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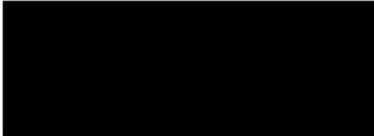
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: JAN 11 2012

Office: TEXAS SERVICE CENTER FILE: 

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a graphics company. It seeks to employ the beneficiary permanently in the United States as a sign erector/fabricator. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with three years of qualifying employment experience, as required by the labor certification. 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 denial, 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 proffered position. The director, noting inconsistencies and discrepancies between job titles and the dates listed in the employment verification letter compared to dates on the labor certification, determined that the petitioner failed to establish that the beneficiary had the three years of required work experience as a sign erector/fabricator as of the priority date of the Application for Alien Employment Certification (January 13, 2004).

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.¹

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 (Acting Reg'l Comm'r 1977). Here, the labor certification application was accepted on January 13, 2004.

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.² On appeal, counsel submits letters from the beneficiary's previous

¹ The petitioner initially filed the petition for an other worker, defined in Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), as 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 petitioner amended its request to classify the beneficiary as a skilled worker in response to the director's Request for Evidence.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-

employers in Colombia, including [REDACTED] as well a [REDACTED] certification of the Registry of [REDACTED] issued by the [REDACTED] and a health insurance history report for the beneficiary. Other relevant evidence in the record includes previously provided letters from [REDACTED]

On appeal, counsel asserts the previously provided evidence of the beneficiary's work experience with [REDACTED] stated a "different job description, in error of the company and poor translation skills."

To determine whether a beneficiary is eligible for an employment based immigrant visa, United States Citizenship and Immigration Services (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'r 1986). See also, *Madany 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 three years of experience in the job offered, as a sign erector/fabricator. The petitioner did not state or allow for meeting the experience requirement through any related occupation.

Form ETA 750, Section 13, states the position's job duties as follows:

Duties: Visits location and measures for location for sign and hanger/fasteners. Coordinates with client on type of material to be used and graphics to be employed in fabricating signs and awnings for businesses.

Designs, lays out and paints or adheres letters and designs to create / fabricate commercial signs and awnings. Uses metal cutters and benders to fabricate metal signs and frames.

Designs and creates neon signs.

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

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).

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 beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. In Item 11 of Form ETA 750, Part B, the beneficiary states that he attended The National Learning Service in Pereira, Colombia from June 1999 to June 2000 and was awarded a certificate in welding.³ On the section of the labor certification eliciting information of the beneficiary's work experience, he represented that he has approximately two years of experience as a systems analyst. He does not provide any additional information concerning his employment background on that form.

Specifically, on Form ETA 750B, the beneficiary listed his employment with [REDACTED] from January 2000 to December 2002 as a systems analyst, performing the following job duties:

Coordinate with client on type of material to be used and graphics to be employed in fabricating signs and awnings for business, the lay out and paints or adheres letter and designs to create were all done on the computer system.

The employment verification letter from [REDACTED] provided with the initial petition listed the beneficiary's dates of employment in the position of [REDACTED] as January 5, 1998 through December 22, 2000. No job duties are listed in this letter.

Also provided with the initial petition was an employment verification letter from [REDACTED] documenting the beneficiary's experience as a welder in Colombia. The letter does not provide any dates of employment and does not document any experience as a sign erector/fabricator. This experience was also not listed on Form ETA 750. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

On appeal, a new employment verification letter from [REDACTED] is provided. This letter lists the beneficiary's dates of employment in the position of [REDACTED]

³ The labor certification also states that completion of high school is required. The beneficiary does not state in the education section any other education. Nothing in the record shows that the beneficiary completed high school education. The petitioner should submit such evidence in any further filings.

██████████ technician in computers and Digital impressions” as January 5, 1998 through December 22, 2002.⁴ The letter indicates that he worked four hours daily.⁵ The letter fails to state any job duties to establish that the beneficiary would have the three years of experience in the job offered required by the labor certification.

Additionally, on Form I-140, Immigrant Petition for Alien Worker, under a section eliciting information about the beneficiary, the petitioner represented that the beneficiary arrived in the United States in November 2001. It is unclear how the beneficiary was employed by ██████████ in Colombia from November 2001 through December 2002, while also in the United States during this period.⁶

On appeal, an additional employment verification letter is provided from ██████████ ██████████. In this letter, ██████████ Manager/Owner, claims that the beneficiary worked with ██████████ for eight years and five months (no exact dates listed) and performed the following functions:

- Graphic Design
- Sign Fabrication, acrylic, wood, metal and electronic signs
- Commercial Signage
- Sign Installation: Led displays and Billboards
- Painting: Spray painting, Paintbrush, Brush
- Experience in Gold Lead
- Vehicle Wrapping
- 3D Signage/Images
- Structural Assembly: Stages

The beneficiary also did not list his employment with ██████████ on the Form ETA 750B. See *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976). Additionally, the letter states that the beneficiary served as a manager for the last five years and not as a sign erector fabricator. The letter does not specify exact dates of work as a sign erector and exact dates of employment as a

⁴ On appeal, counsel asserts that the discrepancy in the dates and job title are due to error of the company and poor translation. No other explanation is provided for the discrepancy. This explanation fails to account for the discrepancy in dates listed on Form ETA 750B, which the beneficiary signed to attest to the claimed experience. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

⁵ This conflicts with the beneficiary’s statement on Form ETA 750B that he was employed 45 hours per week.

⁶ *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.

manager to determine the overall length of his work as a sign erector to establish that he has the required three years of experience in the position offered.

Although secondary evidence of the beneficiary's employment with [REDACTED] was provided with the appeal, in the form of a company registry certificate from the [REDACTED] report, these documents show further inconsistencies. The Chamber of Commerce certificate indicates that [REDACTED] is in the business of "general publicity, representation of brands, production services, impressions, machines importation and exportation, merchandising equipments P.O.P importation and exportations of equipment and supplies. Consultation in social communications and advertising, brochures production, projects formulations, studies related to cooperation image and social communications." There is no indication in the certificate that [REDACTED] is in the business of sign erection/fabrication. Further, the Health Insurance History report shows gaps in the beneficiary's employment from September 1988 to February 1992, from December 1994 to December 1995, from July 1998 to October 1999, from November 1999 to January 2000,⁷ and from September 2000 to November 2000, and does not provide verification of the beneficiary's eight years and five months of employment as claimed. The translation of the Health Insurance History Report lists only 6 entries and is not an accurate translation of the original document which shows 47 entries. Significantly, some of the dates of employment claimed also overlap with claimed employment at [REDACTED], which raises doubts regarding both the [REDACTED] letter and the evidence related to [REDACTED]. These inconsistencies must be resolved in any further filings, as the credibility of both documents is in question. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired three years of experience in the position offered from the evidence submitted into this record of proceeding. The evidence provided includes inconsistent details regarding the dates of the beneficiary's employment, as well as the job title and duties performed. These inconsistencies cast doubt on the reliability and sufficiency of the evidence, which the petitioner must address in any further filings. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.

⁷ As noted previously, the beneficiary also obtained a certificate between the time period of June 1999 to June 2000.