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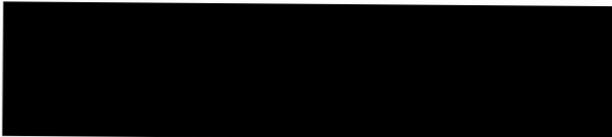
FILE: WAC 00 252 54145 Office: CALIFORNIA SERVICE CENTER Date: MAR 20 2006

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:



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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition approval was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 manufacturer, repairer, and retail sale's business of 22 karat Indian style jewelry. It seeks to employ the beneficiary permanently in the United States as a goldsmith, Indian style jewelry. 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 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.

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 September 23, 1998. The proffered wage as stated on the Form ETA 750 is \$2,000.00 per month. The Form ETA 750 states that the position requires four 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 I-140 petition was filed August 7, 2000. The petition was approved on December 23, 2000 and it was sent to the U.S. Embassy - consular section in Mumbai, India. The consulate conducted two interviews of beneficiary, and after obtaining information raising doubt as to the beneficiary's experience as a Indian style jewelry goldsmith, suspended the issuance of the immigrant visa according to 22 C.F.R. 42.43(a)(1). The director issued a Notice of Intent to Revoke the petition approval as a result of the consulate's findings on August 31, 2004. Petitioner failed to respond with additional evidence to the director. 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). On August 31, 2004, the director issued its decision to revoke the approval of the petition for immigrant visa. On September 17, 2004, an appeal was filed of the director’s decision by the petitioner. Counsel submitted a brief and additional evidence.

The issue to be discussed in this case is whether or not the petitioner has 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. 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 13 and 14, sets forth duties, the minimum education, training, and experience that an applicant must have for the position of a goldsmith, Indian style jewelry.

In the instant case, item 13 describes the duties of the proffered position as follows:

- Conduct die work, filigree work, stone setting, engraving and cholkam for wedding sets.
- Conduct customized design for 22K chains and make such chains (handmade).
- Design and handmake earrings, filigree work, stone setting and engraving work.
- Handmake holo type balls with cholkam work; pendants, etc.
- Conduct professional polishing and repair for the above.

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

14.	Education	
	Grade School	Blank
	High School	Blank
	College	Blank
	College Degree Required	Blank
	Major Field of Study	Blank
	Training	Blank
	Experience	
	Years	4

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15, sets forth work experience that an applicant listed for the position of goldsmith, Indian style jewelry.

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Co-owner (self-employed) Goldsmith

DATE STARTED

Month – Jan Year – 1990

Month – Jan Year - 1998

DATE LEFT

Month – Present

Month – Dec. Year - 1997

KIND OF BUSINESS

Manufacture, export, wholesale, retail & repair, 22k gold Indian

DESCRIBE IN DETAIL DUTIES...

In charge of manufacturing and repairing 22 K Indian style gold jewelry ...

NO. OF HOURS PER WEEK

40

15. WORK EXPERIENCE

b. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Goldsmith

DATE STARTED

Month – June Year – 1980

Month – July Year – 1981

DATE LEFT

Month – June- 1981

Month – May - 1988

KIND OF BUSINESS

Manufacture, export, wholesale, retail & repair, 22k gold Indian

DESCRIBE IN DETAIL DUTIES...

Customize design and hand make 22 K gold Indian style jewelry

NO. OF HOURS PER WEEK

40

15. WORK EXPERIENCE

c. NAME AND ADDRESS OF EMPLOYER

[REDACTED]

NAME OF JOB

Goldsmith

DATE STARTED

Month – June Year – 1988

Month – March Year – 1989

DATE LEFT

Month – June- 1981

Month – May - 1988

KIND OF BUSINESS

Manufacture, export, wholesale, retail & repair, 22k gold Indian

DESCRIBE IN DETAIL DUTIES...

Made and repaired 22 Karat gold jewelry ...

NO. OF HOURS PER WEEK

40

A letter was submitted by the petitioner to verify employment experience. It was made by [REDACTED] a cousin of the beneficiary, as dated August 2, 1989 and certified as true and correct on September 22, 1998. It states that the beneficiary worked as a goldsmith with [REDACTED] June 1988 to March 1989.

The petitioner submitted a second job verification letter from the beneficiary's father dated January 1, 1998 that the petitioner submitted with the petition to prove the beneficiary's work experience as a goldsmith, Indian style jewelry. According to the letter the beneficiary was trained for one year and thereafter worked until May 1988, then from January 1990 through December 1997 as his employee. Thereafter, the beneficiary became a joint owner of the business from January 1998 to the present (i.e. September 22 1998).

A third letter was submitted to verify employment experience. It was made by the beneficiary's brother as dated August 2, 1998. It stated that the beneficiary "... is in charge of manufacturing and repairing 22 karat Indian style gold jewelry and working as a goldsmith at the above business."

As stated in the record of proceedings, two interviews were conducted (August 28, 2001 and December 19, 2001) by the United States consular officers that revealed that the beneficiary's knowledge of the manufacturing, repairing, and retail sale of 22 karat Indian style jewelry and of the goldsmith trade was inadequate and not credible. According to the consular interviewers, the beneficiary did not know the price of gold; the diamond rating system; what gold filigree was; the types of gold work; the names of any jewelry clasps; how to create part-matte and part high polish jewelry finish; the difference between white and yellow gold; or basic jewelry terminology.

Upon appeal, the petitioner states that it did submit a response to the director's Intent to Revoke the approval of the petition¹; and, that because of a language problem the translator in the consular interviews did not translate accurately. The record of proceeding does not establish the truth of these statements.

As additional evidence, the petitioner submits a job verification letter dated September 17, 2003 from [REDACTED] Jewellers made by [REDACTED]. In summary, she stated that since the beneficiary was trained in a remote Indian village, according to the record of proceeding, 20 years ago, and diamond cutting or rating, and white gold are unknown there, the beneficiary today has no knowledge of these things. Also, she asserts the translator at the interview caused the beneficiary to perform poorly concerning knowledge of basic jewelry terms. We do not find these statements credible for a professional jeweler with twenty years of experience. Even if the beneficiary did not deal in diamonds or white gold, as they were not mentioned in the job duties, he should have knowledge of these commodities.

¹ There is a United Parcel Service mailing receipt in the record of proceeding.

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."

Counsel asserts in a brief submitted to support the appeal that the director should not revoke an approved petition unless there is "specific, material and clear evidence to support the revocation," and, a finding of fraud. This is incorrect. On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

We find that the two investigative interviews and their findings by the Mumbai consulate mentioned above constituted good and sufficient cause according to the regulation. The beneficiary was accorded ample opportunity to rebut the report's findings but it did not provide objective independent evidence to do so. The record of proceeding does not contain any competent objective evidence supporting the petitioner's claims relative to the nature of the jewelry industry in rural India. The beneficiary did not demonstrate the required knowledge of manufacturing and repairing 22-karat Indian style gold jewelry and working as a goldsmith as required by the Form ETA 750.

Counsel also asserts that the examining physician in the visa process made prejudicial remarks that predisposed the beneficiary to perform poorly in his consular interviews. There is no evidence of remarks made in the record of proceedings. Such conduct is expressly prohibited of any immigration officer or agent. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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.