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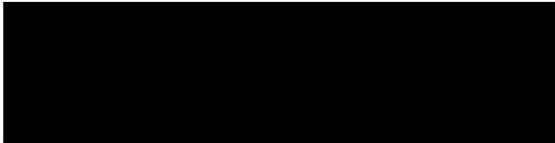


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 2 2005
WAC 02 141 51276

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, Director
Administrative Appeals Office

DISCUSSION: The visa petition was denied by the director, California Service Center, on March 18, 2004, and, it is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The petitioner seeks to classify the beneficiary pursuant to Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director denied the petition because the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification application.

The director stated:

The Service is in possession of the following information: The letters from Alfa Hotel and Noora Hotel were included in the I-140 petition as verification of the beneficiary's experience as a specialty cook.

The investigation ... by the Anti-Fraud Unit of the United States Embassy – New Delhi, India revealed that the letters of experience submitted with the I-140 were fraudulent. These investigations revealed the beneficiary was never employed with Alfa Hotel [or] the Noora Hotel could not be located

The petitioner, by its counsel, appealed the director's decision. On the Form I-290B Notice of Appeal as submitted, counsel failed to identify any erroneous conclusion of law or statement of fact for the appeal.

Counsel stated on Form I-290B:

“The alien ... has the required experience for the job. She has been employed as a cook with Bob Hotchandani in Belize”

Although counsel asserted the above job experience, no job verification affidavit or letter was produced to substantiate the experience. 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).

The regulation 8 C.F.R § 204.5(l)(3)(ii) states in pertinent part:

(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.

Other than the above statement and the submission of several expired work visas for the country of Belize, the petitioner has not submitted any evidence, according to regulation, of the alien's job experience, or offered rebuttal evidence to the investigation's findings. Counsel's appeal is non-responsive to the director's findings that were based upon the fraud investigation conducted by the U.S. Embassy in New Delhi, India. Counsel's present submission is not relevant and of little evidentiary weight to the issue of qualifications of the beneficiary as a cook.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

As stated above, and, as found in the record of proceedings, the investigation conducted by the Anti-Fraud Unit of the United States Embassy – New Delhi, India revealed that the letters of experience submitted with the I-140 were fraudulent. Therefore, the parallel statements of occupational experience in Form ETA 750B were also fraudulent. The Alien Employment Certification should be invalidated as it was procured by fraudulent statements made under penalty of perjury. See 8 U.S.C. § 1182(a)(6)(c), and, 20 C.F.R. §§ 656.30(d) and 656.31(d). Therefore, the AAO will remand the case to the director and the director can undertake any procedural mechanisms or request any additional information or evidence as deemed necessary.

ORDER: The matter is remanded to the director to invalidate the petitioner's alien labor certification in this matter.