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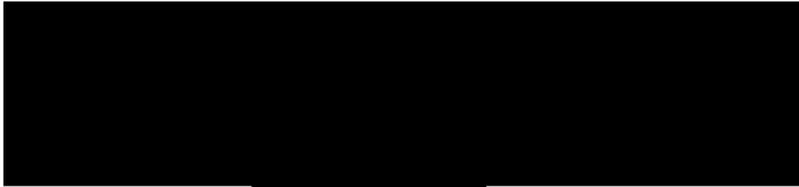
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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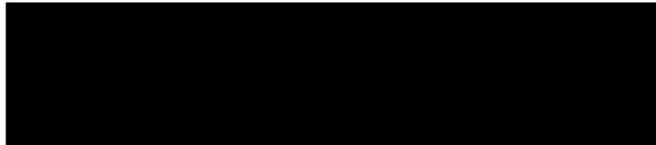
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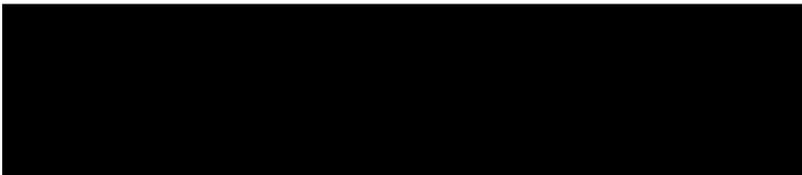
Petitioner:

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The petitioner appealed the director's decision. The Administrative Appeals Office (AAO) remanded the case to the director. The director denied the petition. The petitioner filed an appeal of the decision. The AAO remanded the case to the director who denied the petition. The case was certified and sent to the AAO for review. The AAO again remanded the case to the director who denied the petition. The case was certified and sent to the AAO for review. The decision of the director to deny the petition will be affirmed. The appeal will be dismissed, and the petition denied.

The petitioner is a health care facility. It seeks to classify the beneficiary¹ as an alien worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a medical records technician. The director determined, *inter alia*, that the petitioner had not established by sufficient evidence that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying employment experience.

As set forth in the director's decision certified on September 25, 2009, 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 offered position. Specifically, the director determined that the beneficiary's sworn statements concerning the her employers and the dates of prior employment experiences on the Form ETA 750 B and the Form G-325 conflict; evidence is present in the record that the beneficiary's work record is obscured by the beneficiary's use of an assumed identity, or by the assumption of another person's identity, that the beneficiary entered the United States fraudulently; and that there was insufficient evidence in the record to corroborate and substantiate the required minimum two years of employment experience stated in the labor certification.

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 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

¹ While in the United States, the beneficiary has used the *alias* [REDACTED], or [REDACTED] to work for more than a decade. It is not clear from the record whether the beneficiary has concocted an additional identity, or whether she assumed another person's identity for her own purposes. From the record it appears that the beneficiary continues to use the false or assumed identity of [REDACTED] or [REDACTED] to work in the United States with a false social security number. Other than by an affidavit in the record prepared by the beneficiary, the petitioner has presented no evidence that the beneficiary and [REDACTED], or [REDACTED] is in fact the same person. There is a passport in the record for [REDACTED] surrendered by the beneficiary to USCIS. The biographic photo in the passport does not appear to be the beneficiary.

has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Relevant evidence in the record includes, *inter alia*, the original labor certification accepted on March 3, 2000; a Form G-325 signed by the beneficiary on October 17, 2002; a U.S. Citizenship and Immigration Services (USCIS) Notice of Departure in the name of [REDACTED] a letter from the petitioner on [REDACTED] letterhead dated January 27, 1995; a W-2 Statement from CHOC to [REDACTED] for 1997; pay stubs issued to [REDACTED] from the Children's Hospital of Orange County for the period July 1999, to May 2001; pay statements, pay stubs and invoices issued by Children's Hospital of Orange County and CHOC to [REDACTED] in 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001; a letter from Children's Hospital of Orange County stating that [REDACTED] was employed as a billing representative from June 11, 1996, to August 20, 2001; W-2 Statements from [REDACTED] Services to [REDACTED] for 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998; a W-2 Statement from Bank of America to [REDACTED] for 1993 and 1994; a W-2 Statement from [REDACTED] of San Juan Capistrano, California, to [REDACTED] for 1993 and 1994; a W-2 Statement from [REDACTED], Buena Park, California, to [REDACTED] for 1993; W-2 Statements from Children's Hospital of Orange, California for 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001; Wage and Tax Statements (W-2) issued by [REDACTED] to [REDACTED], for 1999, 2000, 2001, and 2002; and a W-2 Statement from Helpmates Temporary Services of Santa Ana, California for 1990; and a W-2 Statement from the petitioner to [REDACTED] for 2002.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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). According to the plain terms of the labor certification, the applicant must have two years of experience in the job offered.

The beneficiary set forth her credentials on the labor certification and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury on February 7, 2000. On the section of the labor certification eliciting information of the beneficiary's work experience, she represented that she was employed by CHOC located in Santa Ana, California, as a medical record technician, 20-30 hours each week from August 1990 to August 1994, and then August 1994 to present (i.e., February 7, 2000) as an administrative assistant for 10-20 hours each week.

² According to the petition, the beneficiary entered the United States under the assumed name and/or identity of [REDACTED] on August 8, 1989.

The beneficiary then stated on the labor certification she was employed by [REDACTED] located in Cypress, California, as an administrative assistant from October 1990 to present (i.e. February 7, 2000) part time for 20 hours each week. According to the Form ETA 750, Part B, [REDACTED] business is described as “physicians billing.”

The record of proceeding also contains a Form G-325, Biographic Information sheet dated October 17, 2002, submitted under penalty of perjury in connection with the beneficiary’s application to adjust status to lawful permanent resident status. On that Form under a section eliciting information about the beneficiary’s employment for the last five years from the date of the Form G-325, the beneficiary represented that she was employed by [REDACTED] as a medical biller from October 1997 to present time (i.e. October 17, 2002), and for [REDACTED] in the occupation of “direct care staff” from March 2002 to present (i.e. October 17, 2002).

As can be seen from evidence in the record, there is an insufficient correlation between information given the beneficiary on the labor certification and the Form G-325. The labor certification states that the beneficiary was employed part-time, first as a medical record technician, then as an administrative assistant from 1990 through 2001, by CHOC, and at the same time, on a part time basis by [REDACTED] from 1990 to 2000. However, according to the beneficiary’s Form G-325 employment statement, the beneficiary does not mention being employed by CHOC, and fails to mention [REDACTED] although pay records in the record indicate she was employed by that company. The AAO finds that the beneficiary’s sworn statements concerning the beneficiary’s employers and dates of prior employment experiences on the Form ETA 750 B and the Form G-325 conflict and are inconsistent.

While the I-140 petition and the labor certification are in the name of the beneficiary, the payroll documents submitted into evidence are not in the name of the beneficiary. The wage documentation (e.g. W-2 Forms Statements, etc.) is all in the name of [REDACTED]. Assuming for the sake of argument that the wage statements for [REDACTED] are in fact for just one individual who is the beneficiary, and not for two separate individuals, the W-2 statements provide another layer of inconsistent information to further obscure the record. There is no explanation or clarification why the beneficiary stated some but not all of her employment experience, or why some employment information is missing from the record.

For example, there is no statement either by the beneficiary in the labor certification, or on the Form G-325, that she was employed by the Bank of America, [REDACTED] or by [REDACTED], although there are W-2 Statements showing those employment experiences. Further, at the time in 1993 that the beneficiary by the W-2 Statements was employed by these three employers not found on the labor certification, she was also employed by CHOC and [REDACTED] as an administrative assistant, all in 1993. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The beneficiary has submitted a letter to USCIS dated October 8, 2005 stating that in 2002, 2003, and 2004 she did not work and therefore did not file a tax return for those years. According to W-2

statements in the record and the Form G-325, the beneficiary worked for the petitioner and for [REDACTED] in 2002 and 2004. 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.

While not part of the labor certification, the record contains an unsigned draft Form ETA 750B, with a "Rider to ETA 750, Part B," prepared by prior counsel. The draft and its "Rider" provided two other employment experiences not found on the labor certification: the beneficiary's employment experience as an administrative assistant/legal secretary with [REDACTED] Makati City, Metro Manila, Philippines, from February 1988 to July 1990, and employment by [REDACTED], Manila, Philippines from April 1979, to December 1987, as an executive secretary/administrative assistant.

The beneficiary did not claim these work experiences on the labor certification, or prior employment with the [REDACTED], or by [REDACTED]. The labor certification is inaccurate and incomplete. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The AAO has no jurisdiction to amend a certified Form ETA 750 which, in effect, the petitioner is requesting by submitting evidence of at least six other employers and employment experiences not found on the labor certification, or by ignoring the fact that all wage and compensation evidence in the record is not in the name of the beneficiary but another. The AAO cannot utilize an admittedly inaccurate labor certification to determine the qualifications of the beneficiary, or look behind the payroll documents in the name of another. 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. 582, 591 (BIA 1988); *see also Matter of Leung*, 16 I&N Dec. 12 (Dis. Dir. 1976).

The AAO is unable to attribute the work and wage information submitted in the record to the beneficiary under the circumstances of this case. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). As the director stated in his decision dated June 15, 2005, "These multiple inconsistencies make it impossible to determine what the beneficiary was actually doing, at what time, and for whom."

The AAO finds that the beneficiary's sworn statements concerning the beneficiary's prior employers and the dates of prior employment experiences on the Form ETA 750 B and the Form G-325 conflict; and the evidence submitted concerning the beneficiary's work record is obscured by the beneficiary's use of an assumed identity, or by the assumption of another person's identity that the beneficiary adopted to enter and work in the United States. The AAO is unable discern the truth in the matter, or review and analyze the evidence submitted which is not in the beneficiary's name but

another's name. The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

An additional issue is whether there is sufficient evidence in the record to corroborate and substantiate the required minimum two years of employment experience as a medical records technician that is stated in the labor certification.

As stated, 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 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 labor certification application, 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 labor certification application was accepted on March 3, 2000.

The regulation at 8 C.F.R. § 204.5(i)(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.

According to the Form ETA 750, Part A, Item 13, the job of medical records technician requiring two years of experience is described as amended on May 26, 2000:

“Will compile and maintain medical records to document patient’s condition and treatment; Review medical records for completeness; gather clinical data in order to prepare statistical reports on types of diseases treated, surgery performed and use of hospital beds; Operate computer to store and get health information of patients.”

A review of the record demonstrates that the petitioner submitted the following evidence concerning the beneficiary’s qualifications and eligibility for the visa preference category of skilled worker: a “New Hire Agreement” from CHOC, dated June 11, 1996 for the job of “Billing Representative;” a job

reference letter from [REDACTED] Santa Ana, California; a Children's Hospital of Orange County jobs requirement and review form; letters from the petitioner dated August 9, 2002, and October 25, 2002; a "Certification" dated July 14, 2003, from the Republic of the Philippines, Department of Health, Office of the Secretary, stating that the beneficiary was employed from April 1, 1977, to October 8, 1978 (Clerk I), and, from October 8, 1978, to March 3, 1979 (Clerk II); and, the beneficiary's Republic of the Philippines identification card and residence certificate.

There are no letters or statements in the record concerning the offered job of medical records technician, but there is documentation for the position of billing representative given by CHOC, and for the positions of Clerk I and II given by from the Republic of the Philippines, Department of Health, Office of the Secretary.

The positions and terms of employment the beneficiary held in the Philippines do not reflect the duties of a medical records technician and lack credibility due to the many inconsistencies in the record. *See supra.*

Furthermore, the job reference letter from [REDACTED] Santa Ana, California, concerns the position of billing representative, not medical records technician. The relevance of the job letter was not explained, although the AAO notes that a Children's Hospital of Orange County jobs requirement and review form for "Clerk/Biller" was included but was not attached or referenced in [REDACTED] letter. Whether the position of clerk/biller has anything to do with the position of billing representative is not explained in the record. There are no other letters from prior employers required by the regulation at 8 C.F.R. § 204.5(1)(3).

The beneficiary does not meet the terms of the labor certification. *See* 8 C.F.R. § 204.5(1)(3)(ii)(B). The regulation requires evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification. The evidence submitted by the petitioner to prove the beneficiary's qualifications was insufficient.

The preponderance of the evidence does not demonstrate that the beneficiary acquired the minimum qualifications for the offered position of medical records technician 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.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 not been met.

ORDER: The decision of the director to deny the petition is affirmed. The appeal is dismissed, and the petition is denied.