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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 26 2006**

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IN RE:

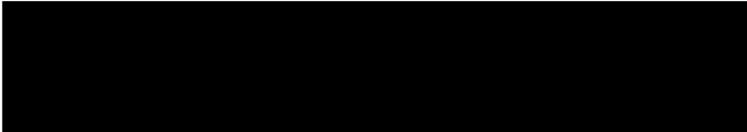
Petitioner:



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 Director, California Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office on appeal. The matter will be remanded.

The petitioner is an electrical contractor. It seeks to employ the beneficiary permanently in the United States as an electrician. 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.

On appeal, counsel submits a statement and 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 or seasonal nature, for which qualified workers are unavailable in the United States.

The regulation at 8 C.F.R. § 204.5(1)(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.

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 April 30, 2001. The labor certification states that the position requires three years of college with the major field of study "mechanic electrician," two years of experience as an electrician, and MSHA training, network wiring certificate, forklift safety training, variable frequency drives, (sic) basic Modicon PCL training, and intermediate Modicon PLC training.

The beneficiary named on the Form ETA 750 and the Form I-140 petition is [REDACTED]. The Form I-140 petition gives the beneficiary's address as [REDACTED].¹ On the Form ETA

¹ In a collateral matter the beneficiary submitted a Form I-485 Application to Adjust Status in which he again gave the

750, Part B the beneficiary stated that he had worked from December 1995 to March 2000 as an electrician for Moltan Company of Fernley, Nevada. The beneficiary claimed no other electrical experience on that form. The Form ETA 750 also states that the beneficiary studied "Professional Tech. Electrician" at Conalep in Chihuahua, Mexico from September 1986 to November 1989, for which he received a degree, though no evidence was provided to support that assertion.

The petitioner submitted a certificate in Spanish and an English translation stating that the beneficiary, [REDACTED], received certification as an electrician on March 20, 1992.

Counsel also submitted documentation pertinent to a [REDACTED]. Those documents are (1) a letter dated September 18, 2000 stating that [REDACTED] was awarded a Network Wiring Certificate valid from August 9, 2000 to August 9, 2002,² (2) a certificate showing that [REDACTED] completed Forklift Safety Training and a certificate of training dated February 20, 2001, (3) a certificate showing that [REDACTED] completed a refresher course in metal and nonmetal surface construction given by the U.S. Department of Labor Mine Safety and Health Administration (MSHA), (4) certificates showing that [REDACTED] completed Course I: Basic Modicon PLC Training on October 16, 1997, and Course II: Intermediate Modicon PLC Training on June 18, 1998, which courses are given by the Applied Industrial Controls Corporation, (5) a certificate dated March 25, 1999 stating that [REDACTED] completed 32 hours of Toshiba equipment training pertinent to certain variable frequency drives, (6) a letter dated May 1, 2000 from the general manager of Moltan Company stating that [REDACTED] worked for it from December 6, 1995 through May 1, 2000,³ (7) another letter from someone else at Moltan also dated May 1, 2000 stating that the beneficiary worked for that company from December 6, 1995 to May 5, 2000.⁴

Because the evidence submitted did not demonstrate that the beneficiary meets the various requirements on the Form ETA 750 the California Service Center, on October 27, 2004, requested pertinent evidence. The service center requested that the petitioner demonstrate that the beneficiary has the experience required by the approved labor petition. 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.

Fallon, Nevada address as his own. A G-325 Biographic Information form states that the beneficiary has lived there since September 1995.

² That letter is on the letterhead of Pass & Seymour/LeGrand and is signed by the director of DataCom.

³ The date the beneficiary stated in the Form ETA 750B he left his employment for Moltan differs from the date the letter states that [REDACTED] ceased to work for that company.

⁴ Not only does the date given as the end date of the beneficiary's employment with Moltan differ from that claimed by the beneficiary in the Form ETA 750 and differ from the end date stated on the other May 1, 2000 letter, it purports to verify employment until May 1, 2000, a date after the date of the letter. This office believes, however, that this inconsistency was the result of a typographical error.

The service center also specifically requested the beneficiary's 2000, 2001, and 2002 W-2 forms, an employment verification letter from the petitioner, and evidence sufficient to demonstrate that [REDACTED] and the beneficiary, [REDACTED] are the same person.

In response, counsel submitted (1) 2000, 2001, 2002, and 2003 W-2 forms, (2) an employment verification letter dated November 29, 2004 from the petitioner, (3) the petitioner's Nevada quarterly wage reports for the last quarter of 2003 and the first three quarters of 2004, (4) an additional employment verification letter dated December 20, 2004 from Moltan Company, (5) a photocopy of an Employment Authorization Card (EAC) of the beneficiary, [REDACTED] (6) a photocopy of [REDACTED] Nevada Driver License, (7) a copy of the social security card of the beneficiary, [REDACTED] and (7) a letter dated January 6, 2005 from counsel's office.

The W-2 forms submitted show that [REDACTED] worked for the petitioner during 2000, 2001, 2002, and 2003. The address given for [REDACTED] on those W-2 forms is [REDACTED] Fallon, Nevada.

The petitioner's employment verification letter provided states that the beneficiary began employment with the petitioner on June 19, 2000 and continued to work for the petitioner on the date of that letter, November 29, 2004, and that his job title is electrician. A form employment verification letter that accompanied that letter stated the same information.

The petitioner's quarterly wage reports show that [REDACTED] worked for the petitioner during the last quarter of 2003 using the social security number [REDACTED] and the beneficiary, [REDACTED] worked for the petitioner during the first, second, and third quarters of 2004 using the social security number [REDACTED]

The employment verification letter from Moltan Company states that [REDACTED] worked for that company from December 6, 1995 to May 3, 2000. It states that [REDACTED] started in the packaging department and transferred to the electrical department on June 24, 1996, where he worked full-time. His job title is not stated.

The photographs on the photocopied EAD, [REDACTED], and the Nevada driver license of [REDACTED] appear to be of the same person. The address given on [REDACTED]'s driver license is [REDACTED], Reno, Nevada, which is the beneficiary's address. The beneficiary's social security card shows that his social security number is [REDACTED]

The letter from counsel's office states that the driver license and the EAD show that the beneficiary and Jesus Campos are the same person.

On February 7, 2005, the director issued a decision in this matter. The director found suspicious the assertion that the beneficiary had changed the name he used in working for the petitioner during the course of his employment. The director also did not find the similarity between the photograph of the beneficiary on his EAD and that of [REDACTED] on the driver license to be sufficient to demonstrate that the beneficiary and [REDACTED]

⁵ The beneficiary's EAD shows that it was issued during the first quarter of 2004.

Campos are the same person. The director denied the petition, finding that the evidence submitted, therefore, did not demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, counsel submitted a Form I-290B appeal, an affidavit dated February 17, 2005 from an office manager at Moltan Company, and an affidavit dated February 19, 2005 from a plant manager at Moltan Company.

The February 17, 2005 affidavit states that the office manager at Moltan Company was aware that the beneficiary, [REDACTED], also worked under the name of [REDACTED]. The affidavit further states that [REDACTED] and [REDACTED] are the same person.

The plant manager's February 19, 2005 affidavit attests to essentially the same facts as the February 17, 2005 affidavit from the petitioner's office manager.

In the appeal counsel asserted that the evidence previously submitted, together with the affidavits submitted on appeal, demonstrate that the beneficiary, [REDACTED] is the same person as [REDACTED].

The person identified as [REDACTED] on the EAD and the person identified as [REDACTED] on the driver license appear to be the same person.⁶ Although subjective, the very strong resemblance appears, in itself, to be sufficient evidence that the beneficiary and [REDACTED] are the same person. In addition, the license shows that [REDACTED] listed the same address on his driver license as the beneficiary listed on the Form I-140 petition.

The petitioner has employed a worker identified as [REDACTED]. At other times the petitioner has employed a worker identified as [REDACTED]. The petitioner does not appear to have employed both simultaneously. The petitioner stated on the Form I-140 petition that it employed 11 people. The quarterly wage reports show similar numbers of employees. In a company of that size the office manager and the plant manager are likely to recognize the other employees.

The office manager and the plant manager should know, of their own knowledge, whether the person who worked for the petitioner under the name [REDACTED] and the person who worked as [REDACTED] are the same person. In the affidavits the office manager and plant manager both stated, under oath, that [REDACTED] and [REDACTED] are, in fact, the same person. Therefore, this office finds that the preponderance of the evidence demonstrates that the beneficiary, [REDACTED] has worked for the beneficiary under the name [REDACTED].

⁶ This statement assumes that the photographs on the EAD and the driver license have not been altered. This possibility is sufficient reason for the director to require the petitioner to present the originals of both documents, if he so desires.

⁷ This office does not find the beneficiary's switching from using an assumed name to using his real name around the beginning of 2004 to be overly suspicious, especially in light of the fact that his EAD was issued to him on February 10, 2004. The beneficiary appears to have used his legal name beginning when he became able to work legally in the United States.

Given that the beneficiary's use of that name has been demonstrated, the evidence also convinces this office that the beneficiary worked for more than four years for Moltan Company under the name [REDACTED]. As Moltan is apparently an electrical contractor and the beneficiary became a licensed electrician during 1992, this office finds credible the assertion that he worked in the electrical department beginning on June 24, 1996 and through early May 2000. This office finds that the beneficiary worked as an electrician from that date, notwithstanding that the employment verification letters did not explicitly so state. The evidence also shows that the beneficiary worked for an additional ten months for the petitioner before the priority date. The petitioner has amply demonstrated that the beneficiary has more than four years of experience in the proffered position, whereas the proffered position requires only two. The petitioner has shown that the beneficiary has the requisite employment experience, thus overcoming the sole basis upon which the petition was denied.

Further, this office finds that the evidence of [REDACTED] acquisition of various certificates is sufficient to show that the beneficiary, in fact, earned and received those certificates. The record contains evidence showing that the beneficiary has the requisite MSHA training, network wiring certificate, forklift safety training, variable frequency drives certification, and basic and intermediate Modicon PLC training. The beneficiary therefore has the other special requirements listed on the Form ETA 750.

The record suggests an additional issue that was not addressed in the decision of denial. The Form I-140 states that the proffered position requires, in addition to two years of experience and the various certifications, three years of college study with the major field of study of "Mechanic Electrician." The record contains no evidence to demonstrate that the beneficiary has that college education.

The matter will be remanded so that the director may, if he wishes, request that the petitioner provide evidence of this additional qualification for the proffered position. The director is free to request any evidence pertinent to that or any other requirements of the instant visa category.

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 matter is remanded for further proceedings consistent with this decision.