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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



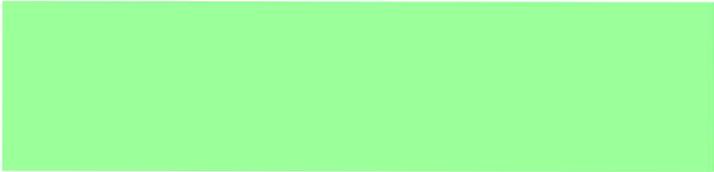
Date: **MAY 03 2013** Office: TEXAS SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On March 13, 2012 the Administrative Appeals Office (AAO) dismissed the appeal and affirmed the decision of the Director, Texas Service Center (the director). The petitioner has now filed a motion to reopen and a motion to reconsider the AAO's decision. The motions will be granted, and the appeal will be reopened. Upon review, the appeal will be dismissed, and the AAO's previous decision will remain undisturbed. The approval of the petition will remain revoked.

The petitioner is a retail donut and bakery shop.¹ It seeks to employ the beneficiary permanently in the United States as a baker, pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).² As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, and the AAO subsequently dismissed the appeal, because the petitioner failed to demonstrate by a preponderance of the evidence that the beneficiary possessed the minimum qualification (two years of work experience in the job offered) before the priority date.

On motions to reopen and reconsider, counsel for the petitioner maintains that the beneficiary had the requisite work experience in the job offered before the priority date and submits various documents intended to demonstrate that the beneficiary worked as a baker in Brazil from March 1997 to December 1999. Counsel also indicates that the complete and sole reliance of U.S. Citizenship and Immigration Service (USCIS) on the CNPJ³ to revoke the approval of the petition is misplaced, because the CNPJ database or system is incomplete and unreliable.

The record shows that the motions are properly filed, timely and supported by new evidence. The AAO conducts this appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted in this proceeding.⁴

¹ The petitioner is a franchisee of [REDACTED]

² Section 203(b)(3)(A)(i) of 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.

³ CNPJ or Cadastro Nacional da Pessoa Juridica is a unique number given to every business registered with the Brazilian authority. In Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ.

⁴ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the motions are accompanied by a new claim (i.e. CNPJ system is not complete and thus unreliable) and supported by corroborating documentary evidence. The motions, therefore, are granted, and the appeal will be reopened.

Upon review, the AAO finds that counsel's assertions that the CNPJ database or system is incomplete and unreliable are not supported by evidence of record. To show that CNPJ database is not reliable and incomplete, counsel submits various news articles and journals, discussing the background and history of CNPJ. Counsel also submits two decisions issued by Brazilian courts discussing the fraudulent use and improper handling of CNPJ number and business information.

None of the evidence submitted above involves the company where the beneficiary claimed to have worked in Brazil. The director indicated, and we have noted in our earlier decisions, that the Department of State had determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual's stated hire and working dates with a Brazilian-based company to that Brazilian company's registered creation date.

Further, the AAO is not persuaded that the beneficiary worked as a baker or possessed the requisite work experience in the job offered before the priority date (April 30, 2001). As noted in our earlier decision, the petitioner must demonstrate, among other things, that, on the priority date – which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL – the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

We note on the Form ETA 750 accepted for processing on April 30, 2001 that the petitioner specifically required all applicants including the beneficiary to have a minimum of two years of work experience in the job offered to qualify for the position. On the Form ETA 750, part B, the beneficiary claimed to have worked as a baker at [REDACTED] in Imitua-SO-Brazil, from December 1997 to December 1999. The beneficiary signed the Form ETA 750B on April 28, 2001 attesting to the truth and veracity of his past work experience under penalty of perjury.

In our decision, the AAO identified several inconsistencies in the record pertaining to the beneficiary's qualifications for the job offered. Among other things, when asked why [REDACTED]

_____ – the company that the beneficiary claimed to have worked as a baker from December 1997 to December 1999 – was not registered with the CNPJ system until October 1998, the beneficiary stated in his sworn statement dated September 16, 2008 that he actually started to work for _____ in March 1997 before the company was bought by _____ and changed the name to _____ on October 22, 1998.

We also questioned in our decision why _____ stated in her letters of employment verification submitted in April 2001 and dated September 12, 2008 that she employed the beneficiary from March 12, 1997 and not December 1997, and why she claimed that the beneficiary was employed by _____ when the company was not named _____ at the time. In addition, we observe that the address of _____ and _____ are different. One is located at _____ and the other at _____.

We also note that the beneficiary did not include his employment abroad on his Biographic Information (Form G-325), which he filed in connection with his Application to Register for Permanent Residence or Adjust Status (Form I-485). The AAO specifically advised the petitioner that any inconsistencies in the record must be resolved by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies).

In his affidavit dated April 11, 2012 submitted in support of the motions to reopen and reconsider, the beneficiary states that regardless of who owned the company in 1997, the business was always known as _____ and that he worked as a baker at _____ from March 1997 to December 1999. The beneficiary also indicates that he does not have any evidence to prove his employment at Invipa as he was paid only by cash, not by check.

As to the inconsistencies in the record pertaining to the period of his employment at _____ the beneficiary stated that his attorney at the time, _____ mistakenly interpreted the day for the month and the month for the day. The beneficiary stated: _____ mistakenly wrote I worked at _____ from “12/97” to “12/99” when in fact I worked there from 3/12/97 to 12/12/99.” In Brazil, according to the beneficiary, people generally write the day first, then the month, and then the year. The beneficiary stated that _____ had been sued and lost complaints against him for fraud and misrepresentation.⁵

The beneficiary also blamed his other attorney, _____ for failing to include all of his employment abroad on the Form G-325 (Biographic Information) and claimed that _____ has been disbarred or suspended from the practice of law.⁶

⁵ The beneficiary submitted an excerpt from a court decision finding _____ liable for unjustly enriching himself. The court did not find fraud or misrepresentation against _____.

⁶ The record contains _____ suspension notice issued by the U.S. Department of Justice on March 1, 2012. The notice states that _____ has been suspended from the practice of

We do not find the beneficiary's affidavit by itself persuasive, because it is self-serving. More importantly, no independent objective evidence, such as a copy of the beneficiary's booklet of employment and social security or other relevant proofs, has been submitted to show that the beneficiary had the experience in the job offered. *See Matter of Ho*, 19 I&N Dec. at 591-92. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). For these reasons, we cannot accept the beneficiary's affidavit as reliable, and therefore, we find that the beneficiary is not qualified for the position offered. As noted above, the position offered is for a skilled worker, requiring at least two years of specialized training or experience. We do not find that the beneficiary had at least two years of specialized training or experience in the job offered before the priority date.⁷

The petition is dismissed for the reason stated above. 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. For the reasons stated above, the appeal must be dismissed.

ORDER: The motions to reopen and reconsider are granted; upon reconsideration, the appeal is dismissed.

law before the Immigration Courts, Board of Immigration Appeals (BIA), and Department of Homeland Security (DHS) for a period of three years from March 1, 2012.

⁷ The AAO acknowledges that the beneficiary is a long-time employee of the petitioner, probably since 2001. [REDACTED] the owner of the petitioner, in his notarized letter dated April 9, 2012 stated that he has known the beneficiary for over ten years. The beneficiary claimed in his Form G-325 (Biographic Information) that he worked for the petitioner from March 2001 to present. We also acknowledge that various people including the beneficiary's close friends, customers, and other business owners located nearby the petitioner's shop, through their letters of recommendation, attest to the beneficiary's professionalism, skills, and good characters while working for the petitioner.