

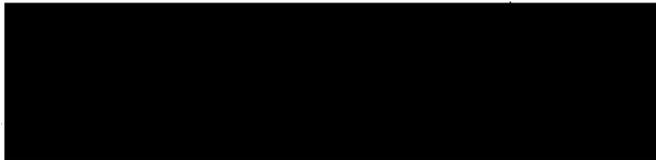
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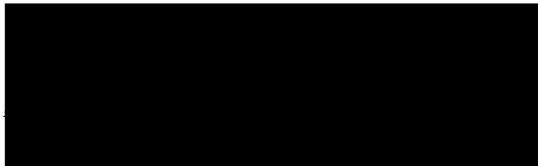
Office: TEXAS SERVICE CENTER

Date: MAY 02 2007

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 was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a convenience store and gas station. It seeks to employ the beneficiary permanently in the United States as a shift manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite qualifying work experience as of the visa priority date and denied the petition accordingly.

On appeal, the petitioner, through counsel, asserts that the director erred in determining that the petitioner had failed to establish that the beneficiary possessed the required two years of work experience.

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.

The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

(ii) *Other documentation*—

(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 a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 30, 2001.¹ The ETA 750B, signed by the beneficiary on April 23, 2001 does not indicate that he has worked for the petitioner.

¹ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that high school is required, and that an applicant must have two years of work experience in the job offered as a shift manager or two years of work experience in a related occupation described as "assistant manager with same duties." Item 15 enumerates other special requirements required. They appear as:

Must have one year experience in Excel inventory
Must work 3 nights (11pm-7am) per week and rotating weekends
Experiential References Required

The job duties of a shift manager are described in item 13. They include:

Manage retail store selling groceries, beverages, household products, tobacco, fuel vehicle products, money orders and lottery tickets. Prepare work schedules and assign employees to specific duties. Formulate pricing policies, coordinate sales promotion, manage inventory levels and remove merchandise from the store's inventory. Reconcile clerk's shift reports; prepare and summarize daily and monthly operating reports on accounting program.

The beneficiary lists three employers on the ETA 750B. He states that he worked for R & S Chevron in Stone Mountain, Georgia as a manager from January 1998 to December 2000. From June 1996 to December 1997, the beneficiary claims that he worked as a full-time shift manager for the Texaco Food Mart in Lawrenceville, Georgia. During the same period, from June 1996 to December 1997, the beneficiary states that he worked 50 hours per week as a client service executive for an advertising company called "A [REDACTED] in Karachi, Pakistan.

Relevant to the beneficiary's past qualifying work experience, the petitioner initially provided three letters. The first letter, dated December 16, 2003, is signed by [REDACTED] of the Texaco Food Mart in Lawrenceville, Georgia. Mr. [REDACTED] position or job title is not identified. He states that the beneficiary was a shift manager from June 1996 to December 1997 and that he made "bank deposits, order inventory for groceries, gas, lottery and money orders. He use to make reports for an Accountant and Owner on MS Excel. And worked on ruby system to order inventory."

The petitioner also provided another letter, dated March 16, 2001, from [REDACTED] Pakistan, signed by [REDACTED] as the managing director. Mr. [REDACTED] affirms that the beneficiary worked at his firm from July 1992 until May 1996, as a client service executive, and left for better career prospects.

The third letter, dated January 2, 2004, is from [REDACTED] in Stone Mountain, Georgia. It is signed by [REDACTED] Mr. [REDACTED] position or job title is not identified. He states that the beneficiary worked as a manger from January 1998 until December 2000. Mr. [REDACTED] states that the beneficiary "use to make bank deposits, order inventory for groceries, gas, lottery and Money orders. He use to make reports for Accountant. And sometimes even go to wholesale place to buy some stuff for the store."

The director requested additional evidence on March 24, 2005. Relevant to the beneficiary's employment verification, the director requested additional corroboration in the form of letters from former employer(s) verifying the beneficiary's specific job duties, and dates of employment/experience and that such letters must

specify the authors' names, titles and business addresses. The director advised the petitioner that the certified position included other duties such as the preparation of work schedules and assignment of employees to specific duties, the formulation of price policies and coordination of sales promotion, and that if the letters show the beneficiary to have such experience, they must provide some detail as to the beneficiary's participation in those functions.

In response, the petitioner, through counsel provided two additional letters from [REDACTED] of the Texaco [REDACTED] of R N S Chevron. The first, dated May 5, 2005, again fails to identify Mr. [REDACTED] position or job title. However, he states that the beneficiary was a shift manager from June 1996 to December 1997 and after reiterating the language of the first letter as a description of the beneficiary's duties, he states that the beneficiary "prepared work schedules for the employees and assigned them to specific duties and reconciled clerk shift reports. He formulated pricing policies and coordinated sales promotions. He worked night shifts and even on weekends. He met with vendors and suppliers and discussed prices and sales promotion schemes."

Mr. [REDACTED] letter, dated April 22, 2005, also fails to identify his position or title with R N S Chevron. He states that the beneficiary "managed our store and ordered inventory for the store. He prepared inventory and accounting reports on MS Excel. . . . He formulated pricing policies and coordinated sales promotions. He prepared work schedules for the employees, assigned them to specific duties and reconciled clerk shift reports. He worked day and night shifts and even on weekends."

The director denied the petition on October 17, 2005. The director determined that the first three employment verification letters failed to confirm that the beneficiary had any experience in employee management, preparation of work schedules, formulation of pricing policies and coordination of sales promotions. The director noted that both the [REDACTED] letter omitted their authors' business titles. Although the director recognized the addition of language in the second [REDACTED] letter referring to the beneficiary's experience in formulating pricing policies and employee management, he determined that the omission of the authors' titles raised a question as to their capacity to accurately corroborate the nature and scope of the beneficiary's experience at those businesses.

The director states that in an effort to establish that the beneficiary actually obtained the required experience with R N S Chevron and the Texaco Food Mart, the Georgia Department of Labor's electronic indices relating to employee compensation and dates of employment was consulted. The director states that an intelligence research specialist determined that these indices contained no record that the beneficiary worked for either establishment under the social security number provided in the Immigrant Petition for Alien Worker (I-140) and the Application to Register Permanent Residence or Adjust Status (Form I-485). Based on this research, as well as the doubts set forth above, the director concluded that, in the absence of Georgia's documentation of the beneficiary's employment, it could not be concluded that the beneficiary acquired the required two years of work experience.

On appeal, counsel states that he is providing an affidavit from the beneficiary's former employer affirming that the beneficiary acquired the work experience as represented in the underlying record. Counsel claims that the former employer, who is not identified, inadvertently failed to state his title and that he has made an affidavit providing such information and a detailed description of the beneficiary's job duties. Counsel does not address the director's findings relevant to the lack of any state agency record of the beneficiary's employment in Georgia. He resubmits copies of various documents contained in the underlying record, but provides no affidavit from any individual on appeal.

It is noted that in determining whether an alien has acquired specific experience in a previous job, one should look to the job duties of previous employment, not just job titles. *See Matter of Maple Derby, Inc.*, 89-INA-185 (BALCA 1991)(*en banc*). Here, in addition to the lack of state agency corroboration as to the beneficiary's record of employment in Georgia and the omission of the titles held by Mr. [REDACTED] and Mr. [REDACTED] on all four letters provided to support the beneficiary's claimed employment, it is noted that the style and grammar of those letters are almost identical, thus raising a question as to the authenticity of the information provided regarding the duties that the beneficiary may have performed. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). In this case, the petitioner has not resolved those doubts and has failed to establish that the beneficiary has acquired the requisite two years of qualifying work experience set forth on the ETA 750 pursuant to the requirements of 8 C.F.R. § 204.5(l)(3).

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 appeal is dismissed.