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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 21 2004

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:
This is the decision 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a textile import and wholesale company. It seeks to employ the beneficiary permanently in the United States as a purchasing agent. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief.

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 unavailable in the United States.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

> (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.
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> (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.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on February 26, 2001. The labor certification states that the position requires two years experience as a purchasing agent and two years experience as a garment manufacturer.

The beneficiary's work history on the Form ETA 750, Part B states that the beneficiary was the owner/representative of EnC, a garment manufacture and sales company in Kyunngi-Do, Korea, from July 1989 to July 1999, as its owner/representative. The work history further states that the beneficiary worked for Tex 21, Inc., a textile importer in Los Angeles, California, from March 2000 to December 2000, as its purchasing agent.

With the petition counsel submitted two Korean documents and translations. The translation of the first document states that it is a business license for EnC in Kyunggi-Do, Korea. The license shows that the business opened on July 20, 1989 and that the beneficiary was the company's representative. The translation of the second document shows that the company went out of business on May 31, 1999.

Because the evidence submitted did not sufficiently demonstrate that the beneficiary has the requisite work experience, the California Service Center, on February 10, 2003, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be letters from the beneficiary's previous employers on the employers' letterhead, giving the name, address, and title of the employer. The Service Center further requested three photographs of the infrastructure of the beneficiary's previous employer and copies of at least three business transactions. Further still, the Service Center requested that the beneficiary's 2000 tax return and the Form W-2 Wage and Tax Statement from Tex 21, Inc. Finally, the Service Center noted that the record[1] shows that the petitioner has employed the beneficiary since January 2001 and requested W-2 forms showing employment by the petitioner since January 2001.

In response, counsel submitted a letter, dated March 28, 2003. That letter states that the beneficiary has been on the petitioner's payroll since January 2003. Counsel states that during 2001 and 2002 the petitioner recorded payments to the beneficiary on Form 1099 Miscellaneous Income Statements[2] and submitted copies of 2001 and 2002 1099 forms showing compensation the petitioner paid to the beneficiary during those years. Counsel also provided what purport to be payroll records showing amounts that the petitioner paid the beneficiary during January and February of 2003.

Counsel further provided a Korean document and English translation showing that the beneficiary paid taxes to the tax collection office in Yichun, Korea during 1996, 1997, 1998, and 1999. The translation does not state that the payments were those due from EnC. Counsel provided what purport to be a daily transaction and sales record in Korean and an English translation. Those documents appear to show that during February of 1998, EnC made five wholesale clothing purchases. Counsel provided a letter and translation from the operations manager of a company in Seoul, Korea stating that the beneficiary purchased fabric, clothes, and accessories from that company from October 1996 through July 20, 1999 while working for EnC. Counsel provided what purport to be garment sales brochures from EnC. Counsel provided what appear to be photos of the interior of a clothing store

Finally, counsel provided a statement from the beneficiary, dated March 24, 2003. In that statement, the beneficiary declared that he was the owner/representative of EnC from July 1989 through July 1999, when the business closed. The beneficiary further stated that he was in charge of negotiating purchases of fabric and closures. The beneficiary continued that he retains only a few photographs of the interior of his business, which he was providing. As to his employment for Tex 21, Inc., the beneficiary stated that no records exist because he was paid in cash. Finally, the beneficiary stated that he has been working for the petitioner since March 2001, and that his status changed from contractor to employee in January 2002.[3]

On May 20, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the specified work experience. The director stated, "It has become apparent that EnC is an existing company and currently continues to do business with Netishion.com. The director found that this

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[1] This information is contained in a G-325A Biographic Information form submitted with the beneficiary's Form I-485 Application to Register Permanent Resident or Adjust Status.

[2] This office notes that a Form 1099 is similar to a W-2 form except that it is used to record non-wage payments for labor and services to non-employees, such as contractors.

[3] This office suspects that the beneficiary meant January 2003, but made a typographical error.

asserted fact contradicts the beneficiary's assertion that EnC went out of business during July 1999. The director further stated that " . . . the business locations on the (evidence of business) transactions (77-104 Yongin-Si) are completely different from the business location the beneficiary indicates on the ETA 750 which is 133-124 Kimyangjang-dong."[4] The director also noted that the photographs submitted, ostensibly interior shots of EnC, give no indication that they are, in fact, photographs of EnC. Finally, the director observed that the tax documentation submitted does not demonstrate any connection to EnC.

On appeal, counsel observes that, contrary to the director's statement, none of the evidence submitted indicates that EnC is currently in business. Counsel also states that the address shown on the evidence of business transactions is the address of the company with which the petitioner transacted, rather than the petitioner's address, and that this is why it differs from the petitioner's address. Counsel observes that the EnC logo appears in both of the interior shots submitted. Finally, counsel states that Korean tax documents for small businesses are issued in the owner's name, rather than the company name.

The director did not point to any evidence that led him to conclude that is a going concern. This office is unable to find any evidence in the record that points to that conclusion. Counsel has overcome that basis for impeaching the credibility of the evidence of the beneficiary's experience.

Considering the location of the address in question, in the heading of a document produced by a business which sold fabric to the EnC, counsel's explanation that it is the address of the seller, rather than that of EnC, is credible. Although this office would have preferred that counsel submit evidence of that assertion, rather than merely stating it, that evidence impeaching the credibility of the evidence of the beneficiary's experience is sufficiently tenuous that counsel has overcome it with only a feasible explanation.

Counsel is correct that the EnC logo appears in both of the photographs that purport to be of the interior of EnC when it was in business. This office is unable to imagine what superior evidence would be likely to appear in those photographs to indicate that they are what they purport to be. Counsel has overcome that impeaching evidence.

Counsel asserts that, consistent with Korean practice pertinent to small businesses, the Korean tax documents refer to the beneficiary rather than to EnC, although those taxes were attributable to EnC. Again, this office would have preferred that counsel submit evidence, rather than merely make assertions. However, counsel has overcome the other impeaching evidence, and this final piece of impeaching evidence is insufficient, in itself, especially after having been addressed by counsel, to justify disbelieving the evidence of the beneficiary's experience.

The evidence submitted in support of the beneficiary's claim of employment for Tex 21, Inc. is only the assertion of the beneficiary. This is insufficient to demonstrate the validity of that employment claim. However, in view of the beneficiary's other employment experience, the beneficiary's employment for Tex 21, Inc. need not be demonstrated to render this petition approvable.

The decision below was based on evidence purportedly impeaching the credibility of the beneficiary's experience evidence. Counsel has overcome that adverse evidence and reformed the credibility of the evidence of the beneficiary's experience. That evidence shows that the beneficiary worked for ten years as

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[4] In fact, the beneficiary's statement indicates that the spelling of the name of the street upon which EnC was located is Kimryangjang-dong.

the owner/representative of his own garment manufacturing and sales company. That the beneficiary opened that business during 1989 and closed it during 1999 is corroborated by what appear to be documents issued by the Korean government. Counsel submitted evidence from a garment and fabric wholesaler corroborating that the beneficiary had, in fact, operated the business in question. The beneficiary's asserted ten years of experience as the owner/representative of a garment manufacturing and sales company included more than two years of garment manufacturing experience and more than two years of experience as a purchasing representative.

The evidence submitted credibly demonstrates that the beneficiary has the requisite two years of experience. Therefore, the petitioner has established that the beneficiary is eligible for 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 met that burden.

ORDER: The appeal is sustained.