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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

B6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 05 2006
WAC 97 108 53144

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Other Worker pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(iii)

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, Chief
Administrative Appeals Office

DISCUSSION: the Director, California Service Center, initially approved the employment-based preference visa petition. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed and the petition will be denied.

Section 205 of 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 Estime*, . . . 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 unrebutted, 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 Estime*, 19 I&N 450 (BIA 1987)).

In order to properly revoke 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 December 14, 2005, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that the I-140 petition was approved in error because an overseas investigation in Ormoc City, the Philippines, could not confirm the beneficiary's claimed previous work experience as a caregiver.

The director referenced a statement written by the American Embassy investigator based on an on-site visit to the [redacted] in Ormoc City, The Philippines. The director stated that the embassy statement indicated that the embassy investigator showed a xeroxed copy of an employment verification for household domestic worker document to [redacted], owner and head nurse of the clinic. The director stated that after she read the contents of the employment verification document, Mrs. [redacted] claimed that she could not remember an employee by the beneficiary's name and that she had never recommended any

caregiver as an employee of the [redacted]. The director stated that [redacted] also stated that she only signs certifications and recommends employees who worked with the clinic as nurses, not as caregivers or domestic workers. The director stated that an addendum to the employment certification was signed by Mrs. [redacted] on April 27, 2003 and witnessed by the U.S. embassy investigator that stated Mrs. [redacted] did not remember any employee by the name of the beneficiary or had never recommended a caregiver as an employee. 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.

In response to the NOIR counsel stated that there were glaring deficiencies in the NOIR. Counsel stated that the field investigation was not conducted until over nine years had passed since the employment verification document was signed. Counsel pointed out that the [redacted] where the beneficiary's claimed employment took place is in the same city and address as indicated on the original ETA 750 signed on August 30, 1994. Counsel states that Citizenship and Immigration Services (CIS) itself established that the medical clinic does actually exist and performs functions that the beneficiary has claimed to perform.

Counsel then stated that the field investigator made two very obvious mistakes in his report. With regard to Mrs. [redacted] claiming that she cannot remember an employee by the name of [redacted] and has never recommended any caregiver as an employee, counsel stated that the employment verification is only proof that the beneficiary did work as the medical clinic and is not a recommendation to any other employer. Counsel also noted that in the addendum to the employment certification document signed by Mrs. [redacted] it does not state that Mrs. [redacted] did not sign the employment verification document. Counsel asserted that the addendum only stated that Mrs [redacted] did not remember an employee with the beneficiary's name and that she never recommends a caregiver as an employee.

Counsel states that Mrs. [redacted] therefore did not state that she did not recognize her signature or that her signature on the employment verification document was forged. Counsel stated that the employment verification document was notarized and that CIS must give weight to the notarized signature, unless CIS can show that the signature is forged. Counsel stated that the field investigator on two different occasions gave the employment verification to Mrs. [redacted] to review and in both instances she stated that she could not remember the name of the individual. Counsel asks whether it is so hard to believe that a person cannot remember an employee after over nine years have gone by. Counsel stated that there is no indication of the size of the medical clinic or of how many employees it has or has had in the past nine years. Counsel stated that CIS cannot summarily deny the existence of the notarized signature of the affiant because the affiant cannot remember the name from so long ago. Counsel stated that all the investigator has accomplished is to legally establish that the person who signed an employment verification document some nine years ago, did not remember the beneficiary's name. Furthermore counsel asserted that the employment verification for household domestic worker was never presented as a recommendation for employment as the field investigator suggests. Counsel stated the employment verification document was rather offered to establish prior work history with the background stipulated on the ETA 750. Counsel reiterated that Mrs. [redacted] never stated that the beneficiary did not work at the medical clinic, bur rather that she did not remember her name. Counsel stated that the beneficiary's former employer never stated that she did not sign the employment verification document or did not recognize her signature. Counsel concluded by stating that unless there is something further that the investigator and CIS have not alleged, there is nothing in the allegations that should cause the previously approved I-140 petition to be revoked.

Counsel also submitted an unsworn affidavit signed by the beneficiary that stated she was employed from December 1989 to May 1992 at the [redacted] at Ormoc City, Philippines and that during the

beneficiary's employment at the clinic she cared for sick patients, cleaned the clinic, prepared and served meals and snacks, and assisted persons with walkers, canes and wheelchairs. The beneficiary stated that she knew that Mrs. [redacted] was the person who needed to certify her work history and that she requested the clinic verify her employment and it was done through a notary which was required by the clinic. The beneficiary affirmed that the employment verification for household domestic workers is a valid document signed by Mrs. [redacted]

On February 8, 2006, the director revoked the petition. The director reviewed counsel's comments submitted in response to the NOIR. The director then cited to a sworn statement conducted under oath in connection with the beneficiary's interview for adjustment of status on December 20, 2002 in Fresno, California.[1]

The narrative record of the first sworn statement stated the following:

> My prior experience working out of my own home consists of: In the Philipines (sic) I was a home economics teacher (and handicrafts) in Ormoc City. I taught there for 10 years. In [redacted] I began in 1957 and worked for 2 years. Then I got married 1959 and stopped working. I began working there again in 1962 until 1968. I stopped working because I had too many children.
>
> I did not work out of the home at all until I came to the U.S. in 1992. That is the only work I have ever done, the only employment I have ever done.
>
> When I came to the U.S. I came to live with my sister [redacted] and my brother in law [redacted]

The second sworn statement stated the following:

> When I was 21 years old (approximately 1954) I worked at a clinic in Ormoc City, Philipines. The name of the clinic: [redacted] I helped in cleaning the people. That was the only time ever in my life I worked in that kind of work. I did that for 1 one year to get a little bit money.(sic)
>
> That employment and the work at [redacted] is all I did in the Philipines.

The petitioner, the brother in law of the beneficiary, and the beneficiary signed both sworn statements.

The director then noted that the employment verification letter submitted to the record with the initial petition, **stated the beneficiary was employed as a household domestic worker at** [redacted] from December 1989 to May 1992. The director also noted that although the sworn statement taken in December 2002 claimed the beneficiary was 21 years old when she worked at the clinic, the employment verification letter submitted with the petition stated that the beneficiary began her household domestic duties some 35 years later.

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[1] As established by the Form I-648, Memorandum Record of Interview made in Examinations, the interview was conducted in English, with no interpreter present. The record reflects two sworn statements signed by both the petitioner, the beneficiary's brother-in-law, and the beneficiary.

The director also stated the beneficiary claimed she helped to clean people while employed at the clinic, but that the beneficiary in the instant position would be required to perform the following duties, as described on the ETA 750:

> Clean house (22 rooms, 6 bathrooms); assist twenty-give (25) frail elderly residents with Alzheimer's disease, dementia, heart attack and stroke victims, cancer and kidney disease, diabetic and incontinent, assist with bed bath, shower, sponge bath, tub bath, ambulating, exercising, shaving, hair care, assist with medications, provide mouth care, bowel care, skin care, personal hygiene (clean the body of dirt, feces, urine) vacuum, wash dishes, wash-iron-dry clothes and linens, hand wash soft clothes, straighten rooms, change diapers every four hours; change urine bag every week, clean up mess and make beds, prepare and serve meals, snacks, help those with walkers and canes and wheel-chair bound residents with their needs.

The director noted that the petitioner's I140 indicated that the petitioner had five current employees to perform the stated duties.

The director then noted that the affidavit signed by the beneficiary dated January 2006 in which the beneficiary stated she worked at the [redacted] from 1989 to 1992, is contradictory to her sworn statement before a CIS official in December 2002.

The director noted counsel's comments submitted in response to the NOIR. The director noted counsel stated that the investigation did not establish that Mrs. [redacted] did not sign the employment verification document, but rather that she did not remember an employee by the beneficiary's name and that she never recommends a caregiver as an employee. The director appears to state that Mrs [redacted] s statement could also be construed to mean that the document was not prepared or signed by Mrs. [redacted] The director then stated that the petitioner had not submitted sufficient evident to rebut the NOIR and had not overcome the grounds for revocation.

On appeal, counsel states on the Form I-290B that CIS misapplied the facts with regard to the revocation and that CIS attempts to prove a fact without evidence. Counsel also states that CIS failed to meet its burden of proof with regard to the revocation. In a subsequent brief, counsel states that the director failed to discuss the fact that Mrs. [redacted] never said that she did not sign the employment verification document, and also that she never stated that the beneficiary never worked for her.

Counsel also states that the director failed to discuss the fact that nine years had lapsed since the signing of ht notarized employment verification form and the questioning of the contents of the document. Counsel states that Mrs. [redacted] could have told the investigator that the signature was not hers or that she never had her signature notarized by the notary; however, she did make either statement. Counsel states that Mrs. [redacted] simply stated she could not remember signing the document[2]. Counsel also takes exception to the director's reference to the fact that the employment verification document might also not been prepared or

[2] The record and the investigative report does not reflect any such statement by Mrs. [redacted]

signed by Mrs. [redacted] since she stated that she never recommended a caregiver as an employee. Counsel states that if the director wanted to prove that Mrs. [redacted] did not sign the notarized document, all they had to do was ask her. Counsel states that rather than doing this, the director says that since Mrs. [redacted] said that she couldn't remember the employee, it could mean that Mrs. [redacted] did not sign the document.

Counsel then asserts that the director made a mistake by attempting to turn the beneficiary's notarized work employment verification document into something that is not. Counsel states that the document is not a statement that Mrs. [redacted] never signed the document, nor is it a letter of recommendation. Counsel states that nowhere on the document does it state that it is a letter of recommendation. Counsel states that the document is just proof of prior employment, as stated on the document.

Counsel then states that the director in his NOIR brings up a new argument that was not discussed or addressed previously. Counsel states that the director alleges that there are signed sworn statements. Counsel states that these statements were never provided to the petitioner or to the beneficiary for review and response. Counsel states that the narrative was never signed by the beneficiary, and cannot be used against the petitioner or beneficiary as the director is attempting to do. Counsel states that there is no proof of when the narrative was completed or if the examiner was able to understand completely the broken English being spoken by the beneficiary at the time.

Counsel then asserts that the narrative does confirm that the beneficiary did work at the Gatchalian Medical Clinic as claimed although the dates may have been wrong. Counsel states that the wrong dates may be due to the examiner's misunderstanding of the answer or the confusion on the part of the beneficiary as to the nature of the question. Counsel states that the only signed statement is the one where the beneficiary stated that she worked for the clinic. Counsel then states that it is clear that the CIS failed to give the beneficiary a copy of any statements that were allegedly made by her. Counsel also states that the director's decision is unclear, at best, in its logic and the use of the admitted facts of the petition. Counsel submits an affidavit from the beneficiary. In her unsworn affidavit, the beneficiary states the following:

> I remember being called to the Immigration Office for an interview on my immigration application that were filed with them.
>
> I also remember that I was extremely nervous of going into a governmental office. We hear many rumors of government offices being very unfair to persons and this has remained with me during my childhood thru adulthood.
>
> I do not understand or speak English very good. I read even worse than I speak and understand the language.
>
> I remember being asked questions and talking with the officer and I remember being given a paper and told to sign my name at a certain place. I was never read what the paper said nor could I read it by myself.

> The petitioner was in the office at the same time and when I began to ask him questions in my native language (sic) I was told to stop talking by the [CIS] officer and speak English. I became even more nervous during the interview process.
>
> I remember telling the officer that I did work at the [redacted] in the Philippines. I do not remember ever saying I was 21 years old at the time. This is not true and I would never haed [sic] said that , if I had been allowed to have the document interpreted to me at the time.
>
> With the above in mind I hereby set my hand to this affidavit [sic] this _____[3] day of February knowing full well the serious consequences that can arise from a false swearing.

Upon review of the record, the ETA 750 submitted to the record states in Part A that the minimum requirements for the position is three months of work experience as a household domestic worker/practical nurse. The beneficiary indicated on the Form ETA 750 Part B, that she worked full time from July 1992 to the time of signing the ETA 750, namely July 8, 1994 as a household domestic/care giver for the petitioner. The beneficiary also indicated that she had worked for [redacted] Ormoc City, Leyte, Philippines from December 1989 to May 1992, also as a household domestic care giver. The petitioner did not submit a letter of work verification for the beneficiary's employment from July 1992 to July 8, 1994. The beneficiary's experience, if documented, with the petitioner totals two years of work experience as a caregiver prior to the 1994 priority date. The beneficiary's claimed work experience with [redacted] totals two and a half years.

With regard to the director's notice of intent to revoke the petition, the AAO notes that the director did not refer to the contradictory statements contained in the statements made by the beneficiary in her 2002 adjustment of status interview, but rather relied on the findings of an investigation conducted in the Philippines. The memorandum of investigation, dated May 6, 2003, stated that Mrs [redacted] disowned the subject and the work employment verification certification purportedly signed by Mrs. [redacted]. However, an examination of the certification and Mrs. [redacted] statement on the certification indicates Mrs. [redacted] merely stated that she "did not remember any employee by the name of and that she never recommended a caregiver as an employee." Thus, the embassy investigative report does not support the conclusions of the director that therefore the beneficiary did not work for the [redacted] at some time.[4]

Thus, the investigative report is viewed as conclusory and immaterial in part, as the statements do not establish that the beneficiary never worked at the clinic or that either Mrs. [redacted] or someone else never did work verifications for the clinic's domestic workers/caregivers. *See Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

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[3] No specific date was identified in the affidavit.

[4] It is noted that if the beneficiary did in fact work for the [redacted] when she was 21 years, it could very well be that she would have used her maiden name, rather than her married name.

Nevertheless the record does contain two sworn statements, handwritten by the interviewing officer, with regard to the beneficiary's work experience. The two statements clearly state at the bottom the following "I have read or have had read to me the foregoing statement and I swear it is a true and complete record of my interview to the best of my knowledge and belief."[5]

While the three pages of notes do not contain any attempt on the part of the interviewing officer to clarify what the beneficiary stated on the statements and what she had previously stated on her ETA 750, counsel has had the opportunity to clarify these contradictory statements on appeal. Although the director did not clearly state the reasons for the notice of intent to revoke the instant petition, namely, the beneficiary's contradictory statements made at her adjustment of status interview, he did provide a complete verbatim record of the beneficiary's testimony as written by the examinations officer, in his revocation decision. Thus, counsel and the beneficiary were provided an opportunity to clarify these contradictory statements on appeal.

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. With regard to her employment as a domestic household worker/caregiver in the Philippines, neither counsel nor the petitioner have presented any more probative evidence of the beneficiary's employment with [redacted] from December 1989 to May 1992. The fact that the signer of the letter could not remember the beneficiary is significant enough to raise a doubt. Furthermore, neither counsel nor the petitioner have provided any clarification for the contradictory statements made at the beneficiary's adjustment of status interview. Counsel's assertion that the beneficiary did work for the clinic but simply forgot the dates of employment is not persuasive. As correctly noted by the director, the difference in employment claimed in the beneficiary's adjustment of status interview and her statement on the ETA 750 is 35 years.

The beneficiary's explanation that she never stated she had worked for [redacted] when she was 21 years old is not viewed as sufficient to clarify the beneficiary's contradictory statements. The additional statements made by the beneficiary at her adjustment of status interview that she never worked out of the home since she stopped working in 1968 until her arrival in the United States in 1992 remain unclarified. If this statement is correct, that the beneficiary did not work for [redacted] from 1989 to 1992.

In sum, the director has good and sufficient cause to revoke the instant petition, 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 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). With regard to the investigation conducted in the Philippines, the investigation report does not appear to have sufficient weight to be the basis of the revocation

[5] It is noted that contrary to counsel's assertion, both sworn statements are signed by both the beneficiary and the petitioner, her brother-in-law.

of the petition. While the areas of information explored by the investigator are material to the grounds for eligibility for the visa classification, namely, the beneficiary's previous work experience, the report itself is conclusory in nature. For example, because Mrs. [redacted] stated that she did not remember an employee with the beneficiary's name, the investigator concluded that the beneficiary had not worked for the [redacted] If Mrs. [redacted] had been asked to verify the validity of the employment verification document or of her signature, or had been asked to check any employee records for the period of December 1989 to May 1992, and had then stated that her signature was not correct, or her employment records showed no one by the beneficiary's name, the investigator's report and conclusions would have had much more probative weight. *Matter of Arias.*

Nevertheless the inability of counsel and the petitioner to clarify the beneficiary's contradictory statements at her adjustment of status interview with regard to her previous employment with the statements made on her Form ETA 750, are sufficient to deny the instant petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) 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." Therefore the director's decision with regard to the revocation of the instant petition is affirmed, and the petition is revoked.

With regard to her claimed previous employment with the petitioner, as stated previously, the beneficiary indicated that she had worked for the petitioner for two years at the time the ETA 750 petition was filed. The record also reflects that the beneficiary received her first aid course certification initially in 1992, which was another requirements outlined on the ETA 750. When the petitioner was asked for verification of the beneficiary's previous employment in the field of domestic household worker/caregiver in a request for further evidence dated June 6, 2002, the petitioner submitted the work verification letter from [redacted] However, the petitioner did not submit any evidence as to the beneficiary's employment with the petitioner prior to the 1994 priority date. Furthermore, under 20 C.F.R. 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). Thus, in the instant petition, since the petitioner is owned by the sister and brother-in-law of the beneficiary, evidentiary documentation of the beneficiary's employment in the proffered position prior to the priority date would have to include actual W-2 documents, or paychecks given to the beneficiary to establish the requisite three months of prior work experience.
The director's decision to revoke the petition, based on the petitioner's inability to establish the beneficiary's three months of requisite work experience, shall stand, and the petition will be revoked. As stated previously, the investigative report from the Philippines by itself is not viewed as sufficient to support the revocation of the instant petition.

ORDER: The appeal is dismissed. The petition is revoked.