

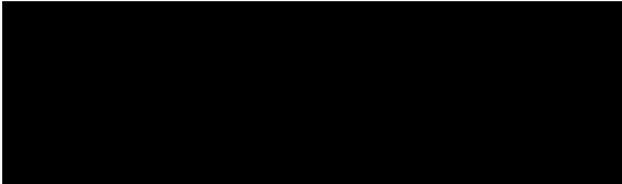


U.S. Citizenship
and Immigration
Services

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FILE:

SRC-03-182-51852

Office: TEXAS SERVICE CENTER

Date: DEC 20 2005

IN RE:

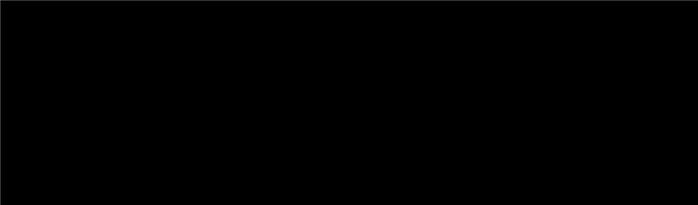
Petitioner:
Beneficiary:



PETITION:

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, Director
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 petition will be remanded to the director.

The petitioner is a convenience store and gas station. It seeks to employ the beneficiary permanently in the United States as a store manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary had four years of experience in the offered job as required on the Form ETA 750, and denied the petition accordingly.

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 not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 30, 2001.

The Form ETA 750 states that the position of store manager requires high school education and four years of experience in the offered position.

On the Form ETA 750B, signed by the beneficiary on April 20, 2001, the beneficiary did not claim to have worked for the petitioner.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The copy of the I-140 in the record is incomplete. It is apparently a partial photocopy of the original. Similarly, the copy of the ETA 750 in the record appears to be a photocopy of the original.

The record on appeal is contained in a temporary file of the beneficiary. On the non-record side of the file is a processing sheet to which is pasted the following typed note: "The original ROP [Record of Proceeding] is not available – it was sent to HQ [Headquarters] as part of a sample of a group of I-140 denials. The enclosed ROP consists of copies of the entire record TSC [Texas Service Center] made at the time of adjudication. TSC CAO #27 / September 10, 2004 / RE: [redacted] (Processing Sheet, September 10, 2004). The processing sheet refers to [redacted] and the temporary file has that same number. However, the correct number for the beneficiary is [redacted]."

In the record on appeal, all documents submitted prior to the decision of the director appear to be photocopies. Some of those documents may be second generation photocopies, since a letter from the director dated May 24, 2004 states that documents previously submitted were not in the file and requests that the petitioner submit additional copies of documents previously submitted. After the beneficiary's file was selected for headquarters review of some I-140 denials, the Texas Service Center then apparently made a copy of the entire record. The copy of the record made by the Texas Service Center is apparently the record on appeal now before the AAO, to which have been added documents newly submitted by the petitioner on appeal.

The I-140 petition was submitted on June 18, 2003. The copy in the record lacks page two of the petition, therefore the copy contains no information on the date when the petitioner claims to have been established, its current number of employees, its gross annual income or its net annual income. With the petition, the petitioner submitted supporting evidence.

In a request for evidence (RFE) dated September 9, 2003, the director requested additional evidence pertaining to the petitioner's ability to pay the proffered wage and additional evidence pertaining to the beneficiary's experience.

In response to the RFE, the petitioner submitted additional evidence. The petitioner's submissions in response to the RFE were received by the director on December 1, 2003.

In a notice of intent to deny (ITD) dated March 12, 2004, the director informed the petitioner of his intention to deny the petition. The director afforded the petitioner 30 days in which to submit evidence in support of the petition and in opposition to the denial.

In response to the ITD, the petitioner submitted a letter from counsel dated April 8, 2004. The photocopy of that letter in the record does not indicate when that letter was received by the director. The record is unclear as to whether additional documents were also submitted in response to the ITD.

In a letter dated May 24, 2004 the director requested a resubmission of evidence. That letter states in relevant part as follows:

[CIS] records indicate that a response has been received to our March 12, 2004 request for further evidence. However, the additional evidence has not been included in the beneficiary's file. We must ask that you submit copies of the evidence you provided in response to our March 12, 2004 request. We apologize for any inconvenience or delay this may cause.

(Director's letter, May 24, 2004, at 1).

In response to the director's request for resubmission of evidence, the petitioner submitted additional copies of documents which had been previously submitted.

In a decision dated August 4, 2004, the director determined that the evidence failed to establish that the beneficiary had four years of experience in the offered position. The director found that the petitioner had submitted two letters from a former employer of the beneficiary in Pakistan and found that neither of those letters contained a complete address of the employer. The director also stated that an investigation by the U.S. embassy in Islamabad, Pakistan, had failed to corroborate the existence of the beneficiary's claimed former employer. The director accordingly denied the petition.

On appeal, counsel submits a brief and additional evidence. Counsel states on appeal that the address which appears on a letter of experience from the beneficiary's former employer is a complete address. Counsel also states that business documents of that employer submitted on appeal show the address to be the same as that which appears on the letter. Counsel also states that one of the telephone numbers listed on that letter appears in a telephone book for the year 2000 for the city of Hyderabad, Pakistan. An original of that telephone book is among the documents submitted on appeal.

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).

Concerning the beneficiary's education, the record contains a copy of a secondary education transcript of the beneficiary dated September 14, 1982 issued by the Board of Intermediate and Secondary Education, Hyderabad, Pakistan. That document is sufficient to establish that the beneficiary had the education required on the ETA 750 as of the priority date.

The facts at issue in the instant petition concern the beneficiary's claimed work experience in Pakistan.

The record contains copies of three letters from the owner of a store named [REDACTED] in Hyderabad, Pakistan. Each letter is dated October 9, 2000. The address for the store is stated on each letter as [REDACTED]. The letter which appears to have been submitted first is on a typed letterhead, which reads [REDACTED] [sic] STORE, [REDACTED], PAKISTAN." That letterhead contains no telephone numbers. The body of the letter states the beneficiary's employment as a store manager from March 3, 1985 to September 15, 2000 and includes a detailed description of the duties of the beneficiary during his employment. The duties are described in language which tracks the duties of the offered job as stated on the ETA 750. This letter was apparently submitted with the I-140 petition.

A second letter from the owner of [REDACTED] is on letterhead, which reads as follows. "DECENT [REDACTED], [REDACTED] Hyderabad. Phone: [REDACTED] Res.: [REDACTED] Dealer: Pak Fan, Wahid Fan, Ref. _____, Date 09 october 2000" [hand-written date]. At the bottom of the page are two lines of printed writing in non-Roman script as the footer to the letterhead. The body of the second letter is nearly identical to the first letter, with some minor grammatical changes. The second letter was apparently submitted in response to the RFE of September 9, 2003.

A third letter from the owner of [REDACTED] is on the same letterhead as the second letter and also contains a hand-written date of "09 october 2000." The letter states the dates of the beneficiary's employment, and states that the beneficiary was paid in cash at the end of each month and that no taxes were deducted from his salary and that therefore no tax documents exist. The third letter was apparently also submitted in response to the RFE, addressing the specific request in the RFE for "additional evidence of the beneficiary's prior work history such as paystubs or tax documents." (RFE, September 9, 2003, at 1).

The record also contains a copy of an electronic mail communication dated February 20, 2004 from a person with an e-mail address at the U.S. Department of State, and a copy of a memorandum dated February 26, 2004 from an intelligence research specialist, Texas Fraud Detection Unit, to the adjudications officer for the instant petition. The memorandum states as follows:

The FDU contacted the American Consulate and they determined that since the letter in the petition was 2-3 years olds [sic] and the phone numbers do not exist anymore. [sic] They tried to find the shop but there are many with the same name.

They did find one [REDACTED]" and the owner did not know the beneficiary.

(Memorandum from intelligence research specialist, February 26, 2004)

The electronic mail communication from the Department of State official states in relevant part as follows:

You had also asked us about the "[REDACTED]" in Hyderabad. We would need the new numbers (the ones on the letterhead are about 2-3 years old and don't exist) or a real address. The address given "[REDACTED]" is a whole district and would not allow one to pinpoint its location. We looked up the "[REDACTED]" in the directory and found one in that area. The owner told us that he had never heard of the subject or the signatory of the letter, but also told us that he knew of a number of other similarly named shops in the city.

(Electronic mail communication from embassy official, February 20, 2004).

The record contains documents submitted for the first time on appeal. The documents newly submitted on appeal appear to be originals, with the exception of a tax payment receipt, of which three photocopies are submitted.

One of the documents submitted on appeal is a telephone book for the year 2000 for the Pakistan Telecommunication Company, Southern Telecommunication Region - I, including the city of Hyderabad. Page sixty-one of that telephone book has been marked with a note pointing to a listing for Decent Electric Store. The phone number matches the phone number on the letterhead in the second and third letters from the owner of that store in the record.

Stapled to page sixty-one in the telephone book is a business card of the owner of [REDACTED], showing the same telephone number as appears in the telephone book and on the owner's letters. The business card also contains several lines of writing in non-Roman script. The card is about twice as large as a typical business card in the United States, and it is printed in color on both sides, and folded. The card contains several small logos of electrical products, including Million brand wires and cables.

The record also contains a color wall calendar for the year 1998 issued by the Million electrical cable company. At the bottom of each page of the calendar appear the printed words "Distributor: [REDACTED] Choti Gatti. Hyderabad Ph [REDACTED]". The words printed on the calendar are primarily in English, but under the names of the months and the dates of each month appear words and characters in non-Roman script.

The foregoing documents corroborate the existence of [REDACTED] and the business telephone number of that store as it appears on the letters in the record from the store's owner.

The record also contains the following documents: a Dealership Certificate dated January 1, 1994 issued by [REDACTED], issued to "[REDACTED]" of "[REDACTED]"; a Membership Certificate dated September 1, 2002 issued by the Hyderabad Chamber of Commerce and Industry to "M/S [REDACTED] Hyderabad"; three copies of a tax payment receipt for [REDACTED] dated January 14, 2003, with the address of the store as "[REDACTED]"; telephone bills for March,

April, May and June 2004 from the Pakistan Telecommunication Company Limited for [REDACTED], at the address [REDACTED] and a receipt dated July 29, 2004 from the Hyderabad Chamber of Commerce for a subscription fee, received from [REDACTED].”

The record also contains an undated letter on letterhead of [REDACTED], certifying that M / S [REDACTED] Hyderabad, was established in the year 1960 and that since that time the store has operated as an electric wholesale dealer. The letter also certifies that the beneficiary worked as a store manager for that store from 1985 to 2000, and that during that period the beneficiary was a member of Anjuman Tajaran, [REDACTED] Hyderabad. The letter bears the signatures and seals of the president of that organization and of its general secretary. A search by the term “Anjuman Tajaran” on an Internet search site produces links to Internet web sites in Pakistan which indicate that the term refers “Anjuman Tajaran” to some type of business or trade association.

On nearly all of the above documents the entire address of [REDACTED] is Chotki Ghitti, Hyderabad, with no further street or building number indication. On only one document does the address contain further information, namely on the telephone bills of [REDACTED] which show a post office box number in addition to the references to [REDACTED] Hyderabad.

The foregoing documents are sufficient to establish that the address of [REDACTED] as it appears on the letters submitted for the record, that is [REDACTED] ti, Hyderabad, is the complete address for that store.

A map of the city of Hyderabad, Pakistan, located on a public Internet web site shows [REDACTED]” as a street in the north central part of the city. See Apna Hyderabad.com, Hyderabad Map <http://www.apnahyderabad.com/Hyderabad/map.asp>; select Hyd City map sector (accessed November 22, 2005). The street Chotki Gitti is not shown as a major street in the city, and it occupies only a small portion of one of the sixteen map sectors on the Hyderabad map. For this reason, it does not appear to be implausible that the address of [REDACTED] might consist of only the street reference, Chotki Gitti, with no numbered street address.

The memorandum dated February 26, 2004 from the intelligence research specialist of the Texas Fraud Detection Unit states that the FDU had contacted the American Consulate about the beneficiary’s experience letter. The memorandum fails to state which American Consulate was contacted. In the ITD dated March 12, 2004 the director states that the Fraud Detection Unit of the Texas Service Center had contacted the American Consulate in Chennai, India, to verify the letter from [REDACTED]. As counsel points out in his brief, the [REDACTED] is located in Hyderabad, Pakistan, not in the city of Hyderabad, India.

In his decision, the director states that the investigation of [REDACTED] was done at the American Embassy in Islamabad, Pakistan, and states that the reference to the American Consulate in Chennai, India in the director’s earlier letter “appears to have been an inaccuracy.” (Director’s decision, August 4, 2004, at 3). However the record provides no basis for any finding as to which consulate or embassy conducted the investigation.

The electronic mail communication from the State Department official contains no identifying information other than the official’s name and e-mail address, which is a Department of State e-mail address, the last part of which is “@state.gov.” On the copy of that communication in the record the official’s e-mail address is circled and above the address is written by hand “Hyderabad, Pakistan.” The letter contains no indication of who wrote those words.

The Department of State maintains no embassy or consulate in Hyderabad, Pakistan or in Hyderabad, India. It should be noted that the city of Hyderabad, India, is in south central India, in the state of Andhra Pradesh. The nearest American consulate is in the city of Chennai, India, about 200 miles south, in the state of Tamil Nadu, on the Bay of Bengal.

The city of Hyderabad, Pakistan, is in southern Pakistan, in the state of Sindh, about 1000 miles northwest of the city of Hyderabad, India. The nearest American consulate to Hyderabad, Pakistan, is not in Islamabad, which is about 700 miles to the north, but is in Karachi, Pakistan, which is about 100 miles southwest of Hyderabad, Pakistan. If an in-country investigation by an American consulate in Pakistan had been requested by the Texas Fraud Detection Unit, the logical choice of consulate would have been Karachi, not Islamabad. *See generally*, The University of Texas at Austin, Perry-Casteneda Library Map Collection, Asia Maps, <http://www.lib.utexas.edu/maps/asia.html> (accessed November 22, 2005); U.S. Department of State, Websites of U.S. Embassies and Consulates, South Asia, <http://usembassy.state.gov/#EA> (accessed November 22, 2005).

The electronic mail communication from the State Department official states that the telephone numbers on the experience letter from the owner of [REDACTED] are about two to three years old and do not exist. In his brief, counsel states that, contrary to the finding of the official, the business number which appears on the letter is still valid. The telephone bills in the record cover the months of March through June 2004. The bills state the customer ID number of [REDACTED] as [REDACTED] and the telephone number as [REDACTED]. The telephone number on the owner's letters and on the other documents mentioned above is [REDACTED]. The telephone bills are therefore sufficient to establish that the business telephone number shown on the owner's letters still existed through June 2004.

The electronic mail communication from the State Department official contains no information on how the official determined that the telephone number on the owner's letter no longer existed. The official does not state that he tried to call the business number on the letter. The official states that "We looked up 'Decent Electric Shop' in the directory and found one in that area," referring to the area of [REDACTED] (Electronic mail communication from State Department official, February 20, 2004). However, in the Hyderabad section of the Pakistan telephone book for the year 2000 in the record only one entry is found under the name "[REDACTED]" and, as noted above, the telephone number listed is the same one which appears on the owner's letters in the record. No address or locality information appears beside the telephone listing for "[REDACTED]" in the telephone book.

The telephone listing for [REDACTED] is typical in form to the other business listings in the telephone book. The listings in the telephone book which appear to be those of individuals contain addresses, but the listings of names which appear to be those of businesses contain no address information, and list only the telephone numbers.

Since the electronic mail communication from the State Department official in the record contains few details on the methods used in investigating the telephone number and the location of [REDACTED], and since the conclusions in the electronic mail communication are inconsistent with several other documents submitted by the petitioner, some of which are original documents, the petitioner's evidence submitted on appeal is sufficient to rebut the adverse information in the electronic mail communication from the State Department official.

This petition may not be denied based on inferences or conclusions that are not supported by the record. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the denial of a visa petition. *See Matter of Arias*, 19 I&N Dec. 568

(BIA 1988) (absence of specific, concrete facts in an investigative report); *Matter of Estime*, 19 I&N 450 (BIA 1987) (rebuttal of adverse information in an investigative report).

Although the address and business telephone number of [REDACTED] are sufficiently established by the evidence newly submitted on appeal, the letters from the owner of that store stating the beneficiary's experience contain some inconsistencies with other evidence in the record. On the first letter from the owner, which is on typed letterhead, the name of the store is spelled "[REDACTED]". The misspelling of the word "Electric" was apparently one of the reasons for the director's decision to seek further corroborating evidence by issuing an RFE. The date on the owner's first letter is October 9, 2000. On the I-140 petition, the date of the beneficiary's arrival in the United States is given as December 10, 2000. The letter therefore purports to predate the beneficiary's most recent arrival in the United States.

The RFE was issued on September 9, 2003. The two letters from the owner of [REDACTED] submitted in response to the RFE are each dated October 9, 2000. Those letters are on letterhead which contains apparently correct information for the address and business telephone number of that store, as discussed above. Nonetheless, the date of October 9, 2000 on each letter raises questions about the authenticity of the letters. The letters submitted in response to the RFE contain all the information required by the regulation at 8 C.F.R. § 204.5(g)(1). Moreover, the letterhead appears to be a business letterhead, and it contains no misspelled words. If those letters in fact existed when the I-140 petition was submitted on June 18, 2003, it would have been appropriate for the petitioner to submit them at that time, rather than after the RFE of September 9, 2003. It appears from the record order that those documents were not submitted at the time that the I-140 was submitted. However, the present order of the photocopied documents in the record may not reflect the order in which they were originally submitted by the petitioner. As noted above, in a letter dated May 24, 2004 the director requested a resubmission of evidence because CIS records indicated that a response had been received to the director's ITD of March 12, 2004, but that the additional evidence was not found in the beneficiary's A-file. Moreover, in the record on appeal all of the documents submitted prior to the director's decision are photocopies, rather than the documents actually submitted by the petitioner.

That fact that the letters in question are photocopies prevents a full analysis of those letters for internal evidence of authenticity.

In some cases on appeal, the authenticity of documents is not in question and photocopies of documents in the record may be equivalent to the originals in evidentiary terms. However, in the instant petition, the authenticity of letters submitted for the record prior to the director's decision is material to the case. The record on appeal does not contain the actual documents submitted by the petitioner to the director. It therefore cannot be determined from the record on appeal whether the petitioner submitted originals of the letters in question, or whether the petitioner submitted copies of those letters, as it was allowed to do by the regulation at 8 C.F.R. § 103.2(b)(4), subject to the authority of CIS to request original documents pursuant to the regulation at 8 C.F.R. § 103.2(b)(5).

Concerning the appeal process, the regulation at 8 C.F.R. § 103.3(a)(2) states in pertinent part as follows:

- (i) *Filing appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

The regulation at 8 C.F.R. § 103.3(a)(2) provides that after an appeal is filed, the official who made the unfavorable decision must review the appeal to determine if favorable action is warranted. The regulation then states as follows "(iv) *Forwarding appeal to [AAO]*. If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the [AAO] in Washington, D.C." 8 C.F.R. § 103.3(a)(2)(iv). No provision is made in the foregoing regulation for forwarding a photocopy of the record in lieu of the record containing the actual documents submitted by the petitioner. Since the authenticity of certain documents in a material issue in the instant petition, the photocopy of the record provides an insufficient basis for resolving that issue.

In his decision, the director stated that the first letter from the owner of the beneficiary's purported former employer in Pakistan was undated. However, the copy of that letter in the record is dated October 9, 2000. Moreover, in the ITD dated March 12, 2004 the director states that the first letter from the owner was dated October 9, 2000.

In his decision, the director found that the letters from the beneficiary's purported former employer in Pakistan were not reliable evidence, based on the adverse findings by the United States Embassy in Islamabad, Pakistan. For the reasons discussed above, the evidence submitted on appeal is sufficient to overcome the adverse information in the electronic mail communication from the State Department official.

Moreover, the record contains no basis for any determination as to which embassy or consulate conducted the investigation, or even concerning in which country the investigation was conducted. The fact that a city in India is named Hyderabad and that in the ITR dated March 12, 2004 the director referred to an investigation by the American consulate in Chennai, India, suggest that the Texas Fraud Detection Unit may have sent its request for an investigation to the consulate in Chennai, India, rather than to the American embassy in Islamabad, Pakistan, or to the American consulate in Karachi, Pakistan, which is the closest American consulate to Hyderabad, Pakistan. The memorandum from the intelligence research specialist at the Texas Fraud Detection Unit states that the unit had contacted the "American Consulate," and makes no reference to contacting any American embassy. (Memorandum from intelligence research specialist, February 26, 2004).

Nonetheless, the letters from the purported former employer raise other questions about their authenticity which were not addressed in the director's decision, and which cannot be resolved on appeal based on photocopies of those documents and on a photocopied record which may not reflect the original order in which documents were submitted for the record.

For the foregoing reasons, the instant petition must be remanded to the director for consideration of the issues concerning the authenticity of the letters in question which were not previously addressed by the director. If resolution of those issues requires a request to the petitioner for the originals of those letters or of any other documents, the director may issue such a request pursuant to the regulation at 8 C.F.R. § 103.2(b)(5). The director may also conduct any further investigation as he deems appropriate. If, on the other hand, the director determines that the evidence in the record is now sufficient to establish that the beneficiary had four years of experience in the offered position as of the priority date, without the need to resolve all issues concerning the letters from the owner of [REDACTED] the director may approve the petition with no further investigation.

ORDER: The petition is remanded to the director for further action consistent with this decision.