

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

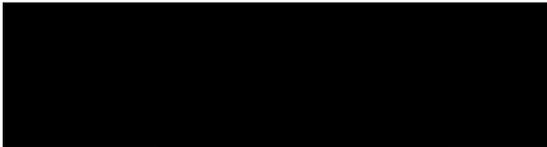
U.S. Department of Homeland Security
20 Mass. N.W. Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B6

PUBLIC COPY



FILE: [REDACTED]
EAC 03 184 50274

Office: VERMONT SERVICE CENTER

Date: OCT 24 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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DISCUSSION: The preference visa petition approval was revoked by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain revoked.

The petitioner is a household employer. It seeks to employ the beneficiary permanently in the United States as a domestic help. 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 did not intend to employ the beneficiary once lawful permanent status is granted. The director revoked the petition approval accordingly.

On appeal, the counsel submits additional evidence.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

The regulation 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.

The regulation 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 ...

(D) *Other Workers.* If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

Here, the Form ETA 750 was accepted on April 25, 2001.¹ The proffered wage as stated on the Form ETA 750 is \$13.90 per hour. The Form ETA 750 states that the position requires three months experience.

¹ It has been approximately five years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

According to the certified ETA Form 750 Part B, Section 15, the beneficiary was employed by the petitioner from December 1993 to the "present (i.e. April 12, 2001), as domestic help at the petitioner's then residence in Bowie, Maryland.

Here, the I-140 petition was accepted for processing on May 27, 2003. On June 14, 2004, CIS approved the petition. The director requested in a Notice of Intent to Revoke issued October 20, 2005, proof of the *bona fides* of the Immigration Petition for Alien Worker. The director specifically stated that according to statements made by petitioner and evidence submitted in the record of proceeding, the beneficiary did not have a *bona fide* intention to commence employment with the petitioner after becoming a permanent residence. Any request for additional information or 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. 8 C.F.R. § 103.2(b)(14).

The director referred to petitioner's written statement made before an immigration officer on February 3, 2005 that the beneficiary "... would not be working for ... [the petitioner] once the ...[the beneficiary] became a lawful permanent residence." According to the record of proceeding, the petitioner appeared as translator for the beneficiary at the beneficiary's adjustment hearing, and after signing a waiver of attorney gave the above mentioned statement on February 3, 2005.

On November 18, 2005, counsel submitted a response to the notice of intent to revoke. Counsel asserted that the beneficiary was employed by the petitioner from December 1993 until she filed for adjustment,² and, then again as a domestic worker from August 1, 2005.

Counsel then stated that the petitioner wrote an addendum on the employment agreement (on February 3, 2005) between the petitioner and the beneficiary "... that [the petitioner] would not hire the beneficiary after she becomes a lawful permanent residence" but the act was "contrary to his true intention."

As additional evidence submitted on response to the notice of intent to deny, counsel submitted the following documents: an affidavit from the petitioner that was attested November 17, 2005; a certificate of employment dated November 16, 2005; computer generated pay statements on plain paper covering the period August 1, 2005 to November 18, 2005; and, an affidavit from the beneficiary made November 17, 2005.

The affidavit from the petitioner that was attested November 17, 2005 stated that the petitioner employed the beneficiary from 1993 to the time she applied for adjustment (i.e. April 20 2001), and since August 2005 to present (i.e. November 17, 2005), that he made a mistake when he wrote upon the employment contract that he would not employ the beneficiary after becoming a permanent residence.

A certificate of employment dated November 16, 2005 was submitted by the petitioner stating that he has employed the beneficiary since August 1, 2005.

Computer generated pay statements on plain paper covering the period August 1, 2005 to November 18, 2005, listing the beneficiary's name and wage payments to her were submitted. There is no corroboration in the record of proceeding such as canceled checks, periodic bank deposits, or tax statements of this or any wage payment to the beneficiary by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

² The CIS Form G-325A in the record of proceeding is dated April 20, 2003.

22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

An affidavit from the beneficiary made November 17, 2005, stated that the petitioner employed the beneficiary from 1993 to the time she applied for adjustment (i.e. April 20 2001), and since August 2005 to present (i.e. November 17, 2005). The beneficiary also states that she has the bona fide intention to "continue employment" with the petitioner after becoming a permanent residence.

The director revoked approval of the petition on January 25, 2006 finding that the evidence submitted did not establish that the petitioner had a *bona fide* intention to employ the beneficiary after becoming a permanent residence.

On appeal, counsel submits an I-290 form appeal filed on February 8, 2006. Counsel asserts that it was the petitioner's intent, despite providing a written statement not to employ the beneficiary, to employ the beneficiary after she became a lawful permanent residence. Counsel states that petitioner made a mistake in writing the words "the interviewing officer dictated for him." Counsel states that the petitioner employed the beneficiary from 1993 to May 2001, and, since August 2005.

As additional evidence counsel submits an affidavit from the petitioner attested February 3, 2006, that it was the petitioner's intent, despite providing a written statement not to employ the beneficiary, to employ the beneficiary after she becomes a lawful permanent residence. The petitioner states that petitioner made a mistake in writing what "the interviewing officer dictated for him." Further the petitioner states that the beneficiary continues to work for the petitioner.

The problem that arises in this case is the inconsistency in information and statements provided by the petitioner concerning his intent to employ the beneficiary after becoming a permanent residence. According to the record of proceeding, the written statement, given by the petitioner in the adjustment interview, that he did not intend to employ the beneficiary after becoming a permanent residence, was confirmatory to prior oral statements made to the CIS interviewer to the same effect. *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." The petitioner statements reflected in the affidavits submitted after the February 3, 2005, are inconsistent to both his oral and written statements discussed above. The petitioner's attempts to rebut his prior inconsistent statements are not credible in the totality of the evidence mentioned above in this case. Therefore, the preponderance of the evidence does not show that the petitioner has the intent to employ the beneficiary upon issuance of legal permanent residence status.

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 petitioner did not have a *bona fide* intention to employ the beneficiary after becoming a permanent residence. The petitioner has not met that burden.

ORDER: The appeal is dismissed.