

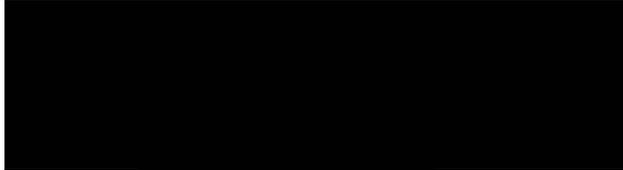


U.S. Citizenship  
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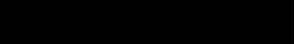
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FILE:



Office: CALIFORNIA SERVICE CENTER

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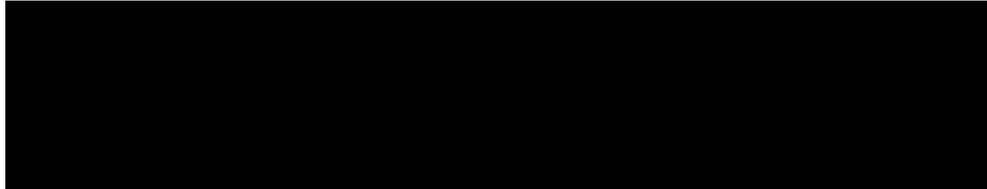
Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Other 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 was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a private home. It seeks to employ the beneficiary permanently in the United States as a private household cook/housekeeper. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary met the experience requirements as stated on the Form ETA 750. 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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's January 18, 2006 denial, the single issue in this case is whether or not the beneficiary met the experience requirements as of the priority date of the visa petition, April 5, 2001.

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 not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3) states, in pertinent part:

(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.

(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.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 5, 2001.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Citizenship and Immigration Services (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).

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In this case, Block 14 requires that the beneficiary must possess six months of experience in the job offered as a private household cook/housekeeper. Block 15 does not list any additional requirements.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of a private household cook/housekeeper must have six months of experience in the job offered as a private household cook/housekeeper.

The Form ETA 750B, which lists the beneficiary's employment, was signed by the beneficiary on March 29, 2001 under penalty of perjury, and it reports the beneficiary's work history as being employed by [REDACTED] as a house worker for ten to fifteen hours per week from March 1996 to the present (March 29, 2001). The Form ETA 750B also lists the beneficiary's work history as being employed by [REDACTED] as a house worker for forty hours per week from December 2000 to March 2001; as being employed by [REDACTED] as a caregiver for forty hours per week from March 1999 to September 2000; and as being employed by [REDACTED] as a caregiver for forty hours per week from April 1997 to July 1998.

In the instant case, counsel provided a letter, dated March 12, 2001, from [REDACTED] stating that she employed the beneficiary as a house worker from March 1996 to the present (March 12, 2001). Counsel also provided a letter, dated March 20, 2001, from [REDACTED] stating that she employed the beneficiary as a house worker from December 2000 to March 2001.

In response to a request for evidence, counsel submitted a letter, dated November 22, 2005, from [REDACTED] Hollander, next door neighbor of [REDACTED], that states:

This letter is to certify that for the past 39 years to the present, I live at the above address, which is a retirement place for the elderly and that the late [REDACTED] was my close friend and next-door neighbor who lived at [REDACTED] Torrance, California.

I hereby confirm and certify that [the beneficiary] worked as Household Worker for Ms. [REDACTED] from March, 1996 to August, 2004. [REDACTED] passed away this year, 2005. [The beneficiary] worked as a part-time weekend House Worker for Ms. [REDACTED] from March 1996 to December 2002 and from December, 2002 to August, 2004, [REDACTED] started working full time for the late [REDACTED]

I remember [the beneficiary] very well because I always went to visit my friend and next door neighbor often and [the beneficiary] always was the person who served us refreshments. In addition, I always saw her cleaning, throwing her employer's trash and buying groceries for her employer. I always met [the beneficiary] within the complex from the years she worked as House Worker for the late [REDACTED]. I had been a board member of the residential complex for six (6) years.

I also hereby confirm [the beneficiary's] employment with [redacted] who also lived within the residential complex [redacted] Torrance, California 90505. I even was the person who referred [the beneficiary] to [redacted] to work as full time House Worker from December 2000 to March 2001.

The director determined that the evidence did not establish that the beneficiary met the six month experience requirement and denied the visa petition on January 18, 2006. The director noted that the verification letter submitted from [redacted] was not supported by payroll records or documentary evidence and that the letter contradicts the employment dates from [redacted] dated March 20, 2001, verifying the beneficiary's employment from December 2000 to March 2001.

On appeal, counsel submits previously submitted documentation and states:

[redacted], and [redacted] all resided in the same residential, retirement community together on [redacted], located in Torrance, California.

\* \* \*

[The beneficiary] claimed on her Form ETA 750B, Part 15-a, that she was employed by Ms. [redacted] as a "House Worker" from September 1996 to "present."<sup>2</sup>

[The beneficiary] also indicated that she was employed by [redacted] as a "House Worker" from December 2000 to March 2001.

The abovementioned two claims were supported by two separate letters from [redacted] and [redacted] respectively. It should be noted that there is no contradiction – and no lack of credibility – for a house worker to be employed by one employer 40 hours per week and by another employer 10 -15 hours per week, especially when both employers resided in the same residential, retirement community.

On December 6, 2005, in response to CSC's Request for Evidence (Form I-797), [the petitioner], through counsel, submitted a letter from [redacted], the next door neighbor of [redacted] to verify [the beneficiary's] employment history.

\* \* \*

It is the CSC District Director's contention that [the beneficiary] never worked for Ms. [redacted] merely because she could not present payroll receipts or employment records. However, most private individuals (as opposed to businesses) who employ a personal house worker do not issue a payroll check or maintain employment records.

\* \* \*

The purpose of [redacted]'s letter was to support two previously submitted letters from [redacted] and [redacted] to verify [the beneficiary's] employment by them as a

<sup>2</sup> The letter actually states tha [redacted] employed the beneficiary from March 1996 to the present.

house worker. However, the CSC District Director chose to ignore the significant evidence submitted in support of [the beneficiary's] case, not because it is fraudulent, but merely because it is not the type of evidence he deemed sufficient.

The CSC District Director also claimed that:

Furthermore, the letter from [redacted] contradicts the employment dates from [redacted] dated March 20, 2001 verifying the beneficiary's employment from December 2000 to March 2001...

However, the CSC District Director's allegation is clearly erroneous because [redacted] November 22, 2005 (and [redacted] s March 20, 2001 letter) both verified that [the beneficiary] worked for [redacted] from December 20, 2000 to March 2001. See Exhibit "B." In addition, a copy of [redacted] s March 20, 2001 letter, submitted in support of [the beneficiary's] labor certification application, is also attached hereto as Exhibit "C."

The AAO is in agreement with counsel. While [redacted] s letter does not state that she employed the beneficiary on a part-time basis from March of 1996 to March 12, 2001 (when [redacted] supplied the employment letter), the letter from [redacted] explains this fact and confirms the beneficiary's full-time employment with [redacted] from December 2000 through March 2001.<sup>3</sup> It is not unusual for a housekeeper or similarly employed (low income) worker to occupy more than one job (full-time and part-time) in order to maintain his or her standard of living. Likewise, it is not unusual for a private household to pay its employees in cash and not keep records of those payments. While affidavits, containing the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury<sup>4</sup>, and sworn to or affirmed by the declarants before an officer authorized to administer oaths or affirmations who has, having confirmed the declarants' identities, administered the requisite oath or affirmation, would have held substantially more evidentiary weight, there is nothing in the record of proceeding that leads the AAO to doubt the validity of the letters from [redacted], [redacted], and [redacted]. Therefore, the AAO must conclude that the petitioner has established that the beneficiary met the experience requirements at the priority date of April 5, 2001. If the director deems it necessary, he may request additional evidence or an investigation of the beneficiary's experience requirements before the Form I-485, Application to Register Permanent Resident or Adjust Status, is adjudicated.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal overcomes the decision of the director.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

<sup>3</sup> It is noted that all three letters meet the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) which state:

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.

<sup>4</sup> 28 U.S.C. § 1746.

**ORDER:** The appeal is sustained. The director's decision of January 18, 2006 is withdrawn, and the visa petition is approved.