



U.S. Citizenship
and Immigration
Services

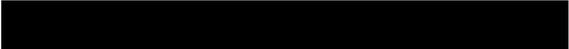
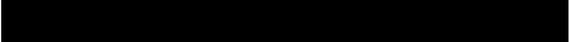
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FILE: SRC 04 006 52727 Office: TEXAS SERVICE CENTER Date: **SEP 12 2005**

IN RE: Petitioner: 
Beneficiary: 

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

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a flooring company. It seeks to employ the beneficiary permanently in the United States as a flooring designer supervisor. 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 it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, that it had not established that the beneficiary has the requisite experience as stated on the approved labor certification, and that it had not established that the beneficiary has the requisite education as stated on the approved labor certification. The director denied the petition accordingly.

On appeal, the petitioner submits a statement and 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.

8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

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.

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 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). Here, the Form ETA 750 was accepted on May 15, 2001. The proffered wage as stated on the Form ETA 750 is \$25 per hour, which equals \$52,000 per year. The Form ETA 750 states that the position requires three years of college with a major in engineering and ten years of experience in the proffered position.

On the petition, the petitioner stated that it was established during 1987 and that it employs ten workers. On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner. Both the petition and the Form ETA 750 indicate that the petitioner will employ the beneficiary in Duluth, Georgia.

With the petition, the petitioner submitted no evidence pertinent to its continuing ability to pay the proffered wage beginning on the priority date and no evidence that the beneficiary has the qualifications listed on the Form ETA 750. Therefore, on September 13, 2004, the Director, Texas Service Center, requested evidence pertinent to both issues. Consistent with 8 C.F.R. § 204.5(g)(2) the Service Center requested copies of annual reports, federal tax returns, or audited financial statements showing the continuing ability to pay the proffered wage beginning on the priority date. The director also requested evidence that the beneficiary has ten years of qualifying employment experience and three years of college with a major in engineering.

In response the petitioner submitted unaudited profit and loss statements. The petitioner also submitted a letter in Spanish, dated October 12, 2004, and English translation, from a person with the same family name as the beneficiary, the owner of Ayarzagotia Pisos y Acabados." That letter states that the beneficiary started working for that company when he was ten years old, picking up wood and tile scraps part-time, then became full-time at age 15. The letter did not state when the beneficiary terminated that employment or how long her worked for that company. The petitioner submitted no evidence that the petitioner attended college.

The director denied the petition on November 17, 2004, finding that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, that the evidence submitted did not demonstrate that the beneficiary has the requisite ten years of salient work experience, and that the evidence did not demonstrate that the beneficiary has the requisite three years of college with a major in engineering.

On appeal, the petitioner's owner asserts that the petitioner's premises suffered a fire that destroyed its records. In support of that assertion the petitioner's owner submits a fire report. The petitioner's owner reiterates, however, that the information on the petitioner's unaudited financial statements is true and that it has the ability to pay the proffered wage. The petitioner's owner states that the beneficiary would be installing borders and medallions and provides pictures of such borders and medallions.

Further, the petitioner's owner states that he spoke with the beneficiary's former employer in Mexico who informed him that the beneficiary began working part-time during 1989 and worked full-time from 1994 to 2004.

As to the beneficiary's college education, the petitioner's owner stated that the beneficiary is unable to provide any evidence because he did not complete his degree and the college is no longer "in service."

The Form ETA 750 states that the proffered position requires three years of college with a major in engineering. The record, however, contains no evidence that the beneficiary has ever attended college. The petitioner has not shown that the beneficiary has the requisite college education and the petition was correctly denied on that ground.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that the petitioner must submit letters from previous employers to establish that the beneficiary has the requisite employment experience as stated on the Form ETA 750. The Form ETA 750 states that the proffered position requires ten years experience in the job offered, which is flooring designer supervisor. Even if the employment verification letter submitted is found to show that the beneficiary worked as a flooring designer supervisor, it does not state for how long and does not, therefore, conform to the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(B). The statement of the petitioner's owner on appeal is insufficient to reform the petitioner's employment verification letter to conform to the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(B). The petitioner has submitted insufficient credible evidence to demonstrate that the beneficiary has ten years of qualifying employment experience and the petition was correctly denied on that ground.

The petitioner's reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) indicates that the petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date with copies of annual reports, federal tax returns, or audited financial statements. The petitioner did not submit copies of annual reports, federal tax returns, or audited financial statements. The petitioner has submitted no credible evidence of its continuing ability to pay the proffered wage beginning on the priority date and the petition was correctly denied on that ground.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted does not demonstrate credibly that the beneficiary has the requisite ten years of qualifying experience. The evidence does not demonstrate that the beneficiary has the requisite three years of college with a major in engineering. For all three reasons, the petition may not be approved.

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.