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U.S. Citizenship
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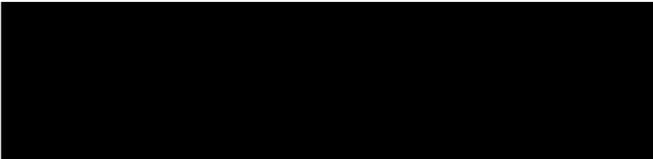
Office: CALIFORNIA SERVICE CENTER

Date: SEP 27 2006

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:



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DISCUSSION: The preference visa petition approval was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 leather apparel importer/wholesaler. It seeks to employ the beneficiary permanently in the United States as a buyer of ladies leather apparel. 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, and, that the petitioner has submitted fraudulent documents to CIS in order to obtain benefits for the beneficiary. According to the notice of revocation, CIS received no response or other communication concerning the notice. The director revoked the petition approval accordingly.

According to the petition, the business was established in 1991. It employs no full time employees. According to the petition prepared in 1994, the gross receipts of the business were approximately \$1.11 million in 1993, with net annual income of \$76,822.00.

On appeal, the counsel submits a brief 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 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 June 13, 1993.¹ The proffered wage as stated on the Form ETA 750 is \$13.37 per hour (\$27,809.60 per year). The Form ETA 750 states that the position requires two years experience.

¹ It has been approximately 13 years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I ... [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

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 amendments made prior to certification.

Also found in the record of proceeding are the following documents: a copy of the biographic pages from the beneficiary's passport and personal information concerning the beneficiary; a translated work experience document from Ali Baba Leder Fabrique,² [REDACTED] Company stating that the beneficiary was employed in letter manufacturing from May 21, 1984 to December 10, 1989; a translated statement concerning work place insurance premium records for the beneficiary for her employment as a "leather expert sales person" at Alibaba Leather Fabric; a translated national health insurance certificate; a translated work verification letter from the beneficiary's father concerning her employment at Ali Baba Leather Fabric as a "Leather Expert and Buyer of Ladies Leather Apparel" from May 21, 1984 to December 10, 1988, (instead of 1989 as stated on the beneficiary's employment card); a letter dated July 28, 2004 from the Istanbul Finance Directorate, Turkey stating that that department "dealt with a Leather Ready-Wear-production-sale business" at the address of Alibaba Leather Fabric; a letter from the Province Finance Directorate, Mercan Tax Department Directorate dated July 29, 2004 to Niyazi Citak "that you have executed business activities" at the address of Alibaba Leather Fabric; six photocopied photos of Alibaba Leather Fabric's former business location; a translated letter from Ahmet Turan Dogan dated October 5, 2004, that to his personal knowledge and as owner of the building in which Alibaba Leather Fabric operated, the beneficiary "worked at Alibaba Leather Company between 1984 and 1988; a translated letter from [REDACTED] a leather vendor, who dealt with the beneficiary as a leather buyer at the Alibaba Leather Company from 1984 to 1988; a translated letter from [REDACTED] dated September 17, 2004, who stated that he was an outside electrician who worked at the Alibaba Leather Company building and that he knew that the beneficiary worked there from 1984 to 1988; a letter from [REDACTED], the beneficiary's brother, dated October 20, 2004, who stated that he was an employee with the beneficiary at Ali Baba Leather Company between 1984 and 1988, and, that the beneficiary "... was in charge of buying leather and accessories;" a letter from Ismet Morali dated October 20, 2004, a barber whose shop was and is at the date of the letter "right next to the [former location] of Ali Baba Leather Company and he stated he observed the beneficiary as "she passed his shop"; a letter from [REDACTED] dated October 2, 2004, that stated that he was the accountant for the Ali Baba Leather Company from 1983 to 1994 and that the beneficiary worked in the company as a leather expert in charge of buying leather from 1984 to December 1988 (and that he inadvertently recorded her termination date as 1989); a support letter from the petitioner;³ and, a Schedule C that is a part of the 1993 income tax return of petitioner.⁴

The I-140 petition was approved February 10, 1995. The director issued a notice of intent to revoke on July 16, 2004. A notice of revocation was issued on September 14, 2004, the director finding that no rebuttal or other communication had been made to the notice of revocation. Counsel contends that a timely rebuttal had been submitted on August 7, 2004. The petitioner appealed the revocation on October 1, 2004.

² The company's name is given variously in the record of proceeding as [REDACTED] Ali Baba Leder Fabrique, Ali Baba Leather Company, Alibaba Leather Company, and, Alibaba Leather Fabric.

³ According to the petitioner's letter dated February 26, 1996, the beneficiary has been employed by the petitioner since January 1996 at \$13.37 per hour.

⁴ There are two other un-translated letters in the record of proceeding from [REDACTED] and [REDACTED]

On appeal counsel asserts that the beneficiary has the requisite two years of experience; that CIS failed to consider the petitioner's rebuttal to the notice to revoke; and, that no fraudulent documents were submitted in the proceeding.

The issues 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, and, whether or not fraudulent documents were submitted in the proceeding.

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, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of a buyer of ladies leather apparel.

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	Blank
	Major Field of Study	Blank
	Training	Blank
	Experience	
	Years	<u>2</u>
	Related Experience	

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15, sets forth work experience that an applicant listed for the position of a buyer of ladies leather apparel.

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER

Ali Baba Leather Fabrik, Malta Fahri Mahallesi, Alibaba Turbe Sokak, No. 4, Cembelitas, Istanbul, Turkey

NAME OF JOB

Buyer of Leather Goods

DATE STARTED

Month – 05 [May] Year - 1984
DATE LEFT
Month – 12 [December] Year - 1989
KIND OF BUSINESS
Importer/Wholesaler of Leather Goods
DESCRIBE IN DETAIL DUTIES...
Bought various leather goods from various sources
NO. OF HOURS PER WEEK
40

In this case, the Form G-325A submitted by the beneficiary dated March 6, 1995, stated that she was employed at Ali Baba Leather Fabrik, Istanbul, Turkey from May 1984 through December 1989. As stated above, the petitioner provided a translated work experience document from Ali Baba Leder Fabrique, "Ali Citak" Company stating that the beneficiary was employed in letter manufacturing from May 21, 1984 to December 10, 1989.

The director requested and the U.S. Embassy in Istanbul, Turkey conducted an investigation of the beneficiary's employment experience. In pertinent part, the investigative report focused on the date of December 10, 1989, and the fact that the beneficiary entered the United States on January 20, 1989, to conclude that there was a discrepancy in information presented, and to therefore reasonably conclude that "...the beneficiary could ...[not] be physically be in two places at once." From this and anecdotal evidence found in the investigative report, and other inconsistent statements given in this matter as stated above, the director found that the beneficiary does not have the requisite experience as stated on the labor certification petition, and, that fraudulent documents were submitted in the proceeding.

On appeal, counsel asserts that CIS failed to consider the petitioner's rebuttal to the notice to revoke; that the beneficiary has the requisite two years of experience; and, that no fraudulent documents were submitted in the proceeding.

On the assertion raised by counsel that the director failed to consider the petitioner's rebuttal to the notice to revoke, since this is a de novo appeal, and, the evidence indicated by counsel that was previously submitted, was found in the record of proceeding and is now being reviewed, the petitioner has its remedy for this omission assuming that the evidence was in the record but not considered by the director in his decision.

Counsel asserts that the beneficiary has the requisite two years of experience as a buyer of ladies leather apparel. Since the issue raised by the inconsistent evidences submitted in this matter (without regard to the misrepresentation finding) is whether the beneficiary has four or five years of work experience, we find that the totality of the independent and objective evidence submitted proves that beneficiary has two years experience.

Counsel asserts that no fraudulent documents were submitted in the proceeding. Based upon the seven affidavits from individuals attesting to the beneficiary's employment at Alibaba Leather Company, and the two statements from the Istanbul, Turkey, taxing authorities that the company existed during the relevant period (a question raised collaterally by the investigation report), the admission of error by the company accountant concerning the working dates, and the beneficiary's father acknowledgement of the correct employment term as stated above, there is evidence of serious mistakes by the beneficiary in the preparation of the labor certification and CIS Form G-325A but no evidence of an intent to misrepresent. We find that there is no evidence of fraudulent document submission in this matter.

The petitioner had established that the beneficiary has the requisite experience as stated on the labor certification petition, and, has proven by evidence submitted that documents submitted in this matter were not fraudulent.

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 met that burden.

ORDER: The petition is sustained.