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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2007

WAC 04 214 50810

IN RE: Petitioner: [redacted]

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:

[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 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 dismissed.

The petitioner is a board and care facility. It seeks to employ the beneficiary permanently in the United States as a cook. 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, provides additional evidence and maintains that the petitioner has demonstrated that the beneficiary's work experience meets the requirements of the approved labor certification.

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 10, 2001.[1] The ETA 750B, signed by the beneficiary on April 9, 2001, lists three positions that she has held. The first job given is that of a cook for the [redacted] and Restaurant" located in San Fernando, Philippines, where the beneficiary claims to have worked as a cook from February 1980 until July 1982. The second place of employment given is

[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.

"Sanyo Marketing Corporation" in Pampanga, Philippines where the beneficiary states that she was employed as a full-time accountant from August 1982 until December 1998. The most recent employment claimed is that of an "owner/cook" at the "Cor-AR Bahay Kusina" in San Fernando, Philippines from January 1, 1999 until May 2000.

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 no formal education is required, but an applicant must have two years of work experience in the job offered as a cook.

Part 5 of the Immigrant Petition for Alien Worker (I-140), which was filed on July 26, 2004, indicates that the petitioner was established on January 15, 1991, and currently employs thirty-four workers.

Relevant to employment experience gained in the job offered by the priority date of April 10, 2001, the petitioner provided a letter, dated April 1, 2001, signed by [redacted] Proprietor, and printed on the letterhead of the [redacted] and Restaurant," indicating an address at "[redacted] in the Philippines. The letter certifies, in pertinent part, that the beneficiary:

> [redacted] has worked with our restaurant/canteen as a Cook from Feb. 11, 1980 to July 24, 1982 on a full time basis, averaging 40 hours per week.
>
> While working with us, she prepared, planned and cooked meals in quantity for the restaurant/canteen. She prepared and planned menuis, estimated food requirements and requisitioned supplies.
>
> Ms. Coronel while with us, has performed exceptionally well and to the full satisfaction of the management and the customer in particular. And her transfer to a more challenging undertaking has been a great loss to us but we feel proud of her.

On July 30, 2005, the director issued a notice of intent to deny the petition, informing the petitioner that Department of Homeland Security personnel from the U.S. Embassy in Manila, Philippines had performed an overseas investigation in order to verify the beneficiary's claimed employment at the [redacted] and Restaurant. As indicated by the director, based on the report of the interview conducted on June 9, 2005, with [redacted] the overseas investigator stated that [redacted] claimed that the [redacted] not Restaurant was first established on the Assumption University campus, which is also located at the Unisite Subdivision and that he operated it from 1983 to 1989 until moving to the current location on [redacted] also stated that he alone cooked the food although he was assisted at times by canteen workers. He indicated that no one ever assisted him on a full-time basis. The investigator stated that [redacted] also denied having employed the beneficiary. [redacted] refused to put this denial in writing. The investigator additionally stated that [redacted] "denied he signed the certification dated April 1, 2001 issued to [redacted] and disowned the stationery where supposed letterhead appears as that of the [redacted]."

Based on the results of the overseas investigation, the director determined that the letter submitted by the petitioner was fraudulent and that the petition could not be approved. The petitioner was afforded thirty (30) days to offer any argument or evidence in rebuttal to this preliminary conclusion.

In response, the petitioner provided an affidavit from [redacted]. In this document, [redacted] states that the canteen was started in 1979 inside the Assumption College by his brother [redacted] who had a limited staff of one cook and two helpers. [redacted] states that in 1983 he acquired the canteen from [redacted] and moved it outside the college campus to its present location in 1989. He also states that they had several staff from 1979 to the present and that he lost track of their records. He claims that he denied the beneficiary's employment to the investigator because he couldn't remember it, but that his brother [redacted] told him that she had worked in the canteen during the years claimed. [redacted] then states that the letterhead was not the restaurant's official form but that he "realized that said document was a computer generated design, prepared by [redacted] herself so that the certification would look more formal and presentable because this will be used in her application to the U.S.A. But just the same, I do recall now that I really signed said certification, after confirming with my brother [redacted] with whom said [redacted] had really served as a cook during his time of management."

An affidavit from [redacted] states that he and his brother started the canteen in 1979 and that he hired the cook and helpers for the day-to-day activity of the canteen. He claims that in 1980 he hired the beneficiary who was still single at the time as a cook and that she left sometime in 1982.

The petitioner also submitted a statement of employment history from the beneficiary. The petitioner provided a copy of a Filipino business name registration document, dated April 16, 1999 and copies of some financial statements from 1999 both of which related to the beneficiary's ownership of a canteen in the Philippines. Also submitted was a statement from the petitioner confirming that it has employed the beneficiary as a cook since January 2005, accompanied by pay stubs which correspond to this employment.

The director denied the petition on September 6, 2005. He emphasized that in *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the Board states:

> 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.
>
> 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 Id.*

The director found that the petitioner failed to overcome the evidence provided by the embassy investigation which indicated that the April 1, 2001 employment verification letter in support of the beneficiary's qualifying work experience was fraudulent and denied the petition on that basis. He observed that, consistent with the requirements of the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner had been informed of the adverse information contained in the overseas investigation and offered an opportunity to provide rebuttal. The director declined to conclude that the new affidavits from [redacted] and his brother [redacted] amounted to objective, competent evidence sufficient to establish the beneficiary's employment with the [redacted] canteen. The director questioned how [redacted] could not recognize his own signature when the investigator presented him with a copy of the letter that he signed. The director also questioned why he did not use the actual letterhead of the canteen that he provided to the investigator, but rather elected to sign a document on a falsified letterhead created by the beneficiary. The director further concluded that having been presented with one false document called into question the authenticity of every piece of evidence submitted by the petitioner.

Counsel asserts that the beneficiary had no intent to defraud anyone in drafting her own experience letter. He asserts that [redacted], not [redacted], was the beneficiary's employer. He states that some of the confusion resulted in part from her employment under her maiden name of [redacted]." Counsel also states that the [redacted] brothers have no family or economic ties with the beneficiary and have no reason to perjure themselves for a former employee. He also asserts that the [redacted] brothers' affidavits are the best evidence available to substantiate the beneficiary's employment twenty years ago and that it is not uncommon that records of her employment would not be available.

Based upon our review of the record, we conclude that the director had sufficient cause to find that the petitioner failed to meet its burden of proof in demonstrating that the beneficiary had obtained two years of full-time qualifying experience as a cook as of the priority date of April 10, 2001. The director raised valid questions in rejecting the [redacted] brothers' affidavits as a means of overcoming evidence in the record that the April 1, 2001 employment verification letter was fraudulent. Counsel's statements that the [redacted] brothers clearly have no interest in this matter such that their statements might be seen as self-serving or fraudulent is not supported by competent reliable evidence. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The overseas investigation led to a preliminary finding that the April 1, 2001 employment verification letter was fraudulent. The petitioner then failed to provide independent, competent and reliable evidence to overcome the inconsistencies between [redacted]s April 1, 2001 letter and his statements made to the investigator, such as copies of employee payroll records, copies of pay stubs other independent evidence that the [redacted] brothers or one of them employed the beneficiary as a cook for two years prior to the priority date. Moreover, CIS is not under any obligation to impose a lesser burden of proof on a petitioner who attempts to sponsor a beneficiary whose claimed work experience is twenty years old. It is additionally noted that her experience acquired with the petitioner accrued after the priority date and is not eligible for consideration. It is further observed that even if the evidence related to the beneficiary's ownership of a canteen and self-employment as a cook for seventeen months from January 1999 to May 2000 had been considered credible, it does not establish her acquisition of two years of full-time experience as a cook as of the visa priority date.

The petitioner has not established that the beneficiary possessed the requisite qualifying work experience as of the priority date. 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.