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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] WAC 97 102 51281

Office: CALIFORNIA SERVICE CENTER

Date: OCT 26 2005

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

CC: PATHWAY MEDICAL GROUP, SUBSTITUTE EMPLOYER
ATTN: HASSAN ALKHOULI
7955 WESTMINSTER BLVD
WESTMINSTER CA 92683

DISCUSSION: The preference visa petition approval was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical practice. It seeks to employ the beneficiary permanently in the United States as a medical secretary. 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 employer named on that Form ETA 750 labor certification, however, is not the substitute petitioner.¹ The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director revoked the petition approval accordingly.

On appeal, the counsel 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 regulation at 8 CFR § 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.

The petitioner must 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).

Here, the Form ETA 750 was accepted on March 21, 1995. The proffered wage as stated on the Form ETA 750 is \$13.00 per hour (\$27,040.00 per year). The Form ETA 750 states that the position requires two years and six months experience.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

¹ Counsel is requesting that the petition be processed pursuant to the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). This office is aware that AC21 rendered certain immigrant employment-based visas "portable." That is, under some circumstances a holder of one of those visas may substitute an employer. The petition as dated February 11, 1997, and its exhibits including the certified Alien employment Application, as filed by the medical practice, are the subjects of this Discussion.

The I-140 petition is dated February 11, 1997. The petition was approved on March 18, 1997. On June 16, 2003, the petitioner informed the Service Center that it was substituting a new employer for the petitioner pursuant to the American Competitiveness in the Twenty-First Century Act of 2000. The Service Center issued a Notice of Intent to Revoke the petition approval, and, it issued a Notice of Decision on June 14, 2004 revoking the approval.

The issue to be discussed in this case is whether or not the petitioner had established that the beneficiary has the requisite experience as stated on the labor certification petition. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the priority date. *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-750 Part A, item 14, sets forth the minimum education, training, and experience that the beneficiary must have for the position of medical secretary.

Item 14 describes the requirements of the proffered position as follows:

- 14. Education.....
 - Grade School "Comp."
 - High School Blank
 - College Blank
 - College Degree Required "not required"
 - Major Field of Study Blank
 - Training Blank
- Experience.....
- Job Offered.....
- Yrs. \ Mos. "2 \ 6 mos."
- Related Occupation.....
- Yrs. \ Mos. "2 \ 6 mos."
- Related Occupation Specify "Medical office"

The Application for Alien Employment Certification, Form ETA-750 Part B, item 15, sets forth work experience of the applicant for the position of medical secretary.

15. WORK EXPERIENCE

- a. NAME AND ADDRESS OF EMPLOYER
Unemployed from 07-1994 to present time / Student at ROP [Regional Occupation Center]
NAME OF JOB
--
DATE STARTED
--
DATE LEFT
--
KIND OF BUSINESS
--
DESCRIBE IN DETAIL DUTIES...
--
NO. OF HOURS PER WEEK
--

- b. NAME AND ADDRESS OF EMPLOYER
[REDACTED]
Secretary
DATE STARTED
Month - 06 [June] Year - 1992
DATE LEFT
Month - 06 [June] - 1994
KIND OF BUSINESS
Real Estate Agency
DESCRIBE IN DETAIL DUTIES...
Typing 65 WPM, data entry, take phone calls, messages, greet customers
NO. OF HOURS PER WEEK
40

- c. NAME AND ADDRESS OF EMPLOYER
[REDACTED]
NAME OF JOB
Medical Secretary
DATE STARTED
Month - 02 [February] Year - 1989
DATE LEFT
Month - 11 [November] - 1991
KIND OF BUSINESS
Medical Offices
DESCRIBE IN DETAIL DUTIES...
As a medical secretary, performing all secretarial skills to include answering phones, take message, make appointments to doctors, bill health insurance agencies as well as assessment of patients coverage. Maintain company files, customer greeting and service. Manage the financial monthly reports. Compiles and records patient's medical charts, reports and correspondences. Computer data entry.

NO. OF HOURS PER WEEK
40

On December 16, 2003, the Service Center requested from petitioner, among other documents, beneficiary's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements for the years 1988 through 2002 as well as Social Security Administration (SSA) Forms SSA-7050-F4 for the same years. On appeal, counsel has submitted a copy of the SSA's "Certification of Extract of Records (Extract) for the beneficiary dated May 25, 2004. The Extract was requested to verify beneficiary's employment since, in some instances, she recounted that she was paid in cash without receipts or W-2 statements issued.

Of interest was the employment as a medical secretary with Pacific Coast Medical Management from 1989 to 1991 as above mentioned. The "Pacific Coast" letter submitted does not describe the job duties to confirm what the beneficiary has set forth in the certified Alien Employment Certification, or if this location, was in fact, a "medical office." The pertinent regulation states in part, "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." The "Pacific Coast" employment duration is not confirmed by the Extract that according to the Form ETA 750 part B, Item "c" was February 1989 to November 1991.

According to the Extract submitted the beneficiary worked at various times for "WCW at [REDACTED], [REDACTED] "Pep Boys Many [REDACTED] of California," [REDACTED], Pic N Save of California, and, RKX Engineers Inc during that same time. The employment dates and employers in the Extract and the information in the certified Alien Employment Application do not coincide, but the casual temporary and part-time employment noted in the Extract is not relevant to the occupational experience, according to the information in the labor certification and the beneficiary's statements in the record of proceedings. In an affidavit submitted, beneficiary explains, that although she did work full time for "Pacific Coast" her rate of pay was low and it was necessary for her to take other employment to meet her living expenses.²

Petitioner has submitted an employment verification letter from the vice president of Pacific Coast Medical Management stating that the beneficiary was employed full time as a medical secretary between February 1989 to November 1991, but there is no substantiation provided for this statement in the record of proceedings such as canceled checks, personal bank statements, or other indicia to show she worked there during that period, nor is there a description of her duties. The beneficiary has said that because she was paid under the minimum wage, she did not receive either a W-2 Wage and Tax Statement or a 1099-MISC statement, but petitioner has submitted nothing to substantiate earnings from that employment.

In this case, a job verification affidavit that the petitioner submitted with the petition to prove the beneficiary's work experience as a medical secretary conflicted with the information recounted above in the Form ETA 750, Part B. The Service Center objected to a job verification letter dated October 15, 1998 submitted by a medical clinic in Beirut, Lebanon, stating that the beneficiary was employed there as "one of our a nurses" from 1984 through 1988. The letter stated:

[The beneficiary's] responsibilities were:

- Helping patients and preparing them for consultation.
- Taking blood pressure, temperature, height and weight.

² Other employment recounted by the beneficiary and questioned by the Service Center, (not as a medical secretary), is confirmed by the Extract.

- Helping patients in caring for their injuries and sanitizing it.
- Iv, blood and immunization.
- Taking patient's messages and pharmacy orders.

We enjoyed having [the beneficiary] as one of our team members; she was a role [sic] model for other employees in keeping her appointments, customer service and public relations....

A second affidavit from the same medical clinic dated May 25, 2004 stated that the beneficiary was "...one of our staff members from January 10, 1984 until October 10, 1998 as a Nurse assistant and a medical secretary."

[The beneficiary's] responsibilities were:

- Helping patients and preparing them for consultation.
- Answering phones and taking messages.
- Taking patient's appointments
- Secretarial duties as: Billing, accounting and typing (Arabic & English)
- Taking blood pressure, temperature, height and weight.
- Prepare Immunization for nurses.

We enjoyed having [the beneficiary] as one of our team members; she was a role model for other employees in keeping her appointments, customer service and public relations....

As is set forth above, the job and duty responsibilities vary between the two employment verifications for the same employment and employment period. There is no explanation given by the maker of the two letters for the revision, or whether the second letter is more accurate than the first letter submitted. The first letter clearly does not describe the duties of a medical secretary in a medical office set forth in the certified Alien Employment application. There is no other substantiation provided by petitioner to help reconcile these disparate statements in the record of proceedings to show the beneficiary's job responsibilities and duties during that period.

The purpose of the Notice of the Intent to Revoke is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The above employment letters seem to be contradictory and there is no evidence submitted to show that the beneficiary was medically trained or in what proportion she conducted the various duties if the letters were intended to be read together meaning that she had duties as both a nurse assistant and a medical secretary. If this is the case, there is no break down found in the record concerning hours spent or percentage of an average day's work in either occupation.

Counsel contends in this case that a "Medical Office" is not an occupation, but rather a place, and the literal interpretation of the Labor Certification for this position of Medical Secretary is not limited to experience as a medical secretary, but any work experience in a medical office. Contrary to counsel's assertion, the occupation stated in the certified Alien Employment Application is limited to the occupation "medical secretary."

As already stated, "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." The certified Form ETA 750, Part A, items 7, 8 and 13 state the following:

8. Nature of Employer's Business Activity

"Medical Office"



9. Name of Job Title

“Medical Secretary”

* * *

13. Describe Fully the Job to be performed (Duties)

Performs secretarial duties. Compiles and records medical charts, reports and correspondence. Billing insurance agencies, as well as assessment of coverage of patients. Answers phones, schedules appointments, and greets patients. Maintains files. Prepares & distributes monthly financial reports. Computer data entry and typing 65 wpm. Work as a liaison between our office and Arabic speaking patients.

It is clear from the above statement that the job duties are strictly delimited and they do not include what may be characterized as clinical or patient treatment duties. There is no probative evidence in the record of proceeding that the beneficiary was employed full time in a medical office conducting the above recited duties.

Expanding upon counsel’s assertion made above, he contends that the statement in the certified Alien Employment application that the insertion of the phrase “Medical Office” under “Related Occupation” some how “opens up” the duties or the occupation to mean any work experience in a medical office. The logic of counsel’s assertion is not apparent. According to item “8” above recited, “Medical Office” is intended to describe the “Nature of Employer’s Business Activity.” Therefore the inclusion of the phrase “Medical Office” under occupation does not detract from the intent of employer to require a medical secretary who is capable of performing the medical secretarial duties that are above stated (i.e. ETA 750 A, item 13) in a medical office.

The problem that arises in this case is the multiple inconsistencies in information provided to prove the beneficiary job experience, and, the lack of credible evidence of the occupation from prior employers. *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. at 591-592 also 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.”

Even if the record of proceeding did not contain multiple inconsistencies, the AAO concurs with the director’s determination that no probative evidence establishes that the beneficiary has two years and six months of experience as a medical secretary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner has not met that burden.

ORDER: The petition is dismissed.