



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 14 2013** Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

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: On February 24, 2012 the Administrative Appeals Office (AAO) dismissed the appeal and affirmed the decision of the Director, Texas Service Center. The petitioner has now filed a motion to reopen the AAO's decision to revoke the petition's approval. The motion will be granted, the appeal reopened and re-adjudicated. Upon review, the appeal will be dismissed, and the AAO's previous decision will remain undisturbed. The approval of the petition will remain revoked.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. 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 petition was initially approved on April 30, 2002 by the Vermont Service Center, but the Director, Texas Service Center (the director), revoked the approval of the petition on May 11, 2009. The director found that the beneficiary did not have the requisite work experience in the job offered before the priority date.

The petitioner subsequently appealed the director's decision to the AAO. Upon review, we dismissed the appeal and agreed with the director. On motion to reopen, counsel for the petitioner maintains that the beneficiary possessed the requisite work experience in the job offered prior to the priority date. Counsel submits additional evidence to demonstrate that the beneficiary qualifies to be categorized as a skilled worker (requiring at least two years training or experience).

The record shows that the motion to reopen is properly filed, timely and states specific reasons for reconsideration. The AAO conducts this 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 in this proceeding.¹

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.

To be eligible for approval, the petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the priority date of the petition is April 19, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In the Form ETA 750, the

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).

petitioner specifies that all job applicants, in order to qualify for the position should have a minimum of two years of work experience in the job offered.

We note that on the Form ETA 750, part B, the beneficiary claimed to have worked as a cook at [REDACTED] in Maceio, AL, Brazil, from July 15, 1998 to July 22, 2000. The beneficiary signed the Form ETA 750B on March 28, 2001 attesting to the truth and veracity of his past work experience under penalty of perjury.

To show that the beneficiary met the minimum requirement for the job offered, the petitioner originally submitted the following evidence:

- A letter dated February 15, 2001 from [REDACTED] of [REDACTED] stating that “he [referring to the beneficiary] worked as a cook auxiliary from July 15, 1998 to July 17, 2000” and that “he always performed all duties given to him.”

In response to the director’s NOIR and to show that the beneficiary had the requisite work experience in the job offered before the priority date, the petitioner provided the following additional evidence:

- A copy of the business registration of [REDACTED] showing that the business was officially registered in the CNPJ registration system on 25/02/1993 (February 25, 1993).²

Upon receipt, the director left open the issue relating to the beneficiary’s qualifications for the job offered. In adjudicating the appeal, the AAO noted several inconsistencies in the record pertaining to the beneficiary’s past work experience as a cook in Brazil. On July 7, 2010 and September 23, 2011, the AAO sent the petitioner a Notice of Derogatory Information/Request for Evidence (NDI/RFE) in accordance with 8 C.F.R. §§ 103.2(b)(8)(iv) and 103.2(b)(16)(i), informing the petitioner about the inconsistencies in the record and the concern about the age of the beneficiary as described above. We indicated that the beneficiary, according to the Form G-325 (Biographic Information) which he filed along with the Form I-485 (Application to Register Permanent Residence or Adjust Status), claimed to have lived in the city of Colorado, Rondonia, Brazil, from 1992 to 2000; but based on the evidence submitted, [REDACTED] was located in the city of Maceio, AL (Alagoas), Brazil.³

² Businesses that are officially registered with the Brazilian government are given a unique CNPJ number. CNPJ or Cadastro Nacional da Pessoa Juridica is similar to the federal tax ID or employer ID number in the United States. The director indicated that the U.S. Department of State has determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual’s stated hire and working dates with a Brazilian-based company to that Brazilian company’s registered creation date.

³ The distance between the city of Maceio, Alagoas, and Colorado, Rondonia, is about 2,730 km (roughly 1,696 miles).

We also observed that the address shown on the CNPJ of [REDACTED] is different from the address provided by the beneficiary in part B of the Form ETA 750 and from the address listed in the February 15, 2001 letter of employment from [REDACTED].⁴ Additionally, we noted that the beneficiary failed to list his employment at [REDACTED] on his Form G-325 under the section regarding his last occupation abroad. Moreover, the dates of the beneficiary's employment at [REDACTED] on the Form ETA 750 part B were inconsistent with the dates mentioned in the letter of employment from the beneficiary's past employer in Brazil.⁵

The AAO also questioned whether the beneficiary worked as a full-time cook in Brazil, since he was only 15 years of age in July 1998, when he claimed he was first employed by [REDACTED] at his restaurant. The AAO advised the petitioner to submit independent objective evidence to resolve the inconsistencies in the record as noted above.

To resolve the inconsistencies in the record regarding the dates of the beneficiary's employment and the beneficiary's failure to include his employment abroad on the Form G-325, counsel for the petitioner submitted the following evidence:

- A sworn statement dated September 24, 2010 from the beneficiary, stating that:
 - ✓ he worked as a cook for [REDACTED] from July 15, 1998, at the age of 15 years old, to July 17, 2000, not July 22, 2000, when he was 17 years of age;⁶
 - ✓ he only received cash due to his underage employment, and therefore there are no records available today to show that he was employed as a cook by [REDACTED];
 - ✓ the inconsistencies regarding the dates of his employment in Brazil are due to [REDACTED] actions and carelessness, not his;
 - ✓ he signed blank Forms ETA 750B and G-325; and
 - ✓ he was the victim of [REDACTED] carelessness and neglect.
- A letter dated September 23, 2010 addressed to the Massachusetts Bar where the beneficiary complained about [REDACTED] and his lack of professionalism;⁷ and

⁴ The address of [REDACTED] as shown in the business registration is at [REDACTED] Brazil. The address provided by the beneficiary and listed by [REDACTED] is at [REDACTED].

⁵ The beneficiary stated in part B of the Form ETA 750 that he worked at [REDACTED] from July 15, 1998 to July 22, 2000. The letter of employment from [REDACTED] stated that the beneficiary worked at [REDACTED] as a cook auxiliary from July 15, 1998 to July 17, 2000.

⁶ The beneficiary states he remembers leaving [REDACTED] on July 17, 2000 because he was very excited about coming to the United States two days afterward on July 19, 2000.

⁷ In the complaint, the beneficiary stated that he was handed a few blank forms to sign by [REDACTED]

- A sworn statement dated August 18, 2010 from [REDACTED] stating that he was the sole owner of [REDACTED] from 1998 through 2000 and that the beneficiary worked as a kitchen assistant at his restaurant helping with preparation and cooking during that period of time.⁸

To show that the beneficiary worked at [REDACTED] and lived in Maceio, Alagoas, from 1998 to 2000 and that [REDACTED] was located at [REDACTED], [REDACTED] counsel for the petitioner submitted the following evidence:

- A sworn statement dated October 11, 2011 from [REDACTED] stating that he is the father of the beneficiary, that he and his wife, the beneficiary's mother is separated, that he lived in Maceio, Alagoas, Brazil with his son (the beneficiary) from December 1997 to July 2000, and that the beneficiary worked as a cook assistant during that period when his son lived with him;⁹
- A document showing the address of [REDACTED];¹⁰ and
- A sworn statement dated October 11, 2011 from [REDACTED] stating that she is the biological mother of the beneficiary, that she and her husband, the beneficiary's father, are separated, that she lived and continues to live in Colorado, Rondonia, and that the beneficiary lived with his father in Maceio, Alagoas from December 1997 to July 2000.

[REDACTED] that he was not informed about the development of the petition, and that [REDACTED] was hard to reach. The beneficiary also indicated that [REDACTED] office advised him not to pursue the green card lottery to obtain legal permanent residence in 2002. Along with the letter of complaint, the beneficiary attached a couple of articles talking about [REDACTED] (one article is dated June 28, 2009 published in the [REDACTED] entitled "[REDACTED]" and the other is posted by [REDACTED] on June 29, 2009 at [REDACTED]).

The AAO notes that [REDACTED] was under USCIS investigation for allegedly submitting fraudulent Form ETA 750 labor certification applications and Form I-140 immigrant worker petitions in June 2009, when the [REDACTED] published the article mentioned above. [REDACTED] has since been suspended from practice before the United States Department of Homeland Security for three years effective as of March 1, 2012.

⁸ [REDACTED] also states that it has been three years since he has had any connection with the business (restaurant).

⁹ [REDACTED] also states, "For me it was important that my son worked from a young age to become responsible."

¹⁰ The document shows that [REDACTED] lives at [REDACTED].

The two letters of employment from [REDACTED] are not sufficient to show that the beneficiary worked as a cook (or assistant cook) for at least two years since neither describes the training or experience of the beneficiary, in accordance with 8 C.F.R. § 204.5(1)(3)(ii).¹¹

We find that none of the evidence submitted above resolves the inconsistencies in the record as noted earlier. The sworn statements of the beneficiary and his parents are not persuasive, because they are self-serving.

On motion to reopen, counsel for the petitioner submits the following additional evidence to demonstrate that [REDACTED] was owned by [REDACTED] when the beneficiary claimed to have worked as an assistant cook in Brazil at the age of 15 (in July 1998), and that [REDACTED] has direct and personal knowledge regarding the beneficiary's employment in Brazil:

- Various documents showing the location (address) and the names of the owners and partners of [REDACTED] from 1993 to 2007.

The AAO finds that the various documents intended to show that [REDACTED] was the owner of the business do not demonstrate that the beneficiary was working as a cook from 1998 to 2000, prior to the filing of the Form ETA 750. The petitioner has not submitted independent objective evidence, such as a copy of the beneficiary's booklet of employment and social security or other relevant proofs, to show that the beneficiary had the experience in the job offered. *See Matter of Ho*, 19 I&N Dec. at 591-92. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As noted above, the position offered is for a skilled worker, requiring at least two years of specialized training or experience. The petitioner has failed to establish that the beneficiary had at least two years of specialized training or experience in the job offered before the priority date. Therefore, we find that the beneficiary is not qualified for the position offered.

The petition is dismissed for the reason stated above. 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. For the reasons stated above, the appeal must be dismissed.

ORDER: The motion is granted, the appeal is reopened; upon review, the appeal is dismissed. The approval of the petition will remain revoked.

¹¹ The regulation at 8 C.F.R. § 204.5(1)(3)(ii) states, "Any requirements of training or experience for skilled workers, professional, 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."