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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

JUN 05 2007  
Date:

IN RE:

Petitioner:

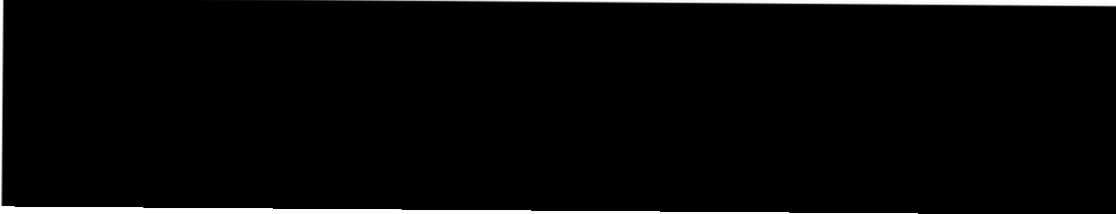
Beneficiary:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decisions of the director and the AAO will be affirmed, and the petition will be denied.

The petitioner is a development council. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite qualifying work experience as of the visa priority date and denied the petition accordingly.

On May 7, 2004, the director denied the petition. The petitioner, through counsel filed an appeal on June 7, 2004. On the notice of appeal, counsel indicated that he would be sending a brief and/or evidence to this office within 30 days.

On appeal, counsel asserted that the director erred in determining that the petitioner had failed to establish that the beneficiary possessed the required four years of work experience. The record indicates that the AAO's decision that was rendered on September 27, 2005, was based upon the record available to the director and on a "motion to remand for adjudication," received by this office on May 25, 2005. This motion was accompanied by copies of two approval notices for H-1 visas, which counsel contended established the beneficiary's qualifying experience. The AAO determined that while the beneficiary was authorized to work for these employers, ( [REDACTED] and [REDACTED] ) the approvals were not evidence of the period of time during which the beneficiary actually worked for those firms, or evidence that he worked for them at all.

Based on a review of the record, the AAO finds that counsel's brief and additional documentation submitted on appeal in conjunction with his request for an additional 30 days, was not properly connected with the file until after the AAO rendered its earlier decision. For that reason, and in response to counsel's additional submissions and argument submitted with his motion to reopen and reconsider, the AAO will consider the evidence as supporting a motion to reopen and a motion to reconsider under the regulation at 8 C.F.R. § 103.5(a)(2) and (3).

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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

\* \* \*

(C) *Professionals.* If the petition is for a professional, the petition must be

accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 30, 2002.<sup>1</sup>

Item 14 of the approved labor certification indicates that the certified position of accountant requires a bachelor's degree in accounting and four years of experience as an accountant. The beneficiary signed Part B of the ETA 750 on December 4, 2000. He claimed four current and previous employers. In all cases, he states that he worked as a accountant. The job duties described in each case are identical with each other and with the job duties listed on the labor certification. The listed employers can be summarized as follows:

	Date Started	Date Left	No of hrs. per week
1.	09 1998	10 1996 <sup>2</sup>	40
2.	10 1996	05 1998	40
3.	10/01/1998	08 2000	40
4.	08 2000	to present	40

Employment verification for each of the employers has been supplied as follows:

1. 

a. A letter, dated June 1, 2004, that was submitted with counsel's brief on appeal. It is signed by [REDACTED] and states that the beneficiary has been employed "on a full time basis with our firm from October 1996 to September 1998."
2. [REDACTED]

<sup>1</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

<sup>2</sup> As noted in previous AAO decision this entry was likely reversed and should have been 10/96 to 9/98.

- a. A copy of a letter, dated October 17, 2005, signed by [REDACTED] certifying that the accounting firm employed the beneficiary between the period of October 1996 to May 1998.
- b. Beneficiary's bank statements from December 1997 showing payroll deposits from [REDACTED] totaling \$1,538.43.
- c. 1997 Wage and Tax Statement (W-2) issued by [REDACTED] showing \$33,441.15 in wages paid to beneficiary.
- d. W-2 for 1996 showing \$6,535.88 in wages paid to beneficiary.
- e. Beneficiary's bank statements from April 1998 showing payroll deposits totaling \$1,935.19.

3. [REDACTED]

- a. A letter, dated July 12, 2004, submitted to the underlying record, signed by [REDACTED] as president and CEO, stating that the beneficiary "was on a full time basis as an Accountant from Oct. 1, 1998 to Oct. 1, 2001." A copy of this letter was provided with counsel's appeal brief.
- b. A letter, dated October 12, 2005, submitted with the motion to reopen and reconsider, signed by [REDACTED] and stating that the beneficiary was "an employee of the Virtual Office from October 6, 1998 to August 25, 2000."
- c. Two of the beneficiary's bank statements from February and May 2000, showing total payroll deposits of \$4,470.82. (submitted on motion to reopen and reconsider)
- d. W-2 showing \$13,666.68 in wages paid to the beneficiary for 2000. Quarterly wage report of The Virtual Office for the 1<sup>st</sup> quarter of 2000.

4. [REDACTED]

- a. A letter, dated October 10, 2005, submitted with the motion to reopen and reconsider. It is signed by [REDACTED] as president and CEO. He states that the beneficiary worked for the Council from August 2000 until April 2002 as a the Chief Financial Officer.
- b. Earnings Statements from employer from August, September and November 2000 showing year-to-date earnings as of November 30, 2000 as \$23,916.62; Earnings Statements from April, May, June and July of 2001 showing year-to-date earnings of \$22,208.29 as of July 15, 2001. (submitted with motion to reopen/reconsider)

- c. W-2 for 2000 reflecting \$27,333.28 in wages paid to beneficiary.
- d. Beneficiary's bank statements showing payroll deposits of January, February, March, and June, July and August of 2001. Each deposit is for approximately \$1,044, excepting the last August 14, 2001, deposit of \$11,265.71.

The AAO notes that with each submission, the petitioner has not attempted to explain or resolve the inconsistencies appearing in the record by providing a credible explanation of conflicts appearing in his work history. As noted in the AAO decision of September 27, 2005, the beneficiary stated on the ETA 750B that he worked for The Virtual Office from 10/01/98 to 8/2000. [REDACTED] first letter in 2004 states that his employment ended in October 2001. His second letter submitted on motion, without explanation, now agrees with the beneficiary's claim. The financial documentation submitted on motion contains references to 1998 and 2000 but omits mention of 1999.

On the ETA 750B, the beneficiary claims full-time (40 hours per week) employment with both [REDACTED] and [REDACTED]. Both jobs purported to have begun in October 1996 and ending in May 1998 for [REDACTED] and September 1998. The AAO finds this claim of simultaneous full-time employment to be questionable.

The letter from the American Economic Council claims it employed the beneficiary from August 2000 to April 2002, yet the financial documentation ends with a large deposit in August 2001. Additionally, the beneficiary's individual tax return for 2001, which was provided in connection with his application for permanent residency shows that he claimed over \$6,000 in unemployment compensation during that year.<sup>3</sup> The AAO finds that employment history claimed with this company is also questionable. It is noted that if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See* Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5<sup>th</sup> Cir. 1989); *Systronics Corp. v. INS*, 153 F.Supp. 2d 7, 15 (D.D.C. 2001).

As noted in the earlier AAO decision, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the remaining evidence submitted in support of the petition. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Here, the AAO does not conclude, in the face of such inconsistencies, that the petition may be approved. The petitioner has not resolved those doubts and has failed to establish that the beneficiary has acquired the requisite four years of qualifying work experience as set forth on the ETA 750 pursuant to the requirements of 8 C.F.R. § 204.5(l)(3).

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 motion is granted. The prior decision of the AAO, dated September 27, 2005, is affirmed.  
The petition remains denied.

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<sup>3</sup> He also describes his occupation as a "systems analyst."