

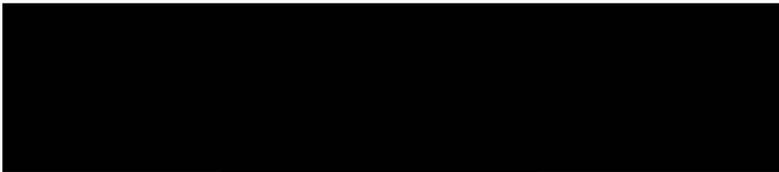
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**U.S. Citizenship  
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Services**

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File: [Redacted]  
WAC-03-079-53100

Office: CALIFORNIA SERVICE CENTER Date: JUN 14 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. Wienmann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (“director”), denied the immigrant visa petition. The petitioner filed an appeal, which was rejected as improperly filed. The petitioner then filed a Motion to Reopen and Reconsider the petition. The director declined to reopen the prior decision and affirmed the denial. The petitioner then filed an appeal of the denied Motion to Reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesaler of photo supplies, and seeks to employ the beneficiary permanently in the United States as a budget analyst. 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 March 28, 2005 decision, the case was denied, as the petitioner did not establish that the beneficiary met the qualifications listed on the certified Form 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.<sup>1</sup>

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 12, 2001. The proffered wage as stated on the Form ETA 750 is \$60,664 per year<sup>2</sup> based on a 40 hour work week. The Form ETA 750 was certified on September 6, 2002, and the petitioner filed the I-140 petition on the beneficiary’s behalf on January 9, 2003. The petitioner listed the following information on the I-140 Petition: date established: 1995; gross annual income: \$877,604; net annual income: not listed; and current number of employees: 10.

On April 14, 2003, the director issued a Request for Evidence (“RFE”) requesting that the petitioner provide evidence regarding the petitioner’s ability to pay the proffered wage from the priority date to the present, in the form of federal tax returns, audited financial statements, or annual reports. The RFE additionally requested the petitioner provide Form DE-6, Quarterly Wage Reports filed with the California Employment Development Department. Further, the RFE requested that the petitioner provide the name, job title, and job duties of each employee listed on Forms DE-6, and to provide Forms W-2 for each employee.<sup>3</sup> The petitioner responded.

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<sup>1</sup> 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).

<sup>2</sup> The petitioner initially listed a wage of \$24,000 per year, but DOL required that the wage be increased to \$60,664 prior to certification.

<sup>3</sup> We note that the employee list provided shows that the petitioner employed five individuals as of July

The director then issued a second RFE on August 27, 2003 for the petitioner to provide its 2002 federal tax return; the beneficiary's W-2 Forms for the years 1997 to 2000; the petitioner's business license;<sup>4</sup> and documentation related to the number of hours that the beneficiary worked at prior employers, required to demonstrate that the beneficiary could document four prior years of experience. The petitioner responded.

On March 22, 2004, the director issued a third RFE, for the petitioner to provide additional evidence related to its ability to pay for the years 2002, and 2003, specifically federal tax returns for those years; Forms DE-6 filed with the EDD; payroll summary, W-3 Forms for the years 2001 to the present;<sup>5</sup> the beneficiary's individual tax returns along with Forms W-2 from the year 1997 to the present as the beneficiary had been present in the U.S. since 1997; and evidence related to the beneficiary's foreign earnings for the years 1992 to 1996. The petitioner responded and provided the requested documentation.

On September 14, 2004, the director issued a fourth RFE.<sup>6</sup> The petitioner responded and provided additional letters related to the beneficiary's prior work experience.

On March 28, 2005, the director denied the petition on the basis that the petitioner failed to demonstrate that the beneficiary had the experience required for the position as listed on the certified Form ETA 750. Specifically, the decision provides that a Citizenship & Immigration Services (CIS) Officer in Mumbai, India conducted an investigation of the beneficiary's claimed overseas employment, on which the beneficiary partially relied to show that he had the four years of prior experience to meet the requirements of the certified Form ETA 750. The Officer phoned the owner of the beneficiary's listed employer, who provided that he did not know the beneficiary and the company in question was no longer in business. As the beneficiary's work experience was in doubt, it was determined that the beneficiary did not meet the requirements of the labor certification. Doubt cast 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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2003, including one accountant. This calls into question whether or not the petitioner requires the services of a budget analyst on a full-time basis. *See* 20 C.F.R. § 656.50.

CIS records reflect that the petitioner has additionally filed two other I-140 petitions for other beneficiaries. The petitioner's employee list exhibits that one of the other two individuals was employed. The second employee filed for does not appear on the petitioner's employee list, or on any of the quarterly wage statements that the petitioner provided.

<sup>4</sup> The petitioner provided its business license, and Articles of Incorporation. A search of California State business records shows that the petitioner's business remains active. *See* <http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C1927660&printer=yes> (accessed on June 11, 2007).

<sup>5</sup> The petitioner provided extensive documentation related to its ability to pay, including federal tax returns for the years 2001, 2002, and 2003, which exhibited sufficient net income, and net current assets to pay the proffered wage. The petitioner additionally submitted quarterly payroll statements for 2002 and 2003; financial reports dated September 2002, and September 2003; bank statements for several months in 2003 and for March 2001; and Balance Sheets and Income Statements for the time period October 2002 to August 2003. The documentation was sufficient to exhibit the petitioner's ability to pay the proffered wage.

<sup>6</sup> The record of proceeding contains the coversheet for the RFE, but not the second page, which would list the actual documents requested.

The petitioner then filed an appeal. On May 5, 2005, the director rejected the appeal based on 8 C.F.R. § 103.3(a)(2)(i). The petition was filed on behalf of the beneficiary as opposed to the petitioner, and was rejected as it was not filed on behalf of the party with standing to appeal.

The petitioner then filed a Motion to Reopen and Reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. See 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. See 8 C.F.R. § 103.5(a)(3). On July 12, 2005, the director denied the motion to reopen and reconsider as the director found that the Motion did not state new facts.

The petitioner has appealed the denial of the motion to reopen<sup>7</sup> and the matter is now before the AAO.

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, 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 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not 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 four years of experience in the job offered, as a budget analyst, with job duties including:

Analyze past and current budgets, prepare and justify budget requests and allocate funds according to spending priorities. Analyze accounting records to determine financial resources required to implement program and submit recommendations for budget allocations. Recommend approval and disapproval of requests for funds. Advise staff on cost analysis and fiscal allocations. Prepare projections for sales and expenses of corporation for approval by corporation officers.

The petitioner listed educational requirements of high 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 February 19, 2001, the beneficiary listed his prior experience as: (1) the petitioner, Inglewood, California, Consultant, November 2000 to March 2001,<sup>8</sup> (2)

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<sup>7</sup> Different counsel represented the petitioner in the prior filings related to this matter.

<sup>8</sup> The beneficiary did not list this experience on the Form ETA 750B, but provided the information to the California Employment Development Department ("EDD") as an amendment to the Form ETA 750, which

Quality Variety, Houston, Texas, Budget Analyst, January 1997 to November 2000; and (3) Bombay Sales Agency, Mumbai, India, Budget Analyst, February 1992 to August 1996.

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 letters:

1. Letter from [REDACTED] President, Quality Variety, Houston, Texas, dated December 3, 2000;  
Dates of employment: January 5, 1997 to November 29, 2000;  
Title: Budget Analyst;  
Job Duties: "analyzed current and past budgets, prepared and justified budget requests and allocated funds according to spending priorities, analyzed accounting records to determine financial records required implementing program and submitted recommendations for budget allocations. Recommended approval and disapproval of request of funds. Advised staff on cost analysis and fiscal allocations. Prepared projections for sales and expenses of the company."
2. Letter from [REDACTED], Owner, Bombay Sales Agency, Mumbai, India, dated September 4, 1996;  
Dates of employment: February 7, 1992 to August 30, 1996;  
Title: Budget Analyst;  
Job Duties: "analyzed current and past budgets, prepared and justified budget requests and allocated funds according to spending priorities, analyzed accounting records to determine financial records required implementing program and submitted recommendations for budget allocations. Recommended approval and disapproval of request of funds. Advised staff on cost analysis and fiscal allocations. Prepared projections for sales and expenses of the company."

We note that letters provided to document the beneficiary's work experience are both the same despite that the letters were provided by two separate individuals four years apart. Further, the Form ETA 750 job description is almost exactly the same as the description in the experience letters provided. The first letter is dated almost five years prior to the labor certification filing.

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was signed and dated August 16, 2001. The petitioner did provide a Form W-2 for 2001 to reflect the beneficiary's employment in that year.

In the March 22, 2004 RFE, the director requested that the petitioner provide the beneficiary's individual tax returns along with Forms W-2 from the year 1997 to the present as the beneficiary had been present in the U.S. since 1997, and evidence related to the beneficiary's foreign earnings for the years 1992 to 1996.<sup>9</sup>

In response, the petitioner submitted the following letters:

3. Letter from [REDACTED], President, Quality Variety, Houston, Texas, dated May 17, 2004; [REDACTED] provided an explanation related to the beneficiary's pay, "Since [the beneficiary] could not provide social security information his wages were paid in cash and therefore no W-2's or 1099 were issued."
4. Letter from [REDACTED] Owner, Bombay Sales Agency, Mumbai, India, dated May 10, 2004; Similarly, [REDACTED] provided a statement related to the beneficiary's pay, "we pay our employees in cash, likewise [the beneficiary's] salary was also paid in cash to him. We do not issue pay slips nor are there any documents like W-2 or 1099 in India." In support, [REDACTED] provided "salary statements," which listed that the beneficiary received the following payments:

1992: he was paid 29,700 rupees for the time period February 1992 to December 1992 based on a monthly salary of 2,700 rupees;  
1993: paid 38,400 rupees for the year based on a monthly salary of 3,200 rupees;  
1994: 45,000 rupees for the year based on a monthly salary of 3,800 rupees;  
1995: 50,400 rupees for the year based on a monthly salary of 4,200 rupees;  
1996: 40,000 rupees for the months January 1996 to August 1996 based on a monthly salary of 5,000 rupees.

The director additionally noted in an RFE that the letters submitted were insufficient as the letters failed to identify whether the beneficiary was employed on a full-time or part-time basis, and did not list the number of hours worked. In response, the petitioner provided additional letters:

5. Letter from [REDACTED], Owner, Bombay Sales Agency, Mumbai, India, dated October 8, 2004;  
Dates of employment: February 7, 1992 to August 30, 1996;  
Title: Budget Analyst;  
Job Duties:

He worked 6 days a week, 45 hours per week. [The beneficiary] was responsible to maintain the budgets of the company. During the tenure of his job, he analyzed our budgets of the past and the current budgets. For the management he prepared the budget requests, and allocated the funds based on priorities justifying the reason for the requests. To achieve budget goals, he analyzed the accounting records to determine the financial resources required to implement program and submitted the recommendations to me for budget allocations. He also recommended me with approvals of funds, which were in the best interest of the company and the funds, which looked risky, to spend, advised against the approval. He

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<sup>9</sup> The petitioner submitted the beneficiary's individual Form 1040 tax returns for the years 2000, 2001, 2002, and 2003, but no tax returns for the years 1997, 1998, or 1999. The beneficiary was issued a 1099 in 2000, which reflected employment with "EZ Travel" in California. We note that the tax returns list a social security number for the beneficiary, and also that his occupation is listed on the tax return signature line as "marketing" in 2000, and 2003, and "sales" in 2001.

advised staff on cost analysis of merchandise and the fiscal allocations available. To aid staff he projected the sales of the company and also detailed the expenses incurred by the company.

6. Letter from [REDACTED] President, Quality Variety, Houston, Texas, dated October 15, 2004;  
Dates of employment: January 5, 1997 to November 29, 2000;  
Title: Budget Analyst;  
Job Duties:

He worked 40 hours per week . . . As budget analyst, he analyzed current and past budgets of our store. He prepared and justified budget requests, allocated funds according to spending priorities advising items which are profit bearing. He analyzed accounting records to determine financial resources available and required to implement the program. He submitted recommendations to me for budget allocations for the purchase of stocks. He recommended approval for merchandise, which are profitable and disapproved others, which are not. [The beneficiary] advised on the cost analysis of the merchandise and the fiscal allocations for the products, for the benefit of the company and management he prepared projections for sales and also made known to us the expenses the company had to undergo to achieve the goals.

The director then denied the petition finding that the beneficiary did not meet the experience requirements listed on the certified Form ETA 750. The director's decision was based on the conclusion drawn by the CIS Officer in Charge in Mumbai, India's investigation, which concluded that the beneficiary's letter from the Bombay Sale Agency was a fraudulent document. The director's decision specifically provided:

**The Officer in Charge contacted the owner [REDACTED] who confirmed the beneficiary . . . never worked for the employer, nor did he sign an employment verification.** The employer goes on to say that he never knew the beneficiary and that the company, Bombay Sales Agency, is no longer in business and closed a long time ago. In sum, the investigation revealed that the documents submitted by the petitioner dated May 10, 2004 in support of the beneficiary's work experience claim is a fraudulent document. In addition, doubt cast on any of 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner then appealed, which was rejected as improperly filed. The petitioner then filed a Motion to Reopen and Reconsider, which the director declined to reopen. The petitioner appealed this denial as well.

On appeal, counsel provides that CIS failed to follow its regulations and operating instructions in not allowing the petitioner an opportunity to rebut certain evidence. Further, counsel contends that the petitioner should have been allowed to inspect the record of proceeding, and contends that CIS disregarded important new facts in the petitioner's Motion to Reopen and Reconsider. Counsel provides that the petitioner submitted new evidence, in the form of an Affidavit from [REDACTED] to explain his response to the Officer's investigative phone call. Additionally, the petitioner has provided several newspaper articles related to fraudulent activity, which had occurred related to telemarketing activities.

Counsel asserts that both the prior filed appeal of April 23, 2005,<sup>10</sup> and the petitioner's motion to reopen were rejected improperly in violation of operating instructions.

The AAO has de novo review and will consider all submissions to date, including those on appeal.

The petitioner submitted an affidavit from [REDACTED], dated April 19, 2005, which provided that he received a phone call on March 21, 2005 from an individual who said he was calling from a bank. [REDACTED] attests that he asked the individual his name and the bank's name. The individual said that he could not disclose the information as it was confidential, and thereafter, the individual continued to ask [REDACTED] questions. The individual informed [REDACTED] that the beneficiary had applied for a housing loan with the bank and that he wanted to verify that the beneficiary "was working for Bombay Sales Agency. To this question I informed him that we do not entertain encourage Bank Loan Applications." [REDACTED] continues:

I also had at the back of my mind the knowledge of several of Telemarketing wrong doing happening in the names of Bank's [sic] where critical company and employee information is derived and then used for wrong purposes. The question of the bank loan seemed strange to me and to ask information about an ex-employee who left about 9 years back from my Company and who to my knowledge was not even in Mumbai, India from last several years to apply for loan in a Mumbai Bank and not a Bank in USA which is what common sense suggests. This made the nature of the call very suspicious to me. Hence I thought and deemed fit and right to mention on phone that [the beneficiary] does not work for this Establishment and to reply all questions related to him in the negative. I admitted that I am the owner of Bombay Sales Agency but has no knowledge about the Bank loan application from [the beneficiary]. I did not wish to be associated with any bank loan liability in any way . . . since even my earlier employment verification letter dated 8<sup>th</sup> October 2004 was a pure work experience confirmation letter and not to be used for any bank loans etc. hence on the spur of the moment I thought its in the best interest not to divulge or confirm information about my ex-employee which could be misused by an unknown person calling from an unknown source . . . I reiterate and confirm that if I was clearly told that this call is originating from the Esteemed Office USCIS and given the identity of the Honourable and Respected Officer, I would have been glad to inform that [the beneficiary] was indeed working with me in my Firm Bombay Sales Agency as a Budget analysis [sic] from February 1992 to August 1996.

The petitioner additionally provided two news articles: one from *The Indian Express* dated April 16, 2005; and a second article also from the *The Indian Express* dated April 13, 2005. The first article appeared in the Pune Newline section and describes how individuals working for an Indian company obtained bank information related to U.S. Citibank customers and misused a significant amount of money. The second article, appearing in the Mumbai section, relates to the same incident.

We note that the phone call took place in March 2005, prior to the articles dated April 2005. Further, while the owner may have been reluctant to divulge personal information, the affidavit does not address why the owner did not simply state that the beneficiary previously worked for him, but no longer worked for his company. Such information would not violate any issues of confidentiality, but merely confirm what [REDACTED] asserts he put in writing. Additionally, the owner does not provide whether Bombay Sales Agency is still in business, or when it closed, or why the officer was informed that Bombay Sales Agency was no longer

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<sup>10</sup> The director properly rejected the appeal based on 8 C.F.R. § 103.3(a)(2)(i).

in business. All of the experience letters were provided on letterhead listing Bombay Sales Agency with an address in Mumbai. The affidavit provided no explanation of why the letters were on letterhead, if the business had closed. Additionally, we note that it is extremely unusual for the Form ETA 750A job description, filed in 2001, to match almost word for word the beneficiary's experience letter, which was dated "1996."

Further, we note additional inconsistencies in the beneficiary's prior work experience. On Form G-325A filed with the beneficiary's I-485 Adjustment of Status application, the beneficiary listed his employment for the last five years as: (1) self-employed, May 2001 to present (date of signature November 18, 2002); and (2) 21<sup>st</sup> Century Photo Supplies, Inc., Inglewood, CA, sales and budget, from January 2000 to March 2001. As the form was dated November 18, 2002, the beneficiary should have listed employment from November 1997 to November 2002, which would have encompassed the time period that the beneficiary was reportedly employed with Quality Variety. The beneficiary did not list any employment prior to January 2000, when the letters provided state that the beneficiary was employed with Quality Variety in Houston, Texas from January 5, 1997 to November 29, 2000. Further, and additionally conflicting, the beneficiary listed that he was employed with the petitioner in California from January 2000 onward, which overlaps with the beneficiary's alleged employment in Houston, Texas until November 2000. Additionally, the beneficiary's Form 1099 provided in 2000 shows that he received income from EZ Travel (presumably based on employment). While the investigation focused on the beneficiary's experience abroad, conflicts in the evidence also suggest questions related to the beneficiary's claimed experience in the U.S. The petitioner provided letters from Quality Variety, but did not provide any reliable secondary evidence to adequately document the beneficiary's experience.<sup>11</sup>

The information provided is insufficient to overcome doubts and conflicts related to the beneficiary's prior work experience. Doubt cast 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

On appeal, counsel focused mainly on the technical deficiencies related to the director's failure to reopen the petition, and does not provide any additional arguments to address the issue of fraud, with the exception of the Affidavit from [REDACTED]. As set forth above, we find that the affidavit is lacking, particularly in the absence of other independent objective evidence to explain inconsistencies in the record. CIS may reject a fact stated in the petition that it does not believe that fact to be true. 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); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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.

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<sup>11</sup> The petitioner submitted a list of merchandise, which Quality Variety reportedly sold. Nothing contained on the list marks the list as exclusive to Quality Variety and is not wholly convincing.