

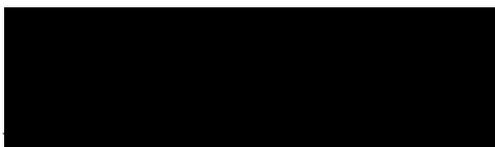
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U.S. Citizenship  
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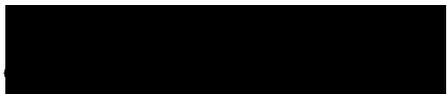
**PUBLIC COPY**



JUN 05 2006

FILE: WAC 04 154 50102 Office: CALIFORNIA SERVICE CENTER

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.

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 dismissed.

The petitioner is apparel wholesaler. It seeks to employ the beneficiary<sup>1</sup> permanently in the United States as a contract administrator. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition to perform the occupation of contract administrator. The director denied the petition accordingly.

On appeal, the counsel submits a brief.

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.

8 CFR § 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.

The petitioner must demonstrate 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).

Here, the Form ETA 750 was accepted on January 2, 2002. The proffered wage as stated on the Form ETA 750 is \$32.00 per hour (\$66,560.00 per year). The Form ETA 750 states that the position requires two years experience.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, and, U.S. federal income tax returns of petitioner.

The I-140 petition Was filed May 6, 2004. A Request for Evidence was issued by July 20, 2004 by the director. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the Director requested, *inter alia*, that evidence of the beneficiary's prior employment experience on letterhead giving the dates of employment/experience giving the name, address, and title of the person providing the information with telephone numbers, and a description of

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<sup>1</sup> He is also called [REDACTED] in the record of proceeding.

the experience of the alien (the beneficiary's titles, duties, dates of employment/experience and numbers of hours worked per week).

In response to the above request, counsel submitted copies of the following documents: the beneficiary's Form 1099- MISC statements for 2002 and 2003 from the petitioner; the beneficiary's Form 1099- MISC statements for 2002 and 2003 from SK Global America Inc.; a certificate of graduation received by the beneficiary in 1961 and his course transcripts; a credentials evaluation, a statement from Bercktowne a debit-note on the beneficiary's personal stationery; a pay statement from the petitioner to the beneficiary referencing the debit-note; approximately 198 like documents<sup>2</sup> as well as other documentation.

The director issued a notice of denial of the petition on December 8, 2004.

The petitioner has appealed the denial. Counsel specifically asserts that the director should have used the job description found in the certified Form ETA 750A, section 13, and that by comparing the job duties with the beneficiary's prior experience counsel contends that the beneficiary has the requisite experience as stated on the labor certification petition to perform the occupation of contract administrator. Counsel contends that the "Berektowne" [sic Bercktowne] employment reference<sup>3</sup> satisfies the director's prior employment verification request. Counsel asserts that whether the beneficiary worked as an independent contractor or an employee, it is the job experience that is determinative on the issue of job experience.

On appeal counsel has submitted no additional evidence.

The issue to be discussed in this case is whether or not the petitioner had established that the beneficiary has the requisite experience as stated on the labor certification petition. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification. *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, item 14, set forth the minimum education, training, and experience that an applicant must have for the position of a contract administrator.

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<sup>2</sup> Counsel has chosen to respond to the director's request by, in part, photocopying and transmitting approximately 200 similar commercial transaction documents without an exhibit table, reference sheet, or a mention in counsel's cover letter that they were enclosed, or to explain for what purpose they had been submitted. After an examination of this material, we will not speculate on the reason the documents were submitted in such quantity or what purpose they serve other than to support the director's contention that the beneficiary's most recent job experience was as a "buying agent." Counsel's reasoning for the introduction of the material is not found in the record of proceeding.

<sup>3</sup> Mentioned in more detail below.

In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education .....	
	Grade School	<u>10</u>
	High School	<u>2</u>
	College	<u>4</u>
	College Degree Required	<u>Bachelor Degree</u>
	Major Field of Study	<u>Economics</u>
	Training	<u>Not Applicable</u>
	Experience.....	
	Years\Mos.	<u>2</u>
	Related Occupation	<u>Not Applicable</u>

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15, set forth work experience (as dated December 17, 2001) that an applicant listed for the position of contract administrator.

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER



NAME OF JOB

Assistant Manager

DATE STARTED

Month - 05 [May] Year - 1961

DATE LEFT

Month - 06 [June] Year - 1972

KIND OF BUSINESS

Food Service

DESCRIBE IN DETAIL DUTIES ...

In May 1961 appointed as on-the-job-trainee for Assistant Cafeteria Manager. In November 1961 assigned to Assistant Cafeteria Manager. In May 1962 assigned as Cafeteria Manager. Resigned in July 1972 due to a partial withdraw of US troops.

NO. OF HOURS PER WEEK

40

b. NAME AND ADDRESS OF EMPLOYER

Unemployed

NAME OF JOB

Blank

DATE STARTED

Month - 06 [June] Year - 1972

DATE LEFT

Month - 11 [November] Year- 1972

KIND OF BUSINESS

Blank

DESCRIBE IN DETAIL DUTIES ...

Blank

NO. OF HOURS PER WEEK

Blank

c. NAME AND ADDRESS OF EMPLOYER

Lumber Business, Seoul Korea

NAME OF JOB

Self Employed

DATE STARTED

Month – 11 [November]Year - 1972

DATE LEFT

Month – 01 [January] - 1972

KIND OF BUSINESS

Lumber Supplier

DESCRIBE IN DETAIL DUTIES ...

Supply various company [sic] with forest products

NO. OF HOURS PER WEEK

40+

d. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Manager

DATE STARTED

Month – 02 [February] Year - 1974

DATE LEFT

Month – 09 [September] - 1985

KIND OF BUSINESS

Buying Agent

DESCRIBE IN DETAIL DUTIES ...

Market researching, price fixing, quality control, monitoring of on-line shipment.

NO. OF HOURS PER WEEK

44

e. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Owner

DATE STARTED

Month – 10 [October] Year - 1985

DATE LEFT

Month – 09 [September] - 1994

KIND OF BUSINESS

Buying Agent

DESCRIBE IN DETAIL DUTIES ...

Market researching, price fixing, quality control, monitoring of on-line shipment.

NO. OF HOURS PER WEEK

40

f. NAME AND ADDRESS OF EMPLOYER

Unemployed

NAME OF JOB

Blank

DATE STARTED

Month – 10 [October] Year - 1994

DATE LEFT

Month – 01 [January] - 1995

KIND OF BUSINESS

Blank

DESCRIBE IN DETAIL DUTIES ...

Blank

NO. OF HOURS PER WEEK

Blank

g. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB

Owner

DATE STARTED

Month – 01 [January] Year - 1995

DATE LEFT

Present {i.e. December 17, 2001]

KIND OF BUSINESS

Buying Agent

DESCRIBE IN DETAIL DUTIES ...

Set up CK International Los Angeles and work as a buying agent for Berktowne [sic] of California, 1600 Broadway, Los Angeles, California, ....

NO. OF HOURS PER WEEK

40+

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, item 13, sets forth the duties to be performed that an applicant must do for the position of a contract administrator:

Direct activities concerned with contracts for purchase and import of apparel from overseas. Examine contract performance requirements, delivery schedules and estimates for shipping and finance costs. Prepare quotations and exhibits as required. Review quotes from competitors to determine acceptable parameters for negotiations with customers. Request or approve amendments to or extensions of contracts according to international conditions. Coordinate sales and shipping departments and act as liaison between company and overseas suppliers.

In this case the job verification statement, specifically a statement [REDACTED] dated September 20, 1998 submitted with the petition to prove the beneficiary's work experience as contract administrator stated that the beneficiary was a buying agent for merchandise import from Korea. Nowhere in the document is there the mention of the job title "contract administrator." Further, as mentioned, since 8 CFR § 204.5(1)(3)(ii) states, in pertinent part "... any requirements of training or experience for skilled 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. The "Bercktowne" is neither an employer nor

a trainer and according to the certified Form ETA 750B, section "g" is one of several clients that utilized the beneficiary's services as a "buying agent." According to the September 20, 1998 letter submitted [REDACTED] executive vice president [REDACTED] the beneficiary's duties were as buying agent involved with the company's introduction of "new styles and fabrics" and conducting follow-up on all samples and quality control for production and shipments. These duties are markedly different from those recited above in section 13 of the labor certification.

Although requested by the director, to submit a letter on letterhead giving the dates of employment/experience giving the name, address, and title with telephone numbers, and a description of the experience of the alien, none was submitted. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The problem that arises in this case is the lack of corroborative employment information provided by the petitioner, and, the lack of credible evidence of experience in the occupation of contract administrator from prior employers. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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." *Matter of Ho*, 19 I&N Dec. at 591-592 also 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."

Counsel specifically asserts that the director should have used the job description found in the certified Form ETA 750A, section 13, and that by comparing the job duties with the beneficiary's prior experience, counsel contends that the beneficiary has the requisite experience as stated on the labor certification petition to perform the occupation of contract administrator. However, the self described occupation that the beneficiary performed for Bercktowne and others stated in the ETA 750 Part B, section "g" was buying agent retained as an independent contractor to work with the companies mentioned. A review of all the work experience the beneficiary states on the labor certification does not mention contract administrator. Counsel draws attention to the job description stated in ETA Part A section 13 for contract administrator. The position is for an employee, not an outside agent, to direct activities, from within the company to do, among other things, coordinate the sales and shipping departments, review quotes, examine contract performance be involved with contract and their amendments. An objective examination of the beneficiary's prior employment experience does not demonstrate that he ever worked in a contract administrator position, nor does the a statement from his client "Bercktowne" dated September 20, 1998, state that he was engaged for that purchase.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner has not met that burden.

**ORDER:** The petition is dismissed.