U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 24 2008

IN RE: Petitioner: [redacted]
Beneficiar

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a jewelry store. It seeks to employ the beneficiary permanently in the United States as a jeweler. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly. The director also noted that the petitioner had provided no evidence to demonstrate that the beneficiary had been registered in the National Security Entry-Exit System (NSEERS).

On appeal, counsel submits a letter and a translation of a statement by the beneficiary.

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 unavailable in the United States.

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.
>
> (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.

8 C.F.R. § 204.5(l)(3)(ii)(A) states that,

> 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.

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 November 14, 2001. The labor certification states that the position requires two years experience.

With the petition the petitioner submitted no evidence pertinent to the beneficiary's employment experience. Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience, the Vermont Service Center, on June 11, 2003, requested pertinent evidence in a Notice of Action. Consistent with the requirements of 8 C.F.R. § 204.5(l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of 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.

In addition, the Service Center requested that the petitioner (1) submit evidence that the beneficiary was registered with NSEERS, or (2) explain why the beneficiary is not required to register. If the beneficiary was not exempt but had not registered, he was instructed to contact the local Citizenship and Immigration Services (CIS) office.

In response, counsel submitted a letter, dated August 20, 2003, in which he stated that the beneficiary had tried to register for NSEERS but had been told that since his fingerprints had already been submitted he did not need to register. Counsel did not provide evidence that the beneficiary had previously registered, was exempt, or had tried to register in response to the June 11, 2003 Notice of Action, nor did he provide any evidence to support his assertion that the beneficiary had once tried to register for NSEERS.

Pertinent to the petitioner's employment experience, counsel submitted a document in Arabic and what purports to be an English translation. The purported translation states,

> This is to verifety that [redacted] Was employed b[redacted] Custom Jewelry [redacted] Was work with us as professional custom Jewelry Experienced Fabricated & repaired Jewelry Articles, Forms Model of Article from Wax or Metal, Cut Sawed, Filed and Polished Articles, soldered Pieces together, repaired Old Jewelry Following Designs or, Instructions using Hand tools and machines Such As Lathe and Drill
>
> [redacted] Working with Our Company Period of 01/10/1996 To 10/1998 AL Noor Custom Jewelry CO. Certified that is [redacted] Was Highly qualified And He Was Fourpous, Dependable and Very Will Oriental Person for His Order We give Him This Certificated. [Errors taken from the original.]

That purported translation was not accompanied by a certification that the person who translated it is qualified to translate from Arabic to English and that translation was complete and accurate. Therefore, pursuant to 8 C.F.R. § 103.2(b)(3), the purported translation is unacceptable.

On October 30, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience. The director also noted that the petitioner had submitted no evidence that the beneficiary had complied with the requirements of NSEERS.

On appeal, counsel submits an affidavit, dated November 3, 2003, from the beneficiary. In that affidavit, the beneficiary states that he went to register for NSEERS, but was told it was unnecessary because he had already provided his fingerprints. Counsel and the beneficiary urge that the beneficiary's failure to register was not willful and should be excused.

Counsel also submits a new translation of the petitioner's employment verification letter. The new translation states,

> [The beneficiary] has been employed by our company in the capacity of "professional custom jeweler" during the period from January 1996 until January 1998. He has been doing the following duties: Fabricated & repaired jewelry articles, forms model of article from wax or metal, cut sawed, filed and polished article, soldered pieces together, repaired old jewelry following designs or instructions using hand tools and machines such as lathe and drill.
>
> He has proven to be proficient and trustworthy. This certificate has been issued upon his request to be used when requested and without any liability on our part.

That translation is accompanied by the translator's certification that he or she is competent to translate from Arabic to English and that the translation is complete and accurate.

Neither of the translations includes the name of the person verifying the beneficiary's employment claim. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), set out above, states that an employment verification letter must give, among other things, the name of the trainer or employer verifying the employment. That letter, therefore, is insufficient to support the beneficiary's claim of qualifying employment.

The decision of denial also raised the issue of the beneficiary's compliance with the requirement of registration for NSEERS. In response to a CIS inquiry, counsel responded that the beneficiary had attempted to register, but had been turned away. Counsel offered no evidence of that assertion. That CIS inquiry also urged the beneficiary to register, unless he already had or was exempt.

Neither counsel nor the beneficiary claims that the beneficiary has already registered or is exempt. Neither have they provided any evidence that, pursuant to the urging of CIS, the beneficiary again attempted to register. Counsel has stated that the beneficiary is willing to register. Being willing to comply with the law, however, is no substitute for actual compliance. The beneficiary's initial failure to register might be found to be excusable. The beneficiary's continuing failure to do so is much less likely to be excused, even though counsel states that he is willing, apparently unconditionally, to do so. In view of our decision pertinent to the beneficiary's employment verification, however, this office need not further address the issue of the beneficiary's NSEERS registration compliance.

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.