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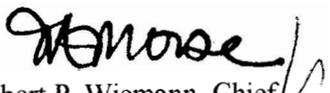
Petitioner:
Beneficiary:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further review and investigation.

The petitioner is a service station. It seeks to employ the beneficiary permanently in the United States as a gas station manager.. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on October 18, 1999. It was initially approved on August 27, 2000. Following an interview at the district office for the beneficiary's adjustment of status to permanent resident application and subsequent investigation by personnel at the U.S. embassy in Mexico City, the case was referred to the service center director. He concluded that the I-140 was approved in error and issued a notice of intent to revoke the petition on September 6, 2005. The director determined that the petitioner's claims as to the beneficiary's past employment experience appeared to be not credible. The petitioner was afforded thirty days to offer evidence or argument in opposition to the proposed revocation. The petition's approval was subsequently revoked on November 2, 2005, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

On notice of appeal, the petitioner, through counsel, asserts that the petitioner failed to receive adequate information regarding the embassy investigation that was conducted in order to verify the beneficiary's past qualifying employment.

Section 205 of the Act, states: "[t]he Attorney General 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 204."

Section 203(b)(3)(A)(i) of 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 not available in the United States.

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

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 8, 1997.¹ The ETA 750B, signed by the beneficiary on March 18, 1997, indicates that he worked for the petitioner "United Oil #58," from September 1994 until the present as a gas station manager.

The ETA 750B also reflects that the beneficiary claims that he worked for a Mexican company as a gas station manager from January 1980 until July 1989. The name and address of the company is shown as:

[REDACTED]

The ETA 750B states that the beneficiary worked 40 hours per week and supervised and directed activities of the workers engaged in the sale of gas, trained workers in setting up and operating gas pumps, and supervised cashiers, mechanics and all other employees, as well as compiling the daily cash report and ensuring that the bank deposits were made. An additional typewritten notation states that the beneficiary "started as a Cashier on January 1980 and was promoted to Manager on July 1983."

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that six years of grade school and two years of work experience in the job offered of gas station manager was sufficient to qualify an applicant for the certified job.

In support of the beneficiary's two years of experience, a letter dated March 12, 1997, was submitted to the record. [REDACTED]

S.A. de C.V., Folio Shop CO814386, Estacion de Servicio No. 3904, Av. [REDACTED]

The letter affirms that the beneficiary had been employed at the Gasolinera Del Balsas since January 1980 as a cashier and was promoted to Manager in July 1983. The letter also states that he has extensive knowledge

¹ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

of gas station management and supervised nine workers at the company. [REDACTED] adds that due to personal reasons, the beneficiary left the company in July 1989.

Following an interview on October 31, 2002, related to the beneficiary's adjustment of status to permanent residency, the Los Angeles district immigration office requested that an investigation be conducted by the U.S. embassy in Mexico City to verify the beneficiary's claimed employment at the G [REDACTED]

An investigation was conducted and a report of that investigation is dated July 3, 2003. In relevant part, it provides the following information:

[REDACTED] was created in 1983.

The operational manager was [REDACTED]

The owner is [REDACTED] his cousin who is actually working at [REDACTED] 01-753 53.

All this information was obtained from [REDACTED] who is working as Auxiliary Secretary at [REDACTED]. She knew all workers at this place, since 1985 and never knew [REDACTED]

The actual administrator of [REDACTED] who began her duties on 2002.

Based on the information contained therein and lack of corroboration of the beneficiary's claimed employment experience at the [REDACTED], on September 6, 2005, the director issued a notice of intent to revoke the approval of the I-140. Within the notice, the director did not identify [REDACTED] the source of the investigation, but noted that she had been employed since 1985 and could not identify the beneficiary as one of the workers. The director noted that the investigation had revealed that "the operational manager was not the beneficiary it was [REDACTED]. The director also erroneously stated that the report had claimed that [REDACTED] was the beneficiary's cousin rather than [REDACTED] cousin. The petitioner was afforded thirty days to offer evidence or argument in opposition to the proposed revocation of the I-140.

In his decision to revoke the petition's approval, the director noted that Citizenship and Immigration Services (CIS) had not received any correspondence from the petitioner during the thirty day period allowed for the response to the notice of intent to deny the petition's approval. The director concluded that the petitioner had not carried its burden to credibly establish that the beneficiary had acquired the requisite experience and revoked the approval of the petition.

On appeal, counsel asserts that the identity of the employee ([REDACTED]) should have been revealed by the director in order to allow the petitioner provide appropriate rebuttal. Counsel also points out the error of the

statement that [REDACTED] was the beneficiary's cousin and assumes that the unidentified witness [REDACTED] provided this information. Counsel also maintains that there was never any attempt to hide the status of [REDACTED] of Gasolinera del Balsas rather than the beneficiary, who had been characterized as only a "manager."²

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16), if a decision that will be adverse to an applicant is based on derogatory information, the petitioner shall be advised of this fact and offered an opportunity to rebut this information and present information on his own behalf. Because the director's notice of intent to deny was somewhat misleading in identifying the beneficiary as the cousin of the owner, Urbina, and failing to fully allow the petitioner to address the basis of [REDACTED] the case will be remanded to afford this opportunity to the petitioner and to encompass any further investigation as to the beneficiary's requisite two full years of employment experience as a gas station manager obtained as of the priority date of April 8, 1997. At the outset, it is suggested that this review also include questions as to any outside business or familial relationship between the beneficiary and the owners or operators of the Gasolinera del Balsas and that necessary corroboration of such employment be obtained if such relationships exist.³

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to conduct further investigation consistent with this opinion and request any additional evidence from the petitioner pursuant to the requirements of section 203(b)(3)(A)(i) of the Act. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which is to be certified to the AAO for review.

² See 3/12/1997 letter from Mr. Palacios.

³ It is noted that the petitioner has the burden, when asked, to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000).