remark by itself of sufficient weight to support the revocation of the instant petition. While the investigator's conversation with J. [REDACTED] does undermine the weight to be given to the letter of work verification signed by [REDACTED], the AAO does not find the telephone conversation provided over the phone to an unknown caller to be of sufficient weight to warrant the revocation of the instant petition.

With regard to the documents submitted to the record in response to the director's NOIR, the petitioner with new counsel submits numerous documents with translations to establish the identity of the Korean Pastry Factory and the director of the factory. One document purports to be a paper transferring authority to a substitute worker, [REDACTED], as manager while the actual manager, [REDACTED] was on sick leave. The AAO does not view such documentation signed by the two individuals in question to be of sufficient evidentiary weight to establish that [REDACTED] was actually manager of the factory at the time the letter of work verification was produced and submitted to the record. The AAO considers counsel's reliance on the translated documents submitted in response to the director's NOIR to be misplaced.

As stated previously, the AAO notes that all three authentication certificates from the U.S. Consulate in Shenyang, China states at the bottom of the page: "I assume no responsibility for the truth or falsity of the representations which appear in the annexed document." The statements by the Vice Counsel on the first page of three packets of documents appear to first identify an official and then to certify that this official whose signature and official seal are on annexed documents was empowered to act in the official capacity described in the documents. The consul's certification in no way adds to the weight to be given these documents. The documents submitted by counsel in response to the director's NOIR appear focused more on explaining why [REDACTED] was identified as the manager when the investigator called the pastry factory. Accordingly, the AAO gives no weight to the documents submitted to the record by counsel in response to the director's NOIR.

As previously stated, 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. *Matter of Ho*. Furthermore, 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.

Nevertheless the information provided by the beneficiary with regard to her last previous position in China coincides both on the ETA 750 and the G325. The beneficiary did not appear to be misrepresenting her previous employment as an accountant. She also identified at least thirteen more years of relevant work experience on the Form ETA 750 in addition to the beneficiary's claimed employment with the Pei Hsin Pastry Factory from 1987 to 1991. These facts provide some weight as to the veracity of the beneficiary's remaining documentation. Furthermore the record is not clear that the petitioner was provided with the investigation report so as to respond to its contents adequately. The AAO finds that the petitioner has not been provided with the opportunity to address the primary concern raised by the director in his initial memorandum as to the beneficiary's ability to both work at the pastry factory and study another field of studies. Although

the AAO acknowledges that the issue of the beneficiary's earlier employment as a food technician producing Korean pastry before her claimed employment with the Pei Hsin Pastry Factory from 1987 to 1991 has not been addressed by either counsel or the director, the AAO would suggest that the petitioner be allowed to submit relevant documentation with regard to the earlier relevant employment listed on the ETA 750, Part B. Since this earlier employment took place in a period of time in which work units were more dominant, and worker's lives were more documented, perhaps the beneficiary can provide more compelling evidence with regard to her claimed earlier employment. For these reasons, the director's decision will be withdrawn, and the matter remanded to the director for further consideration of the results of the overseas investigation, and of the beneficiary's earlier extensive employment in the production of Korean food.

In sum, the director does not appear to have good and sufficient cause to revoke the instant petition's approval, pursuant to Section 205 of the Act, 8 U.S.C. 1155 and as discussed in *Matter of Estime*, 19 I&N 450 (BIA 1987)).

The director's decision to revoke the petition's approval, based on the petitioner's inability to establish the beneficiary's two years of requisite work experience, shall not stand, and the petition will not be revoked. The petitioner will be provided with the opportunity to answer the question posed by the director's initial evaluation of the beneficiary's inability to both work and study at the same time. The petitioner will also be provided with an opportunity to document the beneficiary's earlier long-term work experiences in cooking Korean food, including pastries, as noted on the Form ETA 750.

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 Director's decision of February 9, 2006 is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications to perform the proffered position. The petitioner will be provided with sufficient time to respond to the questions raised in these proceedings. The decision, if negative, will be certified to the AAO for review.