

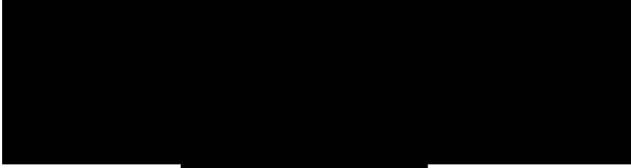
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U.S. Citizenship
and Immigration
Services

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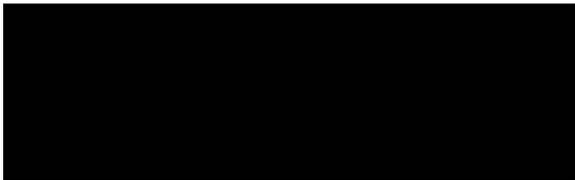
Office: CALIFORNIA SERVICE CENTER

Date: **MAY 10 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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 for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pre-school and elementary school. It seeks to employ the beneficiary permanently in the United States as an administrative assistant.¹ As required by statute, a Form ETA-750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. As set forth in the director's June 1, 2005 decision denying the petition, the director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position and denied the petition accordingly.

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

The issue is whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA-750 as of the petition's priority date. In a decision dated June 1, 2005, the director determined that the beneficiary does not have the required two years of experience performing the duties as described on the Form ETA-750. The director therefore denied the petition.

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 or seasonal nature, for which qualified workers are not available in the United States.

¹ The petitioner titled the proffered position administrative assistant. The proffered position requires two years of experience in the job offered or in the related position of secretary. The Department of Labor (DOL) assigned to the proffered position the occupational title of executive secretaries and administrative assistants, which have the occupational code of 43-6011.00. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/43-6011.00> (accessed February 27, 2007) and its extensive description of the position and requirements for executive secretaries and administrative assistants, the position falls within Job Zone Three requiring "medium preparation." According to DOL, one or two years of training involving both on-the-job experience and informal training with experienced workers is usually needed. DOL assigns a standard vocational preparation (SVP) range of 6-7 to the occupation, which means "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Some may require a bachelor's degree." Additionally, DOL states the following concerning the overall experience required for these occupations:

Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA-750, Application for Alien Employment Certification, as certified by the U.S. Department of Labor and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977). The priority date in the instant petition is April 27, 2001.

The AAO reviews appeals on a *de novo* basis. *See Dor v. I.N.S.* 891 F.2d 997, 1002, n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including any new evidence properly submitted on appeal. 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). On appeal, counsel submits copies of the following previously submitted documentation: counsel's response to the director's Notice of Intent to Deny (NOID); an affidavit from the beneficiary; and an affidavit from the petitioner's owner.

On appeal, counsel states, in part: "While the beneficiary does not have experience in the job offered, she has at least two years of experience in a related occupation where the same skills and thought processes will be used. . . . [The] Beneficiary has clearly and exceeded the two-year minimum requirement of a secretary."

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, blocks 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of administrative assistant. On the ETA-750A submitted with the instant petition, block 14 describes the requirements of the offered position as follows:

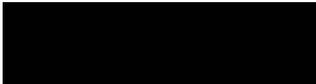
14. Education (number of years)	
Grade School	C
High School	C
College	N/A
College Degree Required	None
Major Field of Study	N/A

The applicant must also have two years of experience in the job offered or in the related occupation of secretary. The duties of the proffered job are delineated at block 13 of the Form ETA-750A and as this is a

public record, will not be recited in this decision. Item 15 of Form ETA-750A does not set forth any special requirements.

The beneficiary states her qualifications on Form ETA 750B. On the ETA-750B submitted with the instant petition, in block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary states the following:

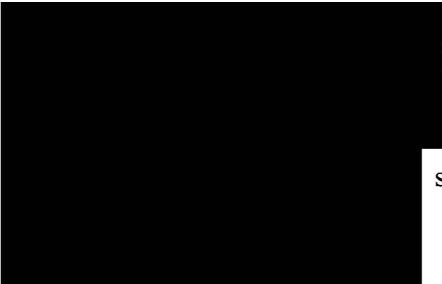
Schools, Colleges and Universities, etc.	Field of Study	From	To	Degrees or Certificates Received
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	Blank	03/1964	05/1976	College
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On the ETA 750B submitted with the instant petition, in block 15, for information on the beneficiary's work experience the beneficiary states the following:

Name and Address of Employer	Name of Job	From	To	Kind of Business
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	secretary/personal assistant	07/98	present	Foreign Mission
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	secretary	06/80	07/98	Banking
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The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor.

At the outset, the AAO notes that the record contains deficiencies regarding the beneficiary's education. On the ETA-750B submitted with the instant petition, in block 11, the beneficiary states that she received "College" degree or certificate from St. Paul's Convent. The record, however, does not contain any evidence, such as a college degree or a college certificate, to corroborate this claim. Further, despite the assertion from the Consul General of the Republic of Sri Lanka that, as the beneficiary passed the "General Certificate of Education [Ordinary Level] Examination," she holds the equivalent of a U.S. high school diploma, the record does not contain an O-Level GCE (Ordinary Level General Certificate of Education) for the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Noted in the record is a written statement, dated 11/05/80, from the principal of St. Paul's stating, in part: "In the certificate dated [06/08/76] it is stated that [the beneficiary] has passed in six subjects. This has been an oversight. She has passed in five subjects with three credits." The petitioner, however, did not submit any independent evidence to illustrate how this information pertains to the completion of an O-Level GCE and/or the equivalent of a U.S. high school diploma. Also noted in the record is a "results schedule," dated 03/24/82, from the Department of Examinations in Sri Lanka for the beneficiary. Again, the petitioner did not submit any independent evidence to illustrate how this information pertains to the completion of an O-Level GCE and/or the equivalent of a U.S. high school diploma. As discussed above, going on record without supporting documentary evidence is

not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also notes that the record contains inconsistencies as to the nature of the proffered position and whether the beneficiary's work experience qualifies her to perform the proposed duties. In an interview with a District Adjudications Officer (DAO), and in the presence of a Center Adjudications Officer (CAO), the beneficiary indicated that her duties would include payroll, budget, filing, phones, and supervising the teachers. The petitioner's owner also indicated that the beneficiary would be handling all payroll and budgeting for three facilities. On appeal, counsel asserts: "Beneficiary and Petitioner's supposed acquiescence or statement that Beneficiary's job duties included handling the payroll and bookkeeping was due to a miscommunication or misunderstanding, as stated previously in their affidavits and in the Response to the Notice of Intent to Deny." Upon review of the record in its entirety, it is not clear how both the beneficiary and the petitioner's owner would realistically misstate the beneficiary's proposed duties to the DAO, in the presence of a CAO, due to a miscommunication or misunderstanding. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: 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. 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. As discussed above, according to DOL, one or two years of training involving both on-the-job experience and informal training with experienced workers is usually needed for executive secretary and administrative assistant jobs. On the ETA-750B, signed by the beneficiary on 04/07/01, in block 11 the beneficiary states that she worked as a secretary/personal assistant at the Consulate General of Sri Lanka in Los Angeles, California from 07/1998 to the present. The beneficiary also states that she worked as a secretary at the Bank of Ceylon in Colombo, Sri Lanka from 06/1980 to 07/1998. On appeal, counsel describes the beneficiary's duties at the Sri Lanka Consulate and the Bank of Ceylon as: "secretarial duties; office services; attending and scheduling meetings and conferences; answering the telephone; correspondence; use of office equipment such as computer, typewriter, fax machine, telephone systems, etc." Counsel states further: "While the beneficiary does not have experience in the job offered, she has at least two years of experience in a related occupation where the same skills and thought processes will be used. [The] Beneficiary has clearly and exceeded the two-year minimum requirement of a secretary." While the beneficiary may qualify as a secretary, the petitioner has not demonstrated that the beneficiary qualifies for an executive secretary or an administrative assistant job, the occupational title assigned by the DOL, and/or for the proffered position, as described by the beneficiary and the petitioner's owner in an interview with the DAO.²

Based on the foregoing analysis, the evidence in the record fails to establish that the beneficiary meets the petitioner's qualifications for the proffered position. The decision of the director to deny the petition was correct, based on the evidence in the record before the director.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal fail to overcome the decision of the director.

² A labor certification for a specific job opportunity is valid only for the particular job opportunity and for the area of intended employment stated on the form ETA 750. 20 C.F.R. § 656.30(c)(2).

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.