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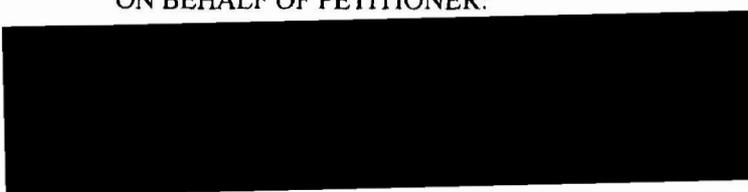
Petitioner:

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:

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 preference visa petition was initially approved by the Director, California Service Center. In connection with the beneficiary's Form I-485, Petition for Adjustment of Status, on July 8, 2003, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for withdrawal of the revocation of the petition and for further consideration of the beneficiary's qualifications.

The petitioner is an auto alarms and automotive services company. It seeks to employ the beneficiary permanently in the United States as an auto alarms electronic technician. The petition was filed for classification of the beneficiary under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act) as a skilled worker. As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

The petitioner's Form ETA 750 was filed with DOL on October 2, 1989 and certified by DOL on December 28, 1989. The petitioner subsequently filed Form I-140 with CIS on February 7, 1994, which was approved on May 5, 1994. An application for lawful permanent residence (Form I-485) in connection with the approved Form I-140 was pending at the time the director issued the NOIR.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

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.

In the instant petition, the petitioner indicated on the Form ETA 750 that the position required four years of work experience. The approval of this petition was revoked as a result of a local investigation that concluded the applicant is not qualified for the immigrant classification sought. It was also revoked based on a memorandum dated October 28, 1998 from the U.S. Embassy in Stockholm.

On July 8, 2003, the director sent a NOIR to the petitioner stating the following:

While adjudicating the adjustment of status application, it was realized that the I-140 petition was approved in error.

[Citizenship and Immigration Services (CIS)] has received the following information regarding eligibility for the classification sought. During a subsequent interview conducted on September 21, 1994, at the American Embassy in Stockholm, Sweden, it was determined that the applicant does not meet the minimum experience requirement as is required within block 14 of Form ETA 750. The applicant was unable to provide proof that he had the skills required on the labor certification. At a later date he provided a letter from the petitioner stating that he had the required skills. The consult requested proof from another source and contacted a vocational school in Sweden and made an appointment for the beneficiary to be tested. The beneficiary never attended the appointment. The [e]mbassy then made another

appointment for the beneficiary to be tested, however, again the beneficiary failed to show for the test. At that time the Embassy refused issuance of an immigrant visa under section 221(g).

The memorandum sent to CIS by the U.S. Embassy is in the record. In the memo the embassy states that it believes the applicant's claim to work experience is fraudulent and that the beneficiary should have been refused under Section 212(a)(6)(C), the Immigration and Nationality Act(INA).

The NOIR then stated the following reasons for the proposed revocation of the petition:

The Department of Labor accepted Form ETA 750 on October 2, 1989. In Part 14 of the form, the petitioner requires at a minimum, four years of previous work experience in the job offered, "Electronic Technician."

The beneficiary entered the United States on June 13, 1998 under the Visa Waiver program which expired on September 12, 1998. On September 11, 1998, the beneficiary filed an I-485 application to adjust his status to that of lawful permanent resident based on the approved I-140 petition. On October 28, 1998, the American Consulate/Embassy in Stockholm, Sweden returned the I-140 petition to [CIS] for further review and action.

On March 14, 2000, a site inspection was conducted with the petitioner, Precision Electronic Engineering. The site location was found to be a vacant lot. After questioning with a business owner located next door, it was discovered that the lot had been vacant for over 2 years which was previously occupied by Precision Electronic.

The director stated that doubt cast on any aspect of the petitioner's proof, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition, and cited to *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The director also cited to *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

On August 7, 2003, newly hired counsel responded to the notice of intent to revoke the petition. In her response, counsel stated that the facts provided by the U.S. embassy in Stockholm were incorrect. Counsel stated that after the U.S. Embassy requested the beneficiary to attend a vocational school for testing of his job skills, he did go to the vocational school, and the school informed him on two different occasions that he would not be allowed to take the examination. Current counsel stated that she received documentation from the prior attorney that documented the beneficiary was not allowed to take the job skills examination. Counsel stated that she was submitting the documentation, which she referred to as letters, with translations to the record. Based on this documentation, counsel states that the facts submitted to CIS by the U.S. embassy are not true.

Counsel also stated that the beneficiary did have the appropriate experience for the proffered position, although it was obtained in Iran during the 1970's and 1980's. Counsel noted that the experience when the application was originally filed in 1989, was not old experience, and should have been usable experience for the I-140 petition. Counsel stated that she was not sure why the American Embassy determined that the beneficiary's stated work experience was not sufficient, and stated she was submitting a copy of the work experience letter with an English translation.

Counsel stated that with regard to the CIS site inspection on March 14, 2000, a representative of her organization photographed the petitioner's former work address, 11385 Luddington Street. Counsel noted that the site was not a vacant lot, but rather a building sold by Precision Electronic Engineering sometime in 1997 or 1998. Counsel stated that although it was true that the petitioner was not on the location in March of 2000, the lot was not vacant.

Counsel stated that the petitioner is now located at 11627 Cantara Street, North Hollywood, California, and that the business has been incorporated and is now called Precision Engineering Industries, Inc.

Counsel submitted the following documentation:

A letter from [REDACTED] President, Precision Engineering Industries, Inc., 11627 Cantara Street, North Hollywood, dated August 6, 2003. [REDACTED] stated that Precision Engineering Industries, Inc., is Precision Electronic Engineering, the petitioner. According to [REDACTED] the petitioner relocated in 1998 to a property owned by the president, and leased to the petitioner. The petitioner stated that it did have normal business documentation which it had attached to the letter. The petitioner also stated that it was not sure whether the change of address could affect the validity of the ETA 750, and that it would look into the matter further about the address change and also about the allegations that the beneficiary did not pursue testing through the U.S. Embassy. The petitioner stated that the beneficiary did not tell it of such a requirement.

A telephone bill for SBC addressed to [REDACTED], 11627 Cantara, North Hollywood, California and dated January 4, 2003.

Articles of Incorporation for Precision Engineering Industries, Inc, dated July 13, 1989.

Form 8109 Federal Tax Deposit Coupon which identified Precision Engineering Industries, Inc's employer identification number (EIN) and address. The address noted is 11627 Cantara Street, North Hollywood.

A copy of the beneficiary's work verification letter originally submitted with the initial petition. The document was translated on August 7, 2003, and a statement of certification of the translator is also submitted.¹

A letter from the U.S. Embassy dated September 21, 1994. The letters states that the office is unable to issue a visa to the beneficiary because the beneficiary was found ineligible to receive a visa under Section 221(G). which prohibits the issuance of a visa to anyone who has failed to present documents requested in connection with the visa application within one year. The letter states in handwritten text the following: "You must show evidence that you are

¹ Although the director in his notice of revocation stated that the translations of the beneficiary's work experience and of the two letters from [REDACTED] were not found in the record, they are in the record as an exhibit submitted by counsel in her response to the notice of intent to revoke dated July 8, 2003.

competent in the requirements of the labor certification, i.e. (as Electronics technician/auto alarms) "Testing, tuning, troubleshooting, repairing electronic equipment of auto alarms, etc."

Two letters from [REDACTED] no address, dated December 1994 and March 1995, signed by [REDACTED]. These two letters are accompanied by copies of the certified translations of the documents dated August 7, 2003. The first letter from [REDACTED] dated December 22, 1994, is addressed to the beneficiary in Uppsala, Sweden, and states the following: "In response to your letter, I hereby inform you that we will not handle the issue of testing your knowledge in the area of electrical engineering." The second letter dated March 13, 1995 and also signed by [REDACTED], states: "Request for permission to participate in test. D. No 95-20/10 We have previously notified you that we cannot handle this issue."

A copy of two color photographs, with handwritten dates on them of August 7, 2003. One photograph shows a grill fencing in front of a paved area with a building in the background. This photograph shows no affixed address or corporate identification. It does show an apparent piece of paper on the grill fencing with the numbers 11385 on it. The second photo shows a building with the numbers 11627 displayed on the outside of the building. There is no business name noted on either building.

An AOL map quest document taken from the Internet that indicates the distance between [REDACTED] Valley, California, to [REDACTED], North Hollywood, California, is 1.04 miles.

Counsel sent an additional response dated November 5, 2003. Counsel stated that the issues of whether the petitioner remained at the same address and whether or not the petitioner had the ability to pay the prevailing wage during the entire period were the main focal points of the notice of intent to revoke. Counsel stated that it informed the petitioner that a new I-140 petition with the necessary information with proof of the petitioner's ability to pay through the submission of tax returns from the priority date to the present time. Counsel stated that counsel requested an additional ten day time period to submit a new I-140 petition with supporting documentation with regard to the petitioner's ability to pay the proffered wage.

The counsel also corresponded with CIS on November 13, 2003 with attached I-140 petition that counsel stated was filed to replace the prior I-140 petition filed in 1991. Counsel stated that the petitioner had moved once before, and that at that time DOL was contacted and had informed the petitioner that the labor certification was still valid because it was the same job in the same statistical area. Counsel stated that she contacted DOL again and they stated that it would be up to CIS to make a determination on the new location. Counsel stated that DOL asserted that they do not deal with these matters anymore once the I-140 is approved. Counsel stated that based on the petitioner's move of one mile, a new I-140 petition is required. Counsel submitted the new I-140 petition, the earlier DOL correspondence, and Forms 1120 for the years 1989 to 2002. She also resubmitted the 1989 articles of incorporation for Precision Electronics Inc.

On April 29, 2004, the director revoked the approval of the I-140 visa petition. The director noted that counsel had not submitted translations of the Swedish language letters submitted by counsel to establish that the beneficiary had attempted to be tested for his job skills in Sweden. The director then stated that the petitioner had failed to provide sufficient evidence that the beneficiary possessed the minimum work experience requirements as of the priority date of October 2, 1989. With regard to counsel's assertions with

regard to the petitioner's work site, the director stated that field investigative officers had reviewed the location and found it to be a vacant lot. The director also stated that the petitioner is responsible for advising CIS of any change in their information, such as address, phone number, etc. The director stated that the petitioner had clearly moved from the original location for over two years and was negligent in advising CIS of this information before the field investigators conducted their inspection. The director cited to *Matter of Ho*, and stated that the petitioner had not established that the beneficiary qualified for the classification sought and revoked the petition.

On appeal, counsel in her statement of facts asserts that the American Embassy ignored the letter of experience that the beneficiary had used with the U.S. Department of Labor, when it asked that the beneficiary appear at a local school for testing. Counsel further asserts that the beneficiary appeared for testing at the school, but was turned away by the school with the school indicating to him that he had not been educated in Sweden, and that therefore they could not test him. Counsel then states that when the U.S. Embassy in Sweden did not approve the immigrant visa without the test, the beneficiary, then without counsel, did not know what to present to them, as he had given them his work experience letter from Iran, and a letter from the petitioner, that both indicated the beneficiary had the appropriate training. Counsel asserts that thinking there was nothing else he could do, the beneficiary gave up on his immigrant visa, and reentered the United States on June 13, 1998, under the Visa Waiver program. One day prior to the expiration of the visa Waiver status, the beneficiary then filed an I-485 adjustment of status application with CIS.

Counsel then states that it is understandable that once an investigation is conducted and the petitioner is not present at the site, questions would arise, and concedes that CIS rightfully inquired about the petitioner's address. Counsel then states that what the petitioner finds unfair in the proceedings, is the CIS interpretation of the facts of the case. Counsel states that there is a discrepancy as to what actually happened while the beneficiary was processed for an immigrant visa in Sweden. While the CIS or Embassy record indicates that the beneficiary did not show up for his testing, the beneficiary indicates that he did appear, and that the school did not allow him to be tested. Counsel states that in response to the notice of intent to revoke the petition, the beneficiary submitted two letters that the school issued, indicating that they would not test him. Counsel asserts that the embassy records were not complete and did not reflect correct information.

Second, counsel states that most embassies do not ask that visa applicants be tested by a school. In the instant petition, the embassy in Sweden did request such a testing and the beneficiary attempted to comply. Counsel then states that the embassy failed to indicate what was wrong with the experience letter from Iran which was presented to the Department of Labor and also to the U.S. Embassy. Counsel states that opposed to merely discounting the experience since it was from Iran, if the embassy wanted to question the experience letter, they should have requested an investigation of the background of the letter, which appears to be standard procedures in such cases. Counsel notes that there is no American Embassy in Iran, but the embassy could have made a formal request of further documentation from Iran-such as a phone book listing which would have satisfied their inquiry. Counsel states that by ignoring the letter from Iran, the embassy was basically making a policy statement that all experience from Iran is disqualified from meeting any labor certification requirements in the United States.

With regard to the site inspection conducted during the local CIS investigation, counsel states that since the two locations are within a mile in the same statistical area, DOL will honor the labor certification. Counsel also states that it is undisputed that the petitioner moved and that they were not at the address on the I-140

petition at the time of the onsite inspection in 2001.² Counsel states that it is not unreasonable for the company to have moved to larger quarters, as they are a viable company. Counsel also notes that the labor certification with the original address was filed twelve years before the 2001 site inspection. Counsel finally states that when the petitioner was asked if a change of address had been provided to CIS, the petitioner could not answer, indicating that the attorney of record would have handled a change of address at the time, and the petitioner had no record of CIS being notified.

With regard to the beneficiary's qualifications, namely whether he possessed the requisite four years of work experience based on his work in Iran, counsel states that the U.S. Embassy made no statements to the beneficiary with regard to the work experience letter from Iran. Counsel states that the embassy just dismissed the letter. Counsel states that only the submission of affidavits are necessary to prove that the beneficiary meets the requirement for the job, and cites *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7 (D.D.C. 1988). Counsel states that the beneficiary was totally upfront regarding his work experience, and that his only work experience was gained while in Iran. Counsel further states that if a school can be located in the United States which would agree to test the beneficiary, he is willing to subject himself to such a test.

Counsel agrees that after the site inspection, CIS had every right to inquire as to where the petitioner was, and whether they still had a need for the beneficiary and also the ability to pay the proffered wage. Counsel states that the petitioner submitted voluminous evidence with regard to this issue. Counsel states that the petitioner explained that it moved its office, and photographs were submitted of the addresses (showing buildings at both locations). Information that the petitioner was still in business and that the job offer remained open after so many years was also provided.

In conclusion, counsel states that there was a misunderstanding, but based on the fact that the petitioner remains viable and willing, and the beneficiary retains his experience letter and the ability to be retested, there is no good or sufficient cause to deny the petitioner. Furthermore, counsel states that the revocation of the petitioner will only force the petitioner to file another I-140 petition which will cause more CIS analysis.³

Counsel resubmits the two letters from [REDACTED] and the work experience letter, as well as the translations of these documents. Counsel also submits a letter dated September 28, 1995, that the petitioner sent to Senator Barbara Boxer requesting assistance. In this letter, the petitioner states that the U.S. embassy in Stockholm rejected the beneficiary's case because it lacked evidence about his competency in the requirements of the labor certification. The petitioner added that despite the fact that the beneficiary does not speak Swedish, he applied to the proper Stockholm gymnasium to be tested with the help of an interpreter. Finally counsel submits a page of the Form ETA 750 that provides the beneficiary's education information. According to section 11, the beneficiary attended Adab High School in Teheran, Iran, studying general studies, from 1958 to 1964.

It should be noted that the AAO cannot comment on the Department of State consular officer's report and counsel's claims as to their fairness. The matter before the AAO is whether or not the revocation was based on good and sufficient cause and whether or not the beneficiary is qualified for the proffered position. However, the AAO can comment on the revocation of the instant petition based on the CIS onsite investigation report.

² The onsite local CIS investigation, based on the record, took place in 2000.

³ According to the record, the petitioner did file a new I-140 using the Cantara address.

In order to properly revoke a petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

With regard to the onsite investigation conducted by CIS in 2001, the report stated that the location of the petitioner's business was a vacant lot and that persons still doing business near the Luddington Street address identified the site as the **petitioner's former work site**. While the CIS report clearly establishes that the petitioner was no longer at the [REDACTED] et address, it did not necessarily establish that the petitioner was not a viable business, or that it did not have the ability to pay the proffered wage, both issues which are material to the approval of an I-140 skilled worker petition, although not noted by the director in his decision to revoke the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). Although the AAO has the authority to review new grounds for ineligibility, the AAO does not view the onsite investigative visit and subsequent observations which focus on the petitioner's physical location as relevant to the primary rationale outlined in the director's decision to revoke the petition, namely the beneficiary's qualifications. The report, rather, appears to focus on the revocation of the petition because that the petitioner is not a viable business concern. It is noted that the director in his decision only states that the petitioner clearly moved from one location to another, and was negligent in advising CIS of its new address prior to the inspection by CIS field investigators. This oversight by the petitioner does not appear material, and therefore it is not, by itself, good and sufficient cause to revoke the instant petition.

It should also be noted that counsel's photographic documentation of the two claimed business addresses of the petitioner consists of photos of two buildings with no corporate identity on them, and with one site identified only by numbers written on a piece of paper. Counsel's photographs are deficient in establishing that either photograph is that of the petitioner's business, or that the business is actually in operation. Of more probative weight are the federal income tax returns that counsel submitted in her response to the director's intent to revoke the instant petition that reflect the petitioner's changed street address as of August 1995, the claimed business volume, net income, and wages paid.⁴ Other probative evidence as to the petitioner's actual business operations, would include brochures, websites, or documentation of the petitioner's actual sales and services. Since the onsite investigative report did not examine the beneficiary's qualifications, or whether the petitioner actually had a job for the beneficiary commensurate with the job description contained in the Form ETA 750, the findings of the CIS investigation as to a change of address by the petitioner are not viewed as good and sufficient cause for the issuance of a notice of intent to revoke the petition. This part of the director's decision is withdrawn.

⁴ The petitioner's 1994 income tax returns, filed in August of 1995, indicate the petitioner's business was located at that time on Cantara Street.

With regard to the beneficiary's qualifications, counsel is correct that the correspondence from the U.S. Embassy does not address the beneficiary's letter of work experience. The summary of the Embassy memorandum states the following:

"We are returning IV petition for the above applicant. Based on applicant's unwillingness to undergo independent testing of his skills arranged by the Embassy on two separate occasions and failure to pursue the case in Stockholm, we believe applicant's claim to experience is fraudulent and that he should have been refused under section 212[(A)(6)(c)] of the INA. End Summary."

With regard to the correspondence by the U.S. Embassy in Stockholm, and the beneficiary's correspondence with the Swedish gymnasium, the embassy correspondence does not identify the school to which the beneficiary was directed for independent testing, although it states that the Immigrant Visa unit contacted a vocational school in Sweden. In addition, the embassy does not indicate how it knows that the beneficiary did not show up for the testing or provide any documentary evidence as to the beneficiary's failure to show up for the testing. Conversely, the director of the Swedish gymnasium does not specify any testing arranged with the embassy, any failure of the beneficiary to appear for the testing, or reason(s) why the petitioner could not be tested. Although counsel asserts that the beneficiary did not receive his training in Sweden, as a reason for why he could not be tested, 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). In fact, there is no correlation made by counsel, the petitioner, or the beneficiary between the embassy's request for independent testing of the beneficiary, and the Swedish gymnasium's inability to test the beneficiary in electrical engineering. As such, the documentation in the record as to either the beneficiary's inability or unwillingness to be tested in the claimed job skills is inconclusive, at best.

The revocation of the instant petition hinges on the beneficiary's qualifications as outlined in the Form ETA 750, and whether the petitioner provided sufficient documentation of the beneficiary's qualifications for the proffered petition. The record reflects that the petition was initially approved based on a letter of work experience submitted by the petitioner, and that when the beneficiary was interviewed by the U.S. Embassy in Stockholm for his immigrant visa, the embassy required further proof of the beneficiary's qualifications from an independent source. Contrary to counsel's assertion, U.S. embassies may make such requests of beneficiaries of both immigrant and non-immigrant visas. As correctly noted by counsel, however, the embassy did not comment on the letter of work experience or state any specific reason why the letter of work experience was not found to be sufficient evidence to establish the beneficiary's qualifications. The director in his notice to revoke specifically based the revocation on the U.S. Embassy's request for independent testing of the beneficiary and the embassy's subsequent refusal to issue an immigrant visa based on lack of independent evidence as to the beneficiary's qualifications. The director, in his decision to revoke the petition, also did not address any deficiencies noted in the letter of work experience.

Due to the lack of comment on the initial letter of work experience in the letter of revocation, which remains the only source of information with regard to the beneficiary's previous work experience or skills, the AAO will comment on the letter, and its two translations. The letter of work experience submitted with the labor certification application and the I-140 petition, based on the first translation, states the following: "Shafagh Electrical Company This is to certify that Mr. [REDACTED] has been employed as Technician Supervisor of the electronic department. He began as a full time employee on 1/13/70 to 10/5/85. This employment verification has been provided upon Mr. [REDACTED] request on 10/10/85. [REDACTED]"

president of Shafagh Electrical Co.” The letterhead information at the bottom of the page is translated as “specializing in: Stereo (sic) and car alarm installation, also a provider of various electrical kits.” There is no information in the record as to who translated this first letter, and whether he or she are qualified to translate from Farsi to English.

The second translation done in 2003 of the same letter states: “Shafagh Electronic Organization, Date: 10/05/1985 Number 25-2-352 Attachment: (Blank) This is to certify [REDACTED] has been employed in this organization, as a full time Supervisor Technician of Electronic Department, from January 23, 1971 until October 5, 1985(present) This certification is prepared and issued following request of the above-mentioned, dated October 2, 1985. Managing Director of Shafagh Electric Organization Engineer [REDACTED] (Signature of [REDACTED]).” The letterhead at the bottom of the letter is translated as “installation of radios, record players, car and residential alarms, and manufacturer of electronic kits (remainder of the liner is illegible) Telephone: [REDACTED].” As stated previously, this translation is accompanied by a notarized certification that states the translator is competent to translate from Farsi and that the translation is, to the best of the translator’s knowledge, a true, correct, complete, and accurate rendition into English of the Farsi document.

Upon review of both translations, the second certified translation appears to provide much more information about the beneficiary’s previous employer, including telephone number, and a more complete description of the employer’s business. As such, the first translation could be viewed as deficient, based on lack of contact information for the former employer. Furthermore, the first translation of the work experience letter did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

Translations. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

Nevertheless, neither translations contain any information about the beneficiary’s specific duties while employed as a full time supervisor technician. As such, both lack detail as to how the beneficiary’s previous job duties relate to the job description outlined in the ETA 750. It does not appear remiss that the U.S. Embassy requested more information as to the beneficiary’s actual skills. However, neither the U.S. Embassy or the director requested any further information as to the previous job duties and how they related to the duties outlined in the ETA 750. As noted by the U.S. Embassy in Stockholm, these duties on the Form ETA 750 included assembling experimental circuitry and completing prototype models. However, neither the U.S. Embassy nor the director provided the petitioner with any explanation of the deficiencies of the original letter of work experience. The U.S. Embassy did, however, send the beneficiary a notice that stated what specific job duties outlined in the ETA 750 they wished to have evaluated by an independent source within a year of the date of the notice. It is also noted that although counsel states that the beneficiary is willing to be tested in his job skills, the beneficiary at no time since the initial notice of intent to revoke the petition, has attempted to be tested in the job skills areas outlined in the Form ETA 750 and challenged by the U.S. Embassy in Stockholm.

Based on the discussion outlined above, while the U.S. Embassy’s correspondence does address specific skill areas to be tested, neither the embassy correspondence or the director’s NOIR sufficiently detailed the evidence of the record, pointing out deficiencies in the letter of work experience. Furthermore the U.S.

Embassy correspondence does not elaborate on any questions asked of the beneficiary as to his job skills, or why the Embassy found it necessary to request vocational testing of the beneficiary. As such, the revocation of the petition, which is directly related to the embassy's correspondence, is not for good and sufficient cause. Therefore the part of the director's decision that referenced the U.S. Embassy's report as to the beneficiary's experience is also withdrawn.

Nevertheless, the issue of whether the beneficiary is qualified to perform the duties of the position remains unresolved. It is noted that counsel has responded to the issues raised by the director in his decision, such as the location of the petitioner, and also to issues not raised by the director in his decision, namely whether the petitioner has the ability to pay the proffered wage. However, counsel has not addressed the question of what actually were the beneficiary's duties and whether they are relevant to the duties outlined in the job description outlined in the ETA 750.

While the petitioner has established that the revocation of the petition was based on speculative and conclusory reasoning, it has failed to submit evidence sufficient to demonstrate that the beneficiary's qualifications are sufficient for the proffered position. Therefore, the petition will be remanded to the director for withdrawal of the revocation of the petition and for further consideration of the beneficiary's qualifications.

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, in part. However the petition will be remanded for further consideration of the beneficiary's qualifications and a suggested evaluation of the beneficiary's work experience and job skills. If necessary, counsel and the petitioner may arrange a testing of the beneficiary's skills in an area convenient to the beneficiary and within a reasonable amount of time.

ORDER: The petition is remanded to the director for further consideration of the petitioner's ability to pay the proffered wage.