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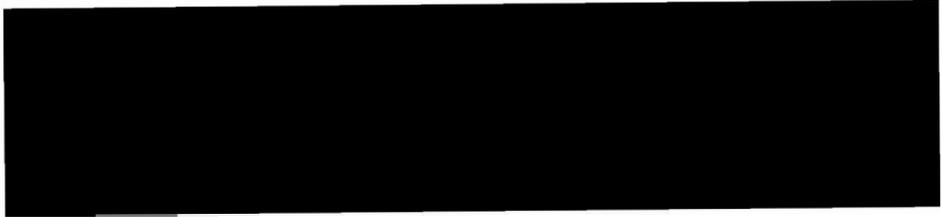
File: [Redacted]
WAC-04-251-52836

Office: CALIFORNIA SERVICE CENTER Date: APR 26 2007

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“director”), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates an auto and truck repair service center. The petitioner seeks to employ the beneficiary permanently in the United States as an electronic equipment installer repairer, motor vehicles (“Auto Electrician, Foreign Cars”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director’s denial, the case was denied, as the petitioner did not establish that the beneficiary met the qualifications listed in the certified ETA 750.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a skilled worker. 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.

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on March 23, 2001. The proffered wage as stated on the Form ETA 750 is \$14.00 per hour, for an annual salary of \$29,120.00 based on a 40 hour work week. The Form ETA 750 was certified on August 19, 2003, and the petitioner filed the I-140 petition on the beneficiary’s behalf on September 16, 2004. The petitioner listed the following information on the I-140 Petition: date established: September 1980; gross annual income: \$493,734; net annual income: \$170,527; and current number of employees: three.

The director issued a Request for Evidence (“RFE”) on April 7, 2005, requesting that the petitioner provide evidence regarding the petitioner’s ability to pay the proffered wage from the priority date to the present, specifically to provide the petitioner’s 2001, 2002, and 2004 federal tax returns. The RFE additionally requested the petitioner to identify whether it currently employed the beneficiary, and if so to provide Forms W-2 as evidence. Further, the RFE requested that the petitioner provide evidence that the beneficiary complied with the National Security Entry-Exit Registration System (NSEERS).²

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).

² NSEERS was established September 11, 2002 to monitor individuals entering and leaving the U.S. NSEERS required nonimmigrants from Iran, Iraq, Libya, Sudan, and Syria as designated by the Federal Register to comply with NSEERS registration at ports of entry, as well as nonimmigrants designated by the U.S. Department of State, and any other nonimmigrant regardless of nationality, identified by an immigration officer in accordance with 8 CFR § 264.1(f)(2). The NSEERS requirement was expanded to include other groups of nationals, and nationals from the designated groups were to report for Special Registration in four

On June 20, 2005, the petitioner responded to the RFE and provided the petitioner's federal tax returns for the years 2001, 2002, and 2004; the petitioner indicated that the beneficiary received his Employment Authorization Document ("EAD") around May 13, 2005 and began work following receipt on June 15, 2005; and the petitioner indicated that the beneficiary had complied with Special Registration, but was unable to provide evidence of his registration as CIS retained his passport.

On June 28, 2005, the director issued a Response and Notice of Intent to Deny (NOID). The NOID provided that an Overseas Investigation conducted into the beneficiary's prior experience in May 2005 revealed that the beneficiary's purported prior experience was not legitimate. Specifically, the director provided in the NOID:

A U.S. Consular Officer conducted an investigation and interviewed [redacted] of Auto Repair Center [who supplied a letter regarding the beneficiary's prior experience]. He stated that he does not know the beneficiary, did not issue him any work letter and did not sign the experience letter. He stated that the gas station/garage was originally owned by [redacted]. This contradicts information provided in the experience letter, which stated that the beneficiary worked for [redacted] Auto Repair Center from September 1992 to June 1997.

Further, the NOID requested that the petitioner submit the prior requested information in response to the RFE related to the petitioner's ability to pay, along with information regarding the beneficiary's NSEERS registration.³ The petitioner responded to the NOID, and submitted the prior requested information in response to the RFE. Following consideration, on August 9, 2005, the director denied the petition on the basis that the Overseas Investigation revealed that the beneficiary's prior experience was not valid and, therefore, the petitioner had not established that the beneficiary had the required prior experience as set forth in the certified ETA 750.

We will examine the evidence submitted to document the beneficiary's qualifications, and then examine the evidence submitted on appeal. In evaluating the beneficiary's qualifications, Citizenship and Immigration Services ("CIS") must look to the job offer portion of the alien labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not

separate "call-in groups." Lebanon, the beneficiary's country of origin, was listed for call-in registration between January 27 and February, 7, 2003. *See* 68 Fed. Reg. 2366 (January 16, 2003). Group 2 additionally included: citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen. *Id.* at 2366. Group 3 included citizens or nationals of Pakistan or Saudi Arabia. *See* 68 Fed. Reg. 33 (February 19, 2003). Group 4 expanded NSEERS and Special Registration to include citizens or nationals of Bangladesh, Egypt, Indonesia, Jordan, and Kuwait. *Id.* at 33. On December 2, 2003, the Department of Homeland Security ("DHS") suspended the automatic 30-day and annual re-registration requirements for NSEERS. *See* <http://www.ice.gov/pi/specialregistration/index.htm>, accessed April 5, 2007.

³ The petitioner was given until June 30, 2005 to respond to the RFE. The petitioner's RFE response contained in the record of proceeding is date stamped that it was received on June 20, 2005, so that the documentation was timely received. It is not clear that the record of proceeding contained the petitioner's RFE response at the time that the NOID was issued.

mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d).

The beneficiary must demonstrate that he had the required skills by the priority date. On the Form ETA 750A, the "job offer" states that the position requires two years of experience in the job offered,⁴ as an auto electrician, foreign cars, with job duties including: "Repair, overhaul, adjust, and rebuild electrical systems and units in foreign cars such as BMW, Volvo, Mercedes and trucks. Confer with customers and test cars to determine malfunction. Adjust ignition, distributors, etc. Repair or replace wiring. Rebuild starters, generators, etc." The petitioner listed educational requirements of grade school in Section 14, and listed no other special requirements for the position in Section 15.

On the Form ETA 750B, signed by the beneficiary on March 2, 2001, the beneficiary listed his prior experience as: (1) [REDACTED] Auto Electrician, foreign cars, 42 hours per week; and (2) (provided by amendment to Form ETA 750B, dated November 20, 2001) "working several short, part-time freelance jobs as a "Auto Electrician Foreign Cars"" from March 1998 to the present, on a "job to job basis." The work was not done for one particular employer, and the beneficiary estimated that he worked five to six hours per week with job duties including "to repair, overhaul, adjust, and rebuild electrical systems and units in foreign cars."

To document a beneficiary's qualifications, the petitioner must provide evidence in accordance with 8 C.F.R. § 204.5(l)(3):

(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.

As evidence to document the beneficiary's qualifications, the petitioner submitted the following letter:

1. Letter from [REDACTED] "Partner Owner," [REDACTED] Lebanon, dated August 8, 2004;
Dates of employment: September 1, 1992 to June 1, 1997;

⁴ The petitioner initially listed that four years of experience was required, however, the experience requirement was changed to two years with DOL accepting the amendment prior to certification.

Title: Auto Electrician of foreign cars;

Job Duties: "he was employed on a full time basis . . . and was . . . responsible for the repair, overhaul [sic] and rebuild of electrical systems and units in foreign cars such as Volvo, Toyota, Honda, BMW, Mercedes, etc."

The director then issued the RFE request and NOID, which outlined deficiencies in the beneficiary's documented experience based on the overseas investigation wherein [redacted] stated that he did not know the beneficiary, and did not provide any letter pertaining to the beneficiary's prior work. In response, the petitioner submitted the following letters:

2. Letter from [redacted] brother of [redacted] "partnerowner" [sic] of [redacted] Auto Repair undated, and not on letterhead;
Dates of employment: September 1, 1992 to June 1, 1997;
Title: not listed;
The letter provides:

I am [redacted] brother of [redacted] partnerowner [sic] of [redacted] Auto Repair center that I wrote recommendation letter [sic] for [the beneficiary] that he worked with us from 1 of September 1992 till 1 June 1997. As I am the manager of that repair center and in the absence of my brother [redacted] I wrote that paper and signed it. Also, I have to report that [the beneficiary] has a nick name [sic] as [redacted] and that everyone in my area knows him as this nick name including my brother [redacted]. Also I have to report that [redacted] rented a gas station 4 years ago and still in the renting period contract I am responsible for the auto repair myself. So when a representative came from your embassy checking on [the beneficiary], no one knew him including my brother [redacted] because everyone knows him as [redacted].

3. Letter from [redacted], Mayor of Dedde, Ministry of Interior, Republic of Lebanon, dated May 14, 2005;
The letter provides:

I, the undersigned, [redacted] Mayor of Dedde, Hereby attest that [the beneficiary], born in 1975, under registry number Dedde 92/, is a citizen and resident of our town, Dedde, and he is known in the town as "[redacted]", since his childhood. There is no other person known in this town by that name other than [the beneficiary]. He is known to me personally and in evidence thereto, this certificate has been issued.

The director's decision raised the following issues related to the additional evidence that the petitioner provided: (1) in the interview with the consular investigator [redacted] stated that he did not know the beneficiary, that he did not issue any work letter, and that he did not sign the experience letter; (2) [redacted] had provided that the original owner of the garage was [redacted]. The original owner has the same surname as the petitioner's owner in the present case; (3) the NOID instructed the petitioner to provide objective evidence related to the issue of the beneficiary's experience; the letter from [redacted] as the brother of [redacted] would not be considered objective evidence; (4) the director questioned why, if [redacted] was in charge of the garage, that [redacted] did not sign the original letter himself, and further, if the beneficiary was known by a different name, why the alternate name that the beneficiary was known by was not in the letter; and (5) counsel's assertion that the Consular Officer used "intimidating methods" in the investigation. The director noted that [redacted] did not repudiate the employment letter because he was intimidated;

further, it was not clear why [redacted] did not provide a statement himself to address the points raised in the [redacted] letter; and (6) regarding the [redacted] letter and the beneficiary's use of another name, the evidence does not explain why [redacted] provided the experience letter and did not use the name that the beneficiary was known by. Further, the decision notes that Form G-325A filed with the beneficiary's adjustment of status application requires an individual to list other names used. The beneficiary did not list that he used, or was known by any other names. Accordingly, based on *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the beneficiary's experience was in question. "Doubt raised on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.* at 591-592. Further, "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice." *Id.* at 591-592.

On appeal, counsel provides that there "is no inconsistency in any of the information submitted with regards to the viability of the company in Lebanon and the past experience of the beneficiary." Counsel resubmitted the same letter from [redacted] and the same letter from [redacted]. Counsel also submitted the following additional identical statements, which provided:

I, the undersigned [name] resident of the village of [village name and phone number listed], hereby certify having seen the named [beneficiary] working at the [redacted] Auto Repair Garage in the Electrical Reparatons and Transmission Reparatons during the period of my deal [sic] with that Garage between the Year 1994 to 1997.

Each of the following individuals provided the above statement, which was signed and notarized: [redacted], resident of Deddeh; [redacted], resident of Batroumine; [redacted] resident at the village of Deddeh; [redacted] resident at Barsa El Koura; [redacted] resident at the Village of Deddeh; [redacted] resident at the Village of Barsa El Koura; [redacted] resident at the Village of Deddeh; [redacted] resident at the Village of Deddeh; [redacted] resident at the Village of Barsa El Koura; and [redacted] resident at the Village of Deddeh.

Regarding the additional evidence submitted, the statements are all identical, and do not explain the individual's relationship to the beneficiary or petitioner, other than being a resident of the village and the vague assertion that they dealt with the garage between 1994 and 1997. The statements list the beneficiary's given name, and the individuals do not refer to the beneficiary by his "nickname," which the petitioner asserts everyone used when referring to the beneficiary. Further, the statements submitted fail to comply with 8 C.F.R. § 103.2(b)(3), which provides that any translated 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." The translations provided do not contain the certification that the translator is competent to translate from the foreign language into English.⁵

⁵ We note that the declarations contain a stamp that they were provided to a sworn translator, an "expert before Courts of Law," and would appear to be similar to a notarized statement. In a notarized statement, an affiant would swear or affirm the statement before an officer authorized to administer oaths or affirmations after the officer confirms the declarant's identity, and administers the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Further, in lieu of notarization, a declaration may contain

The petitioner did not provide any secondary evidence that the beneficiary worked for the company in question, such as pay statements, or other work records, which in connection with the declarations, may have bolstered the credibility of the documentation provided. Further, the statements provided fail to directly address the points raised in the director's decision. The petitioner did not explain any of the discrepancies as enumerated in the director's denial, and did not address why [REDACTED] did not sign the original work experience letter if he wrote the letter on the beneficiary's behalf. Further, the petitioner did provide any additional information from [REDACTED] regarding the letter he initially provided, the investigation, and whether [REDACTED] was aware of the beneficiary based on his nickname. The evidence as a whole fails to address the deficiencies raised in the denial, and the petitioner has failed to explain the inconsistencies in the evidence. See *Matter of Ho*, 19 I&N Dec. at 591-592. Accordingly, the petitioner has failed to demonstrate that the beneficiary has the required two years of prior experience listed on the certified ETA 750.

Based on the foregoing, the petitioner has failed to establish that the beneficiary meets the qualifications as set forth in the certified ETA 750. 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.

the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. The statements provided do not contain this language.