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U.S. Citizenship and Immigration Services

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[redacted]

MAR 04 2004

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 employment based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and her reasons therefore. The director subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a dyeing, printing and fabric finishing firm. It seeks to employ the beneficiary permanently in the United States as a textile color and print maker. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The beneficiary's employment history is set forth in the Form ETA 750-B, signed by the beneficiary. It describes past employment experience with "Fabricas de Yoli" in Guadalajara, Mexico. The beneficiary was purportedly employed as a textile color and print maker from February 1988 to September 1992, thus reflecting that he had the requisite two years of experience required by the position certified by the Department of Labor. The visa petition was approved on March 1, 1995.

Pursuant to a subsequent investigation by United States immigration officials in Mexico City, the director issued a notice of intent to revoke on December 28, 2000. It stated in relevant part:

> On March 15, 1997, a [CIS] Officer visited the neighborhood of the beneficiary's prior employer, FABRICAS de YOLI at Avenida de La Americas, No 233, Guadalajara, Jalisco, Mexico. The address did not exist, the closest number was 225 and that number belonged to a restaurant named Ciceron. Another number, 243, belonged to ITESM, a Technological School. The business telephone number as shown on the letter of experience, 16-46-15, did not exist. The telephone directory of Guadalajara did not have a listing for the business.

The director concluded that the petitioner had not established that the beneficiary had the requisite two years of experience required by the offered position.

Counsel responded to the notice of intent to revoke on January 25, 2001. He attributed the submission of the false employment letter to the actions of a former employee in his office, stating that the beneficiary claimed that he signed blank forms and told counsel's former employee that he would obtain an employment letter from another previous employer in Mexico.[1] Counsel submits a letter, dated January 9, 2001, from an individual in Mexico who states that the beneficiary "worked

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[1] The signature line of Form ETA 750-B states that the beneficiary takes full responsibility for the accuracy of any representations made by his agent.

with me in the Finishing and Weaving Division of M and M and Associates since September 1985 until December 1987."

In her notice of revocation, the director found counsel's response could not overcome the grounds for denial. The director noted that the writer of the second employment letter did not identify himself as the employer or an authorized representative of M and M and Associates, only that he was a co-worker. No tax or earnings records were submitted to corroborate this employment and no letter directly from M and M and Associates was offered. The director noted that this employment was not included on the Form ETA 750-Part B certified by the Department of Labor and submitted with the visa petition. The AAO agrees.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. In this case, that date is December 15, 1992. As noted on the labor certification, the beneficiary must have two years of experience in the job offered as set forth on Block 14 of the ETA 750.

Section 203(b)(3)(A)(i) of 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 or seasonal nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3) additionally 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.

On appeal, counsel asserts that the evidence shows that the beneficiary has the required two years of experience. In this case, no credible employer letter was submitted. There was no explanation as to why it was unavailable, and no other relevant or probative evidence such as payroll records or tax

information was offered. The only letter attempting to corroborate the beneficiary's work experience was not submitted until after the notice of attempt to revoke was issued despite the beneficiary's apparent assurance several years previously that he would obtain employment verification.

On appeal, counsel also contends that the petitioner and beneficiary should not be held responsible for false information submitted in connection with this petition. Regardless of the assignment of responsibility, it remains that the beneficiary's second employment verification letter from one of his co-workers carries little evidentiary weight. The AAO cannot conclude that the director erred in revoking the petition based on the fraudulent submission of statements related to the beneficiary's past employment and the failure of the petitioner to subsequently sufficiently document the beneficiary's employment at M and M and Associates. Without such evidence, the petitioner has not established that the beneficiary has the requisite two years of experience and qualifies as a skilled worker as defined in the Act.

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.