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**U.S. Citizenship
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FILE:



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Office: CALIFORNIA SERVICE CENTER

Date: JUL 06 2006

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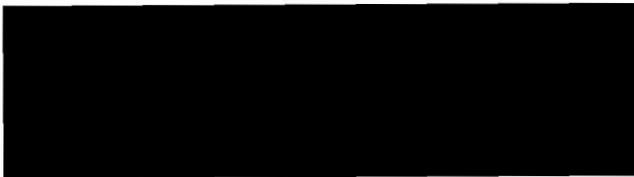
Petitioner:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a store. It seeks to employ the beneficiary permanently in the United States as a purchasing analyst. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel 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 or seasonal nature, for which qualified workers are unavailable in the United States.

The regulation at 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.

Eligibility in this matter hinges on the petitioner demonstrating 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). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on April 27, 2001. The labor certification states that the position requires three years of experience in the job offered.

On the Form ETA 750, Part B, signed by the beneficiary on June 27, 2003, the beneficiary stated that she had worked (1) as a purchasing analyst for a store in Bombay, India from April 1997 to April 1998, (2) as a purchasing analyst for a store, other than the petitioner, in Phoenix, Arizona from April 1998 to October 2001, and (3) as a purchasing agent for the petitioner beginning in October 2002.

With the petition counsel submitted (1) a letter dated May 5, 1998 from the managing director of the store in Bombay, India, (2) a letter dated November 3, 2001 from the managing member of the other store in Phoenix, Arizona, (3) a letter dated November 15, 2002 from the petitioner's managing member, and (4) Two 2001 Form 1099 Miscellaneous Income statements and one 2002 Miscellaneous Income statement.

The May 5, 1998 letter states that the beneficiary worked 40 hours per week for the Bombay store as purchasing analyst from April 23, 1997 until April 30, 1998. The November 3, 2001 letter states that the beneficiary worked 40 hours per week as a supervisor-purchasing analyst for a store in Phoenix, Arizona from June 20, 1998 to October 30, 2001. The petitioner's managing member's November 15, 2002 letter states that it employed the beneficiary 40 hours per week from November 1, 2001 until October 31, 2002 as a supervisor with duties of a purchasing analyst.

This office notes that, as the priority date of this petition is April 27, 2001 experience acquired after that date is not directly relevant to the beneficiary's eligibility for the proffered position. Further, all three of the employment verification letters are addressed "To Whomsoever It May Concern," are otherwise similarly worded, and are in very similar formats. Nevertheless, the beneficiary's claim of qualifying employment prior to the priority date encompasses almost four years.

The 2001 1099 forms submitted show that the petitioner paid the beneficiary non-employee compensation of \$862 during 2001 and the store that previously employed the beneficiary paid her non-employee compensation of \$4,365. The 2002 1099 form shows that the petitioner paid the beneficiary non-employee compensation of \$4,618 during that year.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite three years of qualifying work experience, the California Service Center, on September 9, 2004, requested additional evidence. Consistent with the requirements of 8 C.F.R. § 204.5(l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of 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 service center also specifically requested (1) copies of the petitioner's California Form DE-6 wage reports for the previous four quarters,¹ (2) letters, contracts, and pay statements to support the beneficiary's claim of qualifying employment, (3) W-2 forms, pay stubs, and/or wage statements to further corroborate the beneficiary's employment claim, and (4) a description of the duties of each of the petitioner's employees.

In response, counsel submitted (1) a letter dated November 23, 2001, (2) 1998, 1999, and 2000 Form 1099 Miscellaneous Income statements, (3) the petitioner's 2003 Form W-3 transmittal, (4) the petitioner's Form 940-EZ annual unemployment tax return for the same quarter, (5) seven 2003 Form W-2 Wage and Tax Statements, (6) Form 941 quarterly returns for the last quarter of 2003, and the second and third quarters of 2004, (7) the petitioner's Arizona tax and wage report for the last quarter of 2003 and the first three quarters of 2004, and (8) a list of each of the petitioner's employees and their duties.

Although the petitioner provided various other documents in response to that request for evidence none of those other documents are directly relevant to the petitioner's claim of qualifying employment.

¹ This request was inappropriate, given that the petitioner operates in Arizona.

The November 23, 2001 letter is from another managing member of the Phoenix store at which the beneficiary claims to have been previously employed. That letter states that the beneficiary worked at that store as a purchase analyst from April 1998 to October 2001. This office notes that this claim contradicts the previous claim, in the November 3, 2001 letter, from another managing member of the same store, that it employed the beneficiary beginning on June 20, 1998. Further, although those two letters purport to have come from the same store during the same month, the letterhead upon which they were printed is markedly different, as is the format used.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The 1099 forms submitted show that the beneficiary's alleged previous employer paid her \$3,940, \$3,600, and \$4,365 during 1998, 1999, and 2000, respectively.

The 2003 W-3 transmittal shows that the petitioner paid \$22,256.44 to seven employees during that year. The petitioner's Form 940-EZ confirms that amount. The 2003 W-2 forms provided show wages the petitioner paid to seven employees during that year. Those wages total \$19,556.44, an amount \$2,700 less than the amount shown on the W-3 transmittal. This office notes that at least one W-2 form is missing. One of those W-2 forms was issued to the beneficiary and shows that the petitioner paid her \$7,500 during that year.

The list of the petitioner's employees shows that during 2003 the petitioner employed an administrative office worker, three warehouse workers, two cashiers, and employed the beneficiary as its purchasing agent.

The petitioner's quarterly return for the last quarter of 2003 shows that it paid total wages of \$8,500 during that quarter. The Arizona Tax and Wage Report for that quarter confirms that amount and shows that \$7,500 of that amount was paid to the beneficiary and that she worked for the petitioner for only five weeks of that quarter.² The remaining \$1,000 was paid to an employee who worked only two weeks and is identified on the employee list as a warehouse worker. This office notes that, according to the evidence presented, the petitioner operated during that quarter with the services of the beneficiary, and a warehouse worker, but no administrative workers or cashiers. Further, as the beneficiary worked five weeks and the warehouse worker for two weeks, the petitioner had no employees during more than half of that quarter.

The petitioner's quarterly Federal return for the first quarter of 2004 was not submitted. The Arizona report for the first quarter of 2004 indicates that the petitioner paid total wages of \$8,647.24 during that quarter to four employees, including \$5,000 to the beneficiary, and that the beneficiary worked only five weeks of that quarter.

² This office notices that as a quarter of a year encompasses approximately 13 weeks the beneficiary was employed by the petitioner less than half of that quarter.

The petitioner's quarterly return for the second quarter of 2004 shows that the petitioner paid total wages of \$10,500 during that quarter. The corresponding Arizona Tax and Wage Report confirms that amount and shows that \$10,000 of that amount was paid to the beneficiary. The remaining \$500 was paid to a warehouse worker who worked only two weeks. The evidence presented indicates that the petitioner employed the beneficiary for the entire quarter, that it employed a warehouse worker for two weeks of that quarter, and that it employed no administrative personnel or cashiers during that quarter. The evidence shows that the petitioner had no employees except the beneficiary for approximately 11 weeks of that quarter.

The quarterly return for the third quarter of 2004 shows that the petitioner paid total wages of \$7,500 during that quarter. The corresponding Arizona report confirms that amount and shows that the entire amount was paid to the beneficiary, who worked only five weeks of that quarter. This office notes that the petitioner, therefore, employed no administrative workers, warehouse workers, or cashiers during that quarter and had no employees at all during more than half of the quarter.

On December 14, 2004, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite three years of salient work experience. The director noted that the wages paid to the beneficiary by the store that previously employed her are inconsistent with her claim of full-time employment at that store.

On appeal, counsel states,

The officer failed to incorporate the submitted documents about the value of the rental payment (for about \$11,000/yr.) paid by the Nick Dollar Store to the landlord. The officer determined that the wage paid to the beneficiary was \$2.10 per hour is obviously an error. The beneficiary and the Nick Dollar store entered an agreement that the Nick Dollar store paid major [sic] of her income to the landlord directly. Please reconsider the I-140 based on the attached evidences. [sic] In Arizona, the minimum wage is \$5.75 per hour (total annual minimum wage will be \$12,129/yr. in 2004 – 2005. In 1998 – 1999 the minimum wage is [sic] even lower. The total income for the beneficiary was about \$15,000 per year. It is above the minimum wage.

With the appeal counsel submitted (1) a letter dated January 7, 2005 from the beneficiary, (2) a letter dated December 21, 2004 from a property management company, and (3) 45 receipts for monthly payments of \$955.87.

The beneficiary's January 7, 2005 letter states that she had an agreement with her previous employer that it was to pay her rent directly to her landlord. The beneficiary states that this arrangement was put in place to prevent her from becoming delinquent in her rent.

The property management company's December 21, 2004 letter states that they received payment for the premises at 1622 N. 22th [sic] Street directly from the petitioner's previous employer.

The rent receipts are dated from May 1998 to October 2001, but do not include the months from January to May of 2001. None of the receipts indicate who paid the amount shown. Some of those receipts are in the

amount of \$955.97 and some in the amount of \$981.86. Some of those receipts indicate that they are payments for the beneficiary's rent and some do not.

An additional irregularity appears in those receipts. The record contains two non-duplicate receipts for January, February, March, April, and November 2000.

One receipt is dated January 4, 2000 and indicates that \$955.87 was received on that date as the beneficiary's rent. Another is also dated January 4, 2000 and indicates that \$973.56 was received on that date as the beneficiary's rent.

One receipt is dated February 7, 2000 and indicates that \$955.87 was received on that date for the beneficiary's rent. Another is dated February 6, 2000 and indicates that \$973.56 was received on that date for the beneficiary's rent.

A receipt dated March 2, 2000 indicates that \$955.87 was received on that date as the beneficiary's rent. Another is dated March 3, 2000 and indicates that \$973.56 was received on that date as the beneficiary's rent.

A receipt dated April 8, 2000 indicates that \$955.87 was received on that date as the beneficiary's rent. Another is also dated April 2000. The date of that receipt is otherwise illegible. That receipt indicates that \$973.56 was received during April 2000 as the beneficiary's rent.

Two of the receipts are dated November 2, 2000. Both of those receipts indicate that \$973.56 was received on that date for the beneficiary's rent. Various differences in those receipts indicate that they are not photocopies of the same receipt, but are two different receipts.

Yet further, the evidence purports to show that the beneficiary paid rent, and presumably lived, at 1622 N. 22nd Street in Phoenix, Arizona from May 1998 to October 2001. The Form ETA 750B submitted in this matter on April 27, 2001, however, states that the beneficiary then lived at 2816 N. 16th Street. The record contains no explanation of this additional discrepancy.

Initially this office notes that the petition was not denied because the petitioner paid the beneficiary less than the minimum wage. The petition was denied because the director, based in part on the small annual amounts paid to the beneficiary, found that the petitioner had failed to demonstrate that the beneficiary's previous employment was full-time and failed, therefore, to show that the beneficiary had the requisite employment experience. Further, as the rent receipts submitted on appeal were never previously submitted, counsel's statement that the director failed to consider them is inaccurate.

Further, the discrepancies shown above suggest that at least some of the receipts represented to show payments for the beneficiary's rent do not, in fact, show payments for the beneficiary's rent. Especially given the various discrepancies in the beneficiary's employment verification letters, the addresses given for the beneficiary, and the quarterly reports, the receipts are not convincing evidence of additional wage payments by the petitioner to the beneficiary.³

³ This office might be inclined to find otherwise if the record contained independent objective evidence that the

The beneficiary's W-2 and 1099 forms do not show that the beneficiary was ever employed full-time.⁴ Although they span approximately four years prior to the priority date they do not, therefore, show the equivalent of three years of full-time employment. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.

beneficiary had paid taxes on the amounts shown on those receipts and the petitioner had not deducted it as a business expense.

⁴ Although it is not directly relevant to the beneficiary's employment before the priority date this office notes that the Arizona reports clearly show that the petitioner still does not employ the beneficiary full-time.