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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 08 2006

WAC 03 208 54262

IN RE: Petitioner:
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.

Robert P. Wiemann, Director
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 sustained.

The petitioner is a textile manufacturing and knitting company. It seeks to employ the beneficiary permanently in the United States as a knitting supervisor. 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. The director denied the petition accordingly.

On appeal, the counsel submits additional evidence.

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 August 2, 1999. The proffered wage as stated on the Form ETA 750 is $3,709.94 per month. 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 with two amendments and a supplement; income tax returns of petitioner; copies of documentation concerning the beneficiary's qualifications, specifically a "Certificate of Employment" from Dong-Kuk Knitting Co., Ltd. dated March 5, 1999 as well as other documentation.

The I-140 petition was filed July 8, 2003. A Request for Evidence was issued by August 16, 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 foreign employment experience as stated on the Form ETA 750B be in the form of letters 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 (i.e. the beneficiary's title, duties and dates of employment). The

director stated in a note to the above: "Submit the beneficiary's previous pay stubs, contracts, wage statements, and tax documents to corroborate previous employment and experience."

In response to the above request counsel submitted, *inter alia,* an explanatory letter, and a certificate of employment from the Dong-Kuk Knitting Co., Ltd. dated October 8, 2004.

The director issued a notice of denial of the petition on December 2, 2004.

The petitioner has appealed the denial. Counsel specifically asserts that the additional information requested from the beneficiary which are tax records is not a requirement of "8 C.F.R. 204.5(l)(3); that such records are protected by the rights of privacy;" and since a letter has been supplied by the past employer, the regulatory burden to submit evidence has been met.

On appeal counsel has submitted a Korean language document and an English translation of that document. Counsel has not submitted a brief to explain his contentions but only asserts that the additional information requested from the beneficiary (which are tax records) is not a requirement of "8 C.F.R. 204.5(l)(3)", or that that such records are protected by the rights of privacy."[1]

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 knitting supervisor.

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

[1] The director had requested corroborating evidence that the beneficiary was employed for over six years with the Dong-Kuk Knitting Co., Ltd. On appeal, counsel submitted a prepared statement by the beneficiary that stated that he requested tax records from that employer that corroborated the statements above mentioned, but the "tax office" destroyed tax records beyond five years.

College Degree Required	Blank
Major Field of Study	Blank
Training	Blank
Experience.....	
Years\Mos.	2

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15, set forth work experience (dated July 27, 1999) that an applicant listed for the position of knitting supervisor.

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER
[redacted]
NAME OF JOB
Knitting Supervisor
DATE STARTED
Month – 05 [May] Year - 1991
DATE LEFT
Month – 09 [September] Year - 1997
KIND OF BUSINESS
Knitting Production Company
DESCRIBE IN DETAIL DUTIES ...
Supervised and coordinated activities of workers engaged in textile knit production, scheduled work assignments, recorded and maintained production data/reports
NO. OF HOURS PER WEEK
40

b. NAME AND ADDRESS OF EMPLOYER
None
NAME OF JOB
Unemployed
DATE STARTED
Month – 09 [September] Year - 1997
DATE LEFT
Month – 08 [August] Year - 1999
KIND OF BUSINESS
N/A
DESCRIBE IN DETAIL DUTIES ...
N/A
NO. OF HOURS PER WEEK
N/A

In this case the job verification statement, specifically a Certificate of Employment from Dong-Kun Knitting Co., dated March 5, 1999 submitted with the petition to prove the beneficiary's work experience as a Knitting Supervisor stated "Position Knitting Supervisor (Production)." The certificate stated the period of employment to be May 1, 1991 to September 30, 1997 without telephone numbers, and a description of the experience of the alien (i.e. the beneficiary's duties), and the petitioner did not submit the beneficiary's previous pay stubs, contracts, wage statements, and tax documents to corroborate previous employment and experience. There is no

supporting statement of the averments such as found in the ETA 750B (c) section above, of the beneficiary's duties, or indication of a supervisor.

In response to the request for evidence, the petitioner submitted a second Certificate of Employment from Dong-Kuk Knitting Co., dated October 8, 2004 submitted with the petition to prove the beneficiary's work experience as a Knitting Supervisor entitled "Position Knitting Supervisor (Production)." Under that heading was written, "... supervised production workers, managed production assignments, and coordinated all aspects of production workers." Also added were "Hours Worked/Week: 50 Hours." Otherwise, the information stated reflects that stated on Form ETA 750 Part B. Both job verification statements from Dong-Kuk Knitting Co. are consistent with the same information as found on the certified Alien Employment Application.

However, the beneficiary said that he was provided a record called "Earned Income Tax Withholding Receipt" that he has submitted on appeal. Further the company mentioned on the above-mentioned document is Tong-kuk Corporation, not the Dong-Kuk Knitting Co. but their address is the same, 60-1. 3-Ka, Choongmoo-Ro, Joong-Ku, Seoul Korea. The weight of the evidence submitted, primarily the two statements from Dong-Kuk Knitting Co./ Tong-kuk Corporation, with the tax information indicates that the beneficiary did in fact work for the employer for at least two years in the position of Knitting Supervisor.

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 established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner has met that burden.

ORDER: The petition is sustained.