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FILE: WAC-02-198-50036 Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2005

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:

SELF-REPRESENTED

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

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

The petitioner is involved in ferrous and non-ferrous investment casting. It seeks to employ the beneficiary permanently in the United States as a plant manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position and denied the petition accordingly.

On appeal, the petitioner submits a brief statement.

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 issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is January 14, 1998. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, 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).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of plant manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |                         |               |
|-----|-------------------------|---------------|
| 14. | Education               |               |
|     | Grade School            | Blank         |
|     | High School             | Blank         |
|     | College                 | Blank         |
|     | College Degree Required | None Required |
|     | Major Field of Study    | Blank         |

The applicant must also have two years of experience in the job offered in order to perform the job duties listed in Item 13, which states the following:

Directs and coordinates, through subordinate supervisory personnel, activities concerned with production of company product(s) Ferrous and Non Ferrous Investment Castings. [sic] for Commercial and Aerospace Reviews and analyzes production, quality control, maintenance, and operational reports to determine causes of nonconformity with product specifications, and operating or production problems. Develops and implements operating methods and procedures designed to eliminate operating problems and improve product quality. Revises production schedules and priorities as [sic] result of equipment failure or operating problems. Consults with engineering personnel relative to modification of machines and equipment in order to improve production and quality of products. Supervises Sandblasting Foundry, Wax inspection, wax assembly, Grinding, Straightening, Diproom, Maintenance, Auto Claving, Shipping Receiving Departments [sic]

Item 15 indicates that there are no special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he indicated that he worked for the petitioner from August 1992 to the present time in the proffered position, and prior to that as a plant manager for [REDACTED] California from January 1990 through March 1992 with job duties similar to the proffered position.

With the initial petition, the petitioner submitted an unnotarized letter from Isaias Rubio (Mr. Rubio), who stated that Accurate Mold is no longer in business, but he was employed with them as a Superintendent and can therefore verify the beneficiary's employment as a plant manager with them from January 1990 to March 1992.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on September 5, 2002. The director requested conforming to the regulatory requirements of 8 C.F.R. § 204.5(1)(3)(ii)(B).

In response to the director's request for evidence, the petitioner submitted an unnotarized declaration from Mr. Rubio, stating that he has been "duly sworn" and deposed, and providing his contact information and re-confirming the beneficiary's employment with [REDACTED] and that the business no longer exists.

Because the evidence was still insufficient, the director again requested additional evidence concerning the evidence of the beneficiary's qualifications on March 19, 2003. The director made the exact same request as the previously issued request for evidence.

In response, the petitioner submitted an unnotarized declaration from [REDACTED] the purported owner of [REDACTED] [REDACTED] who stated that the company is no longer in business and confirmed the prior employment of the beneficiary as its plant manager from January 6, 1990 through March 1992.

The director denied the petition on October 2, 2003 stating the beneficiary was "outside the United States applying for an immigrant visa as an E-33, and his visa was denied by the State Department," and determining that this information

made the experience letters and beneficiary's representations about his dates of employment with [REDACTED] inconsistent.

On appeal, the petitioner states the following: “[The beneficiary]’s imm [sic] visa case was based on father’s immigrant visa [sic] He did not qualify due to FACT HE AGED-OUT Before case Approved He never lived in Mexico during time period [sic] The letter signed by prior employer is substantive proof of EMPLOYMENT.” (Emphasis in original). The petitioner ticked a box that additional evidence and/or a brief was submitted with the form; however, the record of proceeding does not contain anything other than the aforementioned statement.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for “skilled workers,” states the following:

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.

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification” as clearly directed by the plain meaning of the regulatory provision.

Additionally, the regulation at 8 C.F.R. § 204.5(l)(3) 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.

Both letters contained in the record of proceeding in support of the beneficiary’s qualifying employment experience fail to conform to the regulatory requirements of 8 C.F.R. § 204.5(l)(3). Neither letter was on letterhead or provided a description of the training the beneficiary received at Accurate Mold. The declarations that were provided 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). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Finally, no independent corroborating evidence was provided to confirm that [REDACTED] was the owner of [REDACTED] or that the beneficiary or [REDACTED] worked for [REDACTED]. Because the petitioner failed to submit regulatory-sanctioned evidence of the beneficiary's qualifications, it should provide independent corroborating evidence to supplement its alternative forms of evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Additionally, the petitioner's statement on appeal appears to concede that the beneficiary did pursue a different immigration benefit that took him to Mexico during the timeframe he was purportedly acquiring qualifying employment experience. Although the petitioner stated that the beneficiary did not live in Mexico "during time period," which presumably means during the timeframe he was purportedly working for [REDACTED] he provides no proof to support this assertion. The correspondence between the director and the consular officer in the Department of State provides identity and case details that correlate to the beneficiary, and thus, the beneficiary must have been in Mexico for some period of time in 1991. Thus, the burden is on the petitioner to prove when the beneficiary was in the United States working for Accurate Mold. As noted above, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

Thus, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of 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.

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<sup>1</sup> No documentation such as corporate documentation showing [REDACTED]'s ownership; Accurate [REDACTED] business or tax filings or payroll records (internal or state or federal quarterly wage reports); the beneficiary's individual income tax returns, 1099 or W-2 forms, bank records or proof of cashed checks from Accurate Mold was presented.