



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE:

JAN - 4 2013

OFFICE: TEXAS SERVICE CENTER

FILE:

[Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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:

[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), approved the immigrant visa petition. On April 16, 2010, the director issued a Notice of Intent to Revoke (NOIR). The petition was revoked on June 24, 2010. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a Chinese restaurant. It seeks to permanently employ the beneficiary in the United States as a cook, Chinese-style. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The director revoked the petition, finding that the beneficiary failed to demonstrate the requisite experience for the job.

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

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).

The Department of Labor accepted the Form ETA 750 on December 10, 2002. On the Form ETA 750, Question #14, the petitioner requires a minimum of two years of experience in the job offered as a cook, Chinese-style food, prior to the priority date.

On Form ETA 750B, the beneficiary claims to have worked at [REDACTED] in China from May 1996 to October 2002 as a cook.

As noted by the director, the record reflects that the beneficiary was interviewed by a consular investigator on April 14, 2009. During the interview, the beneficiary claimed to have worked at [REDACTED] since May 2003, including the summer of 2008. The investigator noted that the hotel was under reconstruction in the summer of 2008 and was closed to all employees. The investigator further noted that the beneficiary was unable to answer questioned related to his job duties at the hotel. The investigator concluded that the beneficiary did not have the required experience to qualify for the proffered position.

In response to the director's Notice of Intent to Revoke, the petitioner submitted numerous salary records from Green Island Hotel which indicated employment and salary. However, these documents did not contain evidence to support the assertion that the beneficiary had the required experience to qualify for the proffered position.

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). See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(b)(6)

The record also contains two employment letters from [REDACTED]. The first letter, dated October 25, 2002, states that the beneficiary worked for the restaurant as a cook of Chinese food from May 1996 to October 2002. The letter (translated from Chinese) has a stamped seal but was not signed. On appeal, the petitioner submits a second letter (translated from Chinese) from [REDACTED] signed by [REDACTED] manager. Mr. [REDACTED] states that according to the records of their human resource department the beneficiary worked as a cook from May 1996 to April 2002.

The record also includes a letter from Mr. [REDACTED] on [REDACTED] letterhead. Mr. [REDACTED] asserts that he was a coworker of the beneficiary, who worked as a cook for [REDACTED] from 1996 to 2003.

The employment verification letters are inconsistent regarding the beneficiary's employment end date, as well as the beneficiary's statement that he began employment in 2003 continuing until at least 2008. 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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Given the above, the evidence in the record fails to establish that the beneficiary's experience meets the requirements of the labor certification.

Thus, the AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker or professional under section 203(b)(3)(A) of the Act.

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 appeal is dismissed.