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U.S. Citizenship
and Immigration
Services

B6

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 5 2005
WAC 03 199 50395

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a convalescent home. It seeks to employ the beneficiary permanently in the United States as a housekeeping supervisor. 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 director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition 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 January 14, 1998. The proffered wage as stated on the Form ETA 750 is \$14.49 per hour (\$30,139.20 per year). The Form ETA 750 states that the position requires two years 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, income tax returns of petitioner, and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

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 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-750B, item 15, sets forth work experience that the beneficiary listed for the position of housekeeping supervisor:

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Housekeeper/Nanny

DATE STARTED

Month - Dec. Year - 1993

DATE LEFT

Month - Present

KIND OF BUSINESS

Household

DESCRIBE IN DETAIL DUTIES...

Household chores; preparing Filipino and Chinese meals; wash and iron clothes; grocery shopping; caring for 4 minor children.

NO. OF HOURS PER WEEK

40

b. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

Housekeeper/Nanny

DATE STARTED

Month - Jan. Year - 1992

DATE LEFT

Month - Nov. Year - 1993

KIND OF BUSINESS

Household

DESCRIBE IN DETAIL DUTIES...

Cleaning house; cooking and serving meals; doing laundry; grocery shopping; caring for 3 minor children.

NO. OF HOURS PER WEEK

40

c.

[REDACTED]

NAME OF JOB

Supervisor of Product Development

DATE STARTED

Month – Feb. Year - 1988

DATE LEFT

Month – Dec.- 1991

KIND OF BUSINESS

Flower Factory

DESCRIBE IN DETAIL DUTIES...

Supervises and instructs employees on construction of silk flowers

NO. OF HOURS PER WEEK

40

The I-140 petition is dated June 17, 2003, and it was filed on October 14, 2003. A Request for Evidence, was issued by the Service Center, that consistent with the requirements of 8 C.F.R. 204.5 § (1)(3)(ii), requested that evidence of the beneficiary's experience be in the form of letters on letterhead from former employers giving the name and title of the letter provider, and a description of the experience of the alien that included specific dates of that current or prior employment and specific duties that were performed. The Service Center advised, "If the experience is from the United States provide any verifiable evidence that would establish that the applicant ... [the beneficiary] has met the labor certification requirements," and, it gave acceptable examples such as work I.D., pay stubs or tax documents.

In the petitioner's response, it submitted two job verification letters, as follows:

- A letter dated August 10, 1991, from a vice president of [REDACTED] that stated that at the time of the letter the beneficiary was employed as a Supervisor of Product Development.
- A letter notarized August 11, 1998 stated that a [REDACTED] employed the beneficiary as a housekeeper and nanny since January 1992 through November 1993.

Also submitted was a letter from Saint Louis University, Baguio City Philippines stating that at the time of the letter dated September 20, 2002, the beneficiary was enrolled in its educational program that would lead to a degree in General Nursing – B.S. Nursing Special Program.

The director denied the petition on March 2, 2004, finding that the evidence submitted was insufficient since there was no specificity found in the two letters relating to duties and responsibilities of the occupation of housekeeping supervisor.

The petitioner appealed and submitted additional evidence not already submitted to the Service Center that is a job verification letter dated March 10, 2004, from Good Shepherd Convent, Baguio, Philippines that stated:

To Whom It May Concern:

This letter serves as verification that ...[the beneficiary] has been employed with the Good Shepherd Convent, Baguio City as Head Housekeeper. She started working with us beginning June 1977 until September 1980 on a 40-hour per week basis. Her duties included but were not limited to the following: general housekeeping chores, janitorial services, laundry of residents', nuns' clothes and facility linens; ability to interact with the staff and other members of the convent including her co-housekeepers; as head housekeeper, ...[the beneficiary] also exercised supervision of the other housekeepers in their assigned tasks

The purpose of the request for evidence 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. *See* 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, consider the sufficiency of the evidence submitted on appeal.

However, in this case, there are no inconsistencies in information provided by the beneficiary, and, there is credible evidence of the housekeeping and supervisory occupational experience from prior employers. In this instance, counsel has provided competent objective evidence pointing to where the truth, in fact, lies

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 established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner has met that burden.

ORDER: The petition is sustained.