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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

[Redacted]

BL

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 13 2005

IN RE:

Petitioner:

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:

[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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the employment-based visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an auto parts sales business. It seeks to employ the beneficiary permanently in the United States as a manager, distribution warehouse. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. . The director denied the petition because he determined that the petitioner failed to provide sufficient evidence that the beneficiary is qualified for the proffered position. The director concluded that the petitioner had not established that the beneficiary had the requisite two years of relevant work experience and therefore the beneficiary was not eligible for the visa classification sought.

On appeal, counsel states that the beneficiary has the requisite two years of relevant work experience and submits additional documentation.

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) 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 worker.* If the petitioner 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 . . . The minimum requirements for this classification are at least the two years of training or experience.

Regardless of whether the petitioner is seeking to classify the petition under 203(b)(3)(A)(i) or (ii) of the Act, however; to be eligible for approval, a beneficiary must also have the education and experience specified on the labor certification as of the petition's filing date. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on April 6, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa, as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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 warehouse distribution manager. In the instant case, item 14 did not describe any necessary education, and only specified that any applicants have two years of experience in the job offered. Under Item 15, the petitioner set forth no additional special requirements. The job offered lists the following duties on Item 13: "Direct, coordinate activities of warehouse including review bills of lading, customer orders, establish operating procedures, record control, and directing reclamation of damaged goods. 16)678-4003."

The beneficiary on Part 11 of Form ETA-750B listed no academic credentials. On Part 15, eliciting information concerning the beneficiary's past employment experience, the beneficiary indicated that he worked for the petitioner from January 1998 to the present as a distribution warehouse manager, with duties identical to the ETA 750 job description. The beneficiary also indicated that he worked from January 1992 to September 1994 for One Stop Auto Parts, Georgetown, Guyana, as a warehouse manager. The duties for the Guyana position were also identical to the Form ETA 750 job description. The petitioner also submitted a letter from [REDACTED] owner, One Stop Auto Parts, that stated the beneficiary worked as a supervisor of an auto parts warehouse from January 1992 to September 1994 on a full time basis and earned 130 Guyanese dollars per month. [REDACTED] listed the beneficiary's duties as follows:

the organization of our warehouse including supervising, directing, and coordinating activities of warehouse employees including work schedules. [The beneficiary] also reviewed bills of lading, customer orders and established operating procedures to better organize our record control. [The beneficiary] also directing [sic] reclamation of damaged goods such as auto parts and equipment.

Because the evidence submitted was deemed insufficient to demonstrate the beneficiary's qualifying experience, on August 1, 2003, the director requested additional evidence pertinent to the beneficiary's work experience. The director stated that the information on the ETA 750 contradicted information available to CIS based on a previous Form G-325A that the beneficiary had submitted in conjunction with an I-485 application filed in 1997. In the previous application, the beneficiary stated that he was self-employed as a "taylor" from June 1990 to December 1995 and that he resided in Caracas, Venezuela from June 1990 to December 1995, not in Guyana. The director stated that based on this contradictory information, more corroborative evidence of the beneficiary's claimed work experience was needed. The director requested that the petitioner submit evidence that established the employment of the beneficiary from either January 1992 to September 1994, or from January 1998 to April 6, 2001.¹ The director stated that such evidence could include, but was not limited to, the beneficiary's individual tax returns, Forms W-2 or Forms 1099 for the years in which the beneficiary worked for the petitioner, and copies of the petitioner's payroll records that indicated the dates of employment. The director also noted that a statement from the petitioner or beneficiary or an additional letter from the beneficiary's former employer would not be sufficient to establish that the beneficiary had the requisite two years of experience as a warehouse manager.

In response, the beneficiary submitted a letter that stated the information contained in the previous I-485 application was incorrect, and that he was not employed as a tailor in Venezuela during the period indicated on the I-485 form. The beneficiary stated that his attorney of record at that time improperly filled out most of his application forms at that time. The beneficiary further asserted that he did not find out about these discrepancies until he requested a copy of his immigration file after the application was already submitted to CIS. The

¹ The latter period of time corresponds to the claimed employment of the beneficiary by the U.S. petitioner prior to the priority date.

beneficiary then stated that he immediately withdrew his application by forwarding a letter to CIS. The beneficiary also stated that his previous attorney was being investigated by CIS for improper conduct and that he no longer represented the beneficiary. The beneficiary stated that he did not leave Guyana until September 1994, and that he worked as a warehouse manager from January 1992 to September 1994 in Guyana. He also added that he was paid a salary of 130,000 Guyanese dollars a month and that his job duties were to supervise staff, review bills of lading, customer orders and to establish operating procedures. The beneficiary stated that he left his employment in order to relocate to Venezuela in September 1994. The beneficiary submitted a copy of his resident visa for Venezuela that stated his resident status was from May 8, 1995 to January 10, 2000.

The petitioner also provided a new letter from [REDACTED] dated September 3, 2003, that reiterated previous statements on the beneficiary's employment and also stated that no financial records could be provided, as Guyanese authorities only require employers to provide records for seven years. In addition, the petitioner submitted letters from [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. All four men stated that they worked at One Stop Auto Parts in Guyana from January 1992 through December 1994. All four letters had identical text that stated that the beneficiary had been their junior supervisor and that he worked as warehouse manager from January 1992 to September 1994.

The director determined that the evidence submitted did not establish that the beneficiary had the requisite two years of experience based on his employment in Guyana and on January 7, 2004, denied the petition. In his decision, the director noted that the remainder of the beneficiary's passport submitted in conjunction with his current application to register Permanent Resident or Adjust Status (Form I-485) showed that prior to the beneficiary receiving a Venezuelan resident visa in May 1995, he initially entered Venezuela on February 22, 1989. In addition, the director stated that the beneficiary was issued a replacement Guyanese passport by the Embassy of Guyana in Venezuela on July 27, 1994, which contradicted the beneficiary's claim not to have left Guyana prior to September 1994. The director also noted that the replacement passport listed the beneficiary's country of residence as Venezuela, and gave his profession as tailor.

The director stated that, although requested, the petitioner had not submitted documentary evidence of the beneficiary's employment by the petitioner from January 1998 to April 2001. In addition, the director stated that since the beneficiary's statements on Form ETA 750B were not considered credible evidence of any claimed work experience, the petitioner had not established that the beneficiary had the requisite two years of qualifying work experience.

On appeal, counsel asserts that the beneficiary was traveling in Venezuela in 1994 when he lost his passport and had to have it renewed in Venezuela. Counsel states that in the beneficiary's affidavit, he stated that he left Guyana in September 1994 to live in Venezuela, and that the beneficiary did not say that he had never been to Venezuela prior to September 1994. Counsel states that CIS is erroneous in using a stamp in a passport to discredit several corroborated affidavits in determining that the beneficiary is not credible. With regard to the beneficiary's employment with the petitioner, counsel submits the beneficiary's 1999, 2000, and 2001 federal income tax returns, along with his W-2 forms. Counsel also submits a copy of the beneficiary's Social Security statement that identifies the wages earned in 1999 and 2000. Counsel notes that these earnings are the same as the wages indicated on the beneficiary's 1999 and 2000 W-2 forms issued by the petitioner. Counsel then asserts that the petitioner has provided sufficient evidence to establish that the beneficiary has the two years of requisite work experience. The beneficiary's W-2 Forms indicate that the petitioner paid the beneficiary \$16,949.96 in 1999, \$16,575 in 2000, and \$28,485 in 2001. All of the beneficiary's Forms 1040 indicate his employment as "dispatcher".

Upon review of the record, counsel's assertion with regard to CIS' erroneous interpretation of the beneficiary's renewed Guyanese passport is not persuasive. First, it is noted that the 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). Counsel submits no further evidentiary documentation with regard to his assertion that the beneficiary was traveling in Venezuela when he lost his passport in 1994, and only relocated to Venezuela in September 1994. Simply 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. 1998) (citing to *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As previously stated by the director, the passport clearly identifies the beneficiary as a resident of Venezuela when the passport was renewed in July 1994. Furthermore counsel did not refute in any manner the director's statement with regard to the beneficiary's profession being noted as tailor on the renewed passport. With regard to the four letters submitted by the beneficiary's co-workers, it is noted that all four letters contain identical text which diminishes the weight to be given to their contents. Furthermore, the director clearly stated that additional letters from former employers would not suffice to substantiate the beneficiary's two years of experience as a warehouse manager. Thus, the second letter from [REDACTED] the owner of One Stop Auto Parts in Georgetown, Guyana, is given no weight in these proceedings. Therefore the petitioner has not established the beneficiary's two years of required experience as a warehouse manager, based on the beneficiary's employment in Guyana.

With regard to the documentation submitted by counsel on appeal as to the beneficiary's employment with the petitioner, the Form ETA 750 indicated that the beneficiary had worked for the petitioner from January 1998 to the present. The petitioner submitted documentation for the beneficiary's employment by the petitioner in 1999, 2000, and in 2001, the period of time prior to the priority date of April 6, 2001. The beneficiary's employment in 1998 is not established in the record. The documentation that is in the record with regard to the beneficiary's wages does not clearly establish whether the beneficiary worked part time or full time in 1999 and 2000, and whether the time worked by the beneficiary from 1999 to 2001 would constitute two years of relevant work experience. Furthermore, the record contains a letter from the petitioner submitted with the petition that states that the petitioner has the financial ability to pay the beneficiary as a manager of its distribution warehouse; however, the record does not include a letter from the petitioner that states that the beneficiary worked for the petitioner as a distribution warehouse manager, or that the beneficiary worked on a full time basis. As previously noted, the beneficiary's Forms 1040 all indicate that he worked for the petitioner as a dispatcher in 1999, 2000, and 2001. This documentation contradicts the information contained on Form ETA 750B, which outlines the warehouse distribution manager duties of the beneficiary. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "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." *Ho* further 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."

Without more persuasive evidence, such as payroll records that indicate the actual work status of the beneficiary during the claimed years of employment, and other documentation as to the actual duties of the beneficiary during the claimed years of employment, the petitioner has not established that the beneficiary has the requisite two years of previous work experience as a distribution warehouse manager, based on his U.S. employment.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. As previously stated, the petitioner has not sufficiently established the beneficiary's relevant work experience in Guyana. In addition, the petitioner has not provided sufficient documentation with regard to the beneficiary's work experience in the United States prior to the priority date to establish the two years of relevant work experience as a distribution warehouse manager.

Without more persuasive evidence, the petitioner has not established that the beneficiary had two years of work experience at the time the original petition was filed. 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. The appeal will be dismissed. The petition will be denied.

ORDER: The appeal is dismissed.