

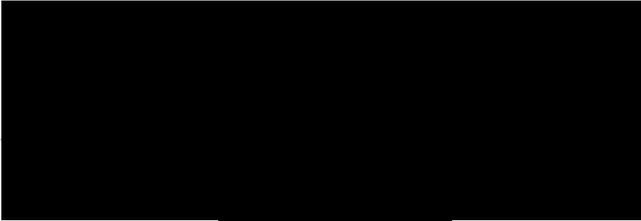
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 14 2005**
WAC-95-022-50964

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:

SELF-REPRESENTED

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

CC: [REDACTED]

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the results of an investigation performed by the consular officer in Amman, Jordan pursuant to the beneficiary's application to adjust status to lawful permanent resident, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain revoked.

The petitioner is an automobile service and repair business. It seeks to employ the beneficiary permanently in the United States as an automobile mechanic. 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 was qualified for the proffered position and revoked the petition accordingly.

The petitioner was represented by counsel for one responsive pleading before the director. The petitioner did not indicate that he terminated the relationship with counsel on appeal, although no correspondence was received from counsel, so a copy of this decision will also be provided to the attorney representative with a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative in the record of proceeding.

On appeal, the petitioner submits additional evidence.

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 issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is November 17, 1993. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, 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 automobile mechanic. In the instant case, item 14 describes the requirements of the proffered position as follows:

| | | |
|-----|-------------------------|-------|
| 14. | Education | |
| | Grade School | 8 |
| | High School | Blank |
| | College | Blank |
| | College Degree Required | Blank |
| | Major Field of Study | Blank |

The applicant must have two years of training in order to perform the job duties listed in Item 13, which states "repair and overhaul foreign cars. Repair and repalce [sic] parts as pistons, gears, valves, carburators [sic], generators, etc.. Rebuild and overhaul engines, brakes, etc. Time spent 60% Mercedes, 10% BMW, 10% Porsche, 10% Audi, jaguar. 70% of work involves engines, 20% carburators [sic], brakes, starters and 10% air conditioning and minor electrical work." There are no special requirements listed in Item 15.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he indicated that he was employed at [redacted] [sic] in Northmarka, Amman, Jordan as a car mechanic from March 1981 to July 1991, performing duties similar to the duties of the proffered position.

With the initial petition, the petitioner submitted two letters. One letter was on letterhead in Arabic and contained English text stating that the beneficiary was employed as "Expert Car - mechanics [sic] from March 1981 to July 1991." The identity of the writer is unclear. The second letter is in English except for an Arabic heading on the right. The second letter's English heading on the left states an address of [redacted] Specialist / BMW [redacted] Northmarka, TL 886977, stating the same content as the first letter, and signed by the "Director General."

The petition was approved on February 13, 1995. The beneficiary filed an application to adjust status to lawful permanent resident on July 13, 1995. On September 17, 1996, the director, citing a high volume of fraud at his office, issued a request to the consulate in Amman, Jordan to investigate the beneficiary's claim of having two years of experience as a mechanic.

On November 25, 1996, the vice consul of the American Embassy in Amman, Jordan, wrote the director stating the following:

In response to your memorandum dated September 27, 1996, Embassy investigators visited the owner of [redacted] auto workshop in Amman, [redacted]. He admitted that the affidavit describing the beneficiary's work experience was exaggerated. In fact, the beneficiary worked at [redacted] for less than on year and never had supervisory responsibilities.

Pursuant to the vice consul's findings, the director issued a notice of intent to revoke the approved petition on June 24, 2003, informing the petitioner of the results of the investigation and providing the petitioner with an opportunity to respond with additional evidence.

The petitioner retained counsel who submitted an "additional letter of experience from previous employer abroad and a certification from the employer abroad in respond [sic] to the proposed allegations." Two notarized and sworn affidavits were submitted, in Arabic with certified English translations, from [REDACTED] who claims to be the owner of [REDACTED] and is on [REDACTED] Auto Workshop letterhead. Mr. [REDACTED] stated that he was never contacted by an embassy official concerning the beneficiary's past employment at his business in one affidavit and restates the beneficiary's employment experience in another affidavit.

The director denied the petition on February 4, 2004 stating that the petitioner's response to his notice of intent to deny failed to prove that [REDACTED] was the owner of [REDACTED] or was the original author of the first experience letters submitted into the record of proceeding. The director noted that the consular investigation only indicated that [REDACTED] was the owner of the business that previously employed the beneficiary. Additionally, the director noted that no evidence was submitted to show that [REDACTED] Workshop and [REDACTED] Maintenance are the same business. Finally, the director also referenced a document "from the Hashemite Kingdom of Jordan, Ministry of Interior, Department of Civil Status" that indicates that the beneficiary's occupation as "Décor Designer." The director was referencing a document submitted by the beneficiary with his application to adjust status to lawful permanent resident.

On appeal, the petitioner asserts there are misunderstandings and submits an affidavit from its owner, [REDACTED] and the beneficiary. In those affidavits, the beneficiary states that [REDACTED] are the same person. The given name of the owner is [REDACTED] and the name [REDACTED] reflects the fact that he has a son named [REDACTED] and is an "old Middle Eastern tradition." The beneficiary also states that "Décor Designer" was indicated on his Jordanian civil record because that was the occupation he initially pursued but had to settle for any opportunity when he did not find a job in that field. [REDACTED] states that the beneficiary is a good employee and his business and the beneficiary and his family would undergo hardship if his immigrant visa were revoked.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). The AAO finds that the director had good and sufficient cause to revoke the approval of this petition as he properly relied upon the results of an investigation undertaken by a consular office of the U.S. Embassy after which inconsistencies and misrepresentations were revealed concerning the beneficiary's qualifications for the proffered position.

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 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 AAO concurs with the director's determination that the petitioner failed to overcome the adverse findings of the American consular officer in Jordan. No additional objective evidence was received from [REDACTED] or [REDACTED] or from [REDACTED] Workshop or [REDACTED] Maintenance, to clarify the inconsistent information obtained by the consular officer against the assertions of the beneficiary and [REDACTED]. The assertions made by the beneficiary and [REDACTED] are self-serving and thus lack objectivity. The investigation conducted by the U.S. Embassy in Jordan and reported results are credible and probative evidence that the beneficiary misrepresented his employment status and duration at [REDACTED] Maintenance. Additionally, the assertion by [REDACTED] that he was never interviewed by the consular officer is not persuasive since no objective and corroborating evidence demonstrates that the consular officer's report was false. 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 *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the evidence submitted on appeal fails to provide clear and convincing clarification of the inconsistent information and representations made in this matter.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) 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." *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."

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.