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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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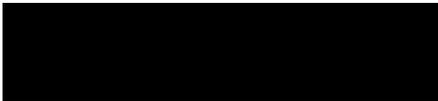
Office: NEBRASKA SERVICE CENTER

Date:

MAR 03 201

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner owns a ranch. He seeks to employ the beneficiary permanently in the United States as an animal breeder of horses. 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 failed to demonstrate that the beneficiary had the two years required experience as an animal breeder of horses to perform the duties of the proffered position. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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 10, 2008 denial, the primary issue in this case is whether or not the petitioner has established that the beneficiary had the two years experience as an animal breeder of horses, as described in the ETA 750, prior to the priority date in this matter.

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 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 April 30, 2001.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

In evaluating the beneficiary's qualifications, United States Citizenship and Immigration Services (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

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). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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); and *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

On appeal, counsel asserts that the petitioner has demonstrated the qualifications of the beneficiary sufficient to perform the duties of the job offered.

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 [REDACTED] 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 his credentials on the labor certification application and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the Form ETA 750 labor certification application eliciting information of the beneficiary's employment experience, the beneficiary indicated at part 15c. that he was employed as a breeder of horses by [REDACTED] in Mexico from August 1977 through October 1980. He also indicated that he worked as an animal breeder of horses for [REDACTED], California from January 1988 to February 2001, and at part 15a. he indicated that he worked for the petitioner as an animal breeder of horses since February 2000. He does not provide any additional information concerning his employment background on that form.

The petitioner initially submitted with his Form I-140 application a translated letter from City Hall in San Juan Atepec in which the Municipal Secretary stated that the beneficiary had been employed at the horse-troop in the City of Mexico, belonging to the police brigade, from 1978 to 1980. The declarant did not provide the exact dates of the beneficiary's employment, a description of the beneficiary's job duties, or the employment relationship between the declarant and the beneficiary.

On appeal, the petitioner submitted a translated letter from the President of the Municipality for the San Juan Atepec municipality who states that the beneficiary was employed as a breeder of horses for the police brigade in Mexico from August 1977 through October 1980. This statement is inconsistent with the statement made in the employment letter initially submitted by the petitioner; in that letter, the declarant stated that the beneficiary was employed by the police brigade in Mexico from 1978 through 1980 and did not mention that he was an animal breeder of horses. Furthermore, the declarant describes the beneficiary's job duties as: "taking charge of feeding to bathe them, to travel them, to examine them and veterinarian assistant...." This description of job duties is also inconsistent with that which the beneficiary listed on the ETA 750 at part 15c. The beneficiary described his job duties for the Mexican police department at part 15c. as:

Selected horses to be bred according to knowledge of animals, genealogy, traits, and offspring desired. Examined horses to detect symptoms of illness or injury. Recorded weight, diet, and other breeding data. Fed and watered horses, and cleaned stalls, and yards. Branded, tagged, or castrated horses. Treated minor injuries and ailments and engaged veterinarian to treat horses with serious illnesses or injuries. Built and maintained stalls. Exhibited horses at shows.

These inconsistencies have not been explained. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The AAO also notes that the horse breeder job duties required on the Form ETA 750 require knowledge of genealogy, traits, and offspring desired; and experience recording breeding data such as weight and date; branding and castrating; and exhibiting horses. None of these duties are described by the references submitted. Accordingly, the petitioner has failed to establish that the beneficiary has the requisite two years of experience. 8 C.F.R. § 204.5(g)(1) and (L)(3)(ii)(A).

The record of proceeding also contains a Form G-325A, Biographic Information sheet submitted in connection with the beneficiary's Form I-485, application to adjust status to lawful permanent resident status. On that form under the section eliciting information about the beneficiary's employment history, he indicated, above a warning for knowingly and willfully falsifying or concealing a material fact, that he was employed by the petitioner as an animal breeder from February 2000 to May 2007, the date he signed the Form G-325A. He also indicated that he was employed by [REDACTED] in Malibu, California as an animal breeder from January 1998 to February 2000. The beneficiary did not list the Mexican police department as a former employer. 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. See *Matter of Ho, supra*.

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.

The AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired the requisite two years of experience to perform the duties of the proposed job as of the filing date of the labor certification. The record of proceeding contains numerous inconsistencies with regard to the beneficiary's employment history and job duties. The petitioner has failed to provide an explanation for the many inconsistencies found in the record. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Beyond the decision of the director, the petitioner has failed to provide evidence specifically requested by the director in the request for evidence (RFE) in order to determine the petitioner's ability to pay the proffered wage. The petitioner claims to be a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

The director requested in the RFE dated August 27, 2007 that the petitioner as a sole proprietor submit a list of his monthly reoccurring household expenses for 2001 through 2006. The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide a list of his household expenses. Such evidence would have demonstrated the amount of income used to pay household expenses and would reveal whether the petitioner has the ability to pay the proffered wage. As the petitioner has failed to submit this evidence, it cannot be determined that the petitioner has the ability to pay the proffered wage. For this additional reason, the petition will be denied.

The appeal will be dismissed and the petition will be denied for the above stated reasons, with each considered as an alternative ground for dismissal. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.