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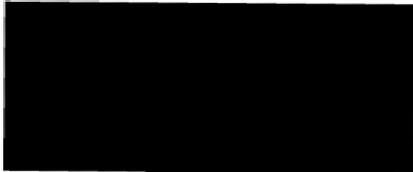
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 04 095 51820

Office: TEXAS SERVICE CENTER

Date:

OCT 10 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a mortgage broker. It seeks to employ the beneficiary permanently in the United States as an assistant mortgage broker. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying employment experience. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's March 7, 2005 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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 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 DOL 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 April 9, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹ On appeal, counsel submits a revised Form G-325A for the beneficiary, a letter dated October 15, 1998 from Bridge Mortgage Bank of America regarding the beneficiary's previous training, and a letter dated April 1, 2005 from the petitioner regarding the beneficiary's previous training. Other relevant evidence in the record includes a letter dated January 5, 2005 from the petitioner regarding the beneficiary's prior work experience, the beneficiary's transcripts from The International University in India and The Hailey College of Commerce in India, and the beneficiary's examination results from The Board of Intermediate & Secondary Education in India. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel asserts that the beneficiary has the required two years of experience for the proffered position. He states that at the time the Form I-140 was submitted, the petitioner did not submit evidence of the time the beneficiary worked as a trainee. Counsel asserts that the petitioner erroneously believed the time spent as a trainee did not qualify as actual experience and, therefore, evidence of the beneficiary's training was omitted from the petition.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and 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 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of assistant mortgage broker. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	8
	High School	4
	College	0
	College Degree Required	N/A
	Major Field of Study	N/A
	Training	
	No. Years	0
	No. Mos.	0
	Type of Training	N/A

The applicant must also have two years of experience in the job offered or two years of experience in marketing. The duties of the job offered are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A requires that the applicant speak Hindi, Urdu, Punjabi and English.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, she represented that she worked for Bridge Mortgage, Inc. as a mortgage processor assistant from 1997 to 1999. She also represented that she worked as a marketing executive for The English Weekly Businessman in Pakistan from January 1988 to December 1991. She does not provide any additional information concerning her employment background on that form.

The record of proceeding also contains a Form G-325, Biographic Information sheet, submitted in connection with the beneficiary's application to adjust status to lawful permanent resident status. On that form, above a warning for knowingly and willfully falsifying or concealing a material fact and under a section eliciting information about the beneficiary's employment for the last five years, she represented that she worked for the petitioner as a broker from March 2003 to the date she signed the Form G-325 on July 9, 2003. She does not provide any additional information concerning her employment background on that form.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(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.

In response to the director's request for evidence dated November 19, 2004, the petitioner submitted a letter dated January 5, 2005 verifying that the beneficiary has been a full-time employee of the petitioner since the approval of her labor certification and certifying that she is fluent in Punjabi, Hindi, Urdu and English.² However, the letter does not give a description of the beneficiary's experience and, as noted by the director, the letter does not demonstrate that the beneficiary obtained the required two years of experience as of the priority date. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, counsel submits a revised Form G-325A for the beneficiary which states that the beneficiary worked as a trainee for Bridge Mortgage Bank of America from October 1997 to September 1998, that the beneficiary worked as a trainee for the petitioner from October 1998 to November 1999 and that the beneficiary worked for the petitioner as an assistant mortgage broker/loan processor from March 2003 to the date she signed the revised Form G-325A on April 4, 2005. Further, on appeal counsel submits a letter dated October 15, 1998 from Bridge Mortgage Bank of America stating that the beneficiary completed her internship as a residential loan processor at the company from October 1997 to September 1998. The letter states that the beneficiary received no compensation during her internship. Further, the letter contains a syllabus for a 10-week mortgage course and indicates that the beneficiary received training in the areas of expertise listed in the course syllabus. Also, on appeal counsel submits a letter dated April 1, 2005 from the petitioner stating that the beneficiary received training from October 1998 to November 1999 as an assistant mortgage broker/loan processor. The letter states that the beneficiary received no compensation during her training period.

Counsel asserts on appeal that the petitioner omitted the information regarding the beneficiary's unpaid training because the petitioner believed that it did not qualify as actual experience. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). None of the evidence submitted in the record of proceeding represents that the beneficiary received any training with either Bridge Mortgage Bank of America or the petitioner. On appeal, the petitioner wishes to change its original submissions regarding the beneficiary's experience to conform to CIS requirements. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

² The Form ETA 750 was approved by the DOL on March 7, 2003.

Even assuming this office would accept the petitioner's submissions on appeal, the beneficiary's training with Bridge Mortgage Bank of America and the petitioner does not qualify as experience required by the labor certification application in this matter. In this case, the Form ETA 750A clearly states that no training is required. Instead, the labor certification application specifically requires two years of experience in the job offered or two years of experience in marketing. The beneficiary has not established that she has the required two years of experience.³

Therefore, the AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired two years of experience in the job offered or two years of experience in marketing from the evidence submitted into this record of proceeding. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

ORDER: The appeal is dismissed.

³ This office also notes that the letter dated April 1, 2005 from the petitioner does not meet the regulatory requirements of 8 C.F.R. § 204.5(1)(3). The letter states that the beneficiary received training as an assistant mortgage broker/loan processor and that during her training, she "received extensive know how and skill for the trades which will be very helpful in her future job procurement in this field." The letter does not provide a description of the specific training received by the beneficiary.