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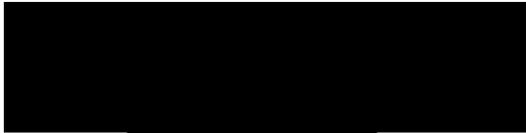
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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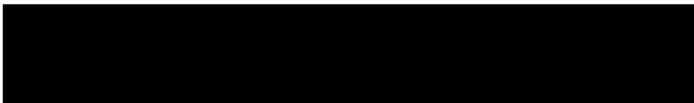


FILE: [Redacted]
SRC 04 242 50809

Office: TEXAS SERVICE CENTER

Date: **MAY 21 2007**

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 director of the Texas Service Center certified a decision revoking the approval of the instant petition to the Administrative Appeals Office (AAO). The director had previously submitted a Notice of Intent to Revoke the petition on December 1, 2006 to which counsel had responded and submitted further documentation. On certification, current counsel submits further documentation. The AAO affirms the director's decision. The petition will be revoked.

The petitioner is an individual investor. He seeks to employ the beneficiary permanently in the United States as a clerical assistant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied 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 nature, for which qualified workers are not available in the United States.

Section 205 of the Act, 8 U.S.C. 1155, states that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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).

On December 1, 2006, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that the I-140 petition was approved in error because information provided by the beneficiary on the Form ETA

750, Part B, and the three previous letters of work verification¹ conflicted with the information obtained by a consular officer in Brazil with regard to the beneficiary's previous work experience. Based on the investigative report, the director stated that the beneficiary was not eligible for the classification sought and that good and sufficient cause existed to deny the beneficiary the benefit sought.

In response to the NOIR, counsel submitted a fourth letter of work verification dated December 22, 2006 from [REDACTED], Manager of Human Resources, [REDACTED] (CEMIG) with translation. Counsel also submitted a copy of two pages of the beneficiary's workbook with translation. Counsel states that the letter of work verification confirmed and clarified the beneficiary's dates of employment as July 1, 1985 to June 1, 1993, as well as his work duties. Counsel stated that CEMIG's head office was located in Belo Horizonte, and then provided a description of how electricity and electric bills are provided in rural parts of Brazil. Counsel asserted that the beneficiary worked both as an electrician and a clerk at CEMIG from 1985 to 1993, working as a clerk for a third of his work duties. Counsel also stated that CEMIG employs thousands of persons, many of whom have the first name [REDACTED], and that the beneficiary did not work in the main office in Belo Horizonte, but rather in rural areas where he had two managers, [REDACTED], a field manager to whom the beneficiary reported in his day to day duties and [REDACTED], the official manager of human resources, [REDACTED]. Counsel then noted that since the beneficiary worked for CEMIG for eight years or 96 months, and divided his time between electrical and clerical duties, he had acquired 28 months of experience as a clerk, or more than two years of full time experience as a clerk.²

In his decision certified to the AAO, the director stated that the four different letters of work experience indicated three different dates of employment. The director then stated that the petitioner did not attempt to explain the discrepancies in the dates of the beneficiary's employment, or provide any independent objective evidence which would explain the discrepancies. The director further noted that the beneficiary's workbook did not indicate the ending date of the beneficiary's employment with CEMIG. The director also stated that the beneficiary represented his position at CEMIG as a clerical assistant who worked 40 hours a week, and that he misrepresented his position and duties at CEMIG on the Form ETA 750, Part B, as well as his dates of employment. The director invalidated the labor certification based on 20 C.F.R. §§ 656.30(d), and 656.31(d), and revoked the petition for fraud.

In response to the director's certification of his decision to the AAO, counsel submits the following evidence:

¹ The record indicates that the instant petitioner initially submitted a petition represented by [REDACTED] an attorney convicted of immigration fraud. This petition (SRC 01 217 53252) was subsequently denied based on abandonment when the original petitioner attempted to withdraw the petition following the receipt of a Notice of Intent to Deny (NOID) the petition based on the presumption of fraud, and the non-response of the petitioner to the NOID. A second petition (SRC 04 212 51422) for the instant beneficiary used the original Form ETA 750 with a different petitioner and was later withdrawn following the receipt of a request for further evidence to establish that the petitioner was the successor in interest to the original petitioner. The third and subsequently approved petition was filed by the original petitioner utilizing the original ETA 750 on September 14, 2004 (SRC 04 242 50809).

² Counsel's calculations are incorrect. The beneficiary's one third of employment spent in doing clerical duties would have been 32 months. One third of 96 months is 32 months.

A copy of the beneficiary's Brazilian work and social security book. This document shows a front cover, ninety-six pages, and a card that appears to be financial document. Counsel did not translate this final page. Counsel stamps on the first page of this document that copies of document submitted are exact photocopies of unaltered original documents.

Counsel's translation of page six of this document that counsel states identifies the document as the beneficiary's workbook history. Counsel certifies on this translation and other translated documents that he is competent to translate the document from Portuguese to English.

A translation and a FAX transmission of a letter written by [REDACTED] Commercial Manager, IMCOL Colonial Furniture Limited, [REDACTED] Minas Gerais, Brazil. The letter writer states that the beneficiary worked at IMCOL from July 1, 1979 to April 22, 1984, assisting with the performance of various duties, including filing bank deposit slips and invoices, making charges and receipts for clients, performing general banking services, and waiting on customers and filling documents.

A copy of page ten of the beneficiary's workbook. Counsel asserts that page ten contains the beneficiary's start date for his employment with the IMCOL Furniture Company and identifies the start date as June 1, 1979.

A copy of pages twelve and thirteen of the beneficiary's work book. Counsel asserts that page twelve in the section entitled "data saida" establishes that the beneficiary ended his employment with IMCOL on April 22, 1984. Counsel also states that page thirteen indicates the start date for the beneficiary's employment with CEMIG. Counsel identifies this date as July 1, 1985 as indicated by the line entitled "data admissao."

Copy of page seventy of the beneficiary's workbook. Counsel states that a section of this page with a stamp entitled "Auxilio Doenca/Apos Invalidez," and a date, indicates the beneficiary's ending date with CEMIG, namely, June 1, 1993.

A letter from [REDACTED] a councilwoman in the municipal government of [REDACTED] from 1997, who also socialized with the beneficiary because they attended the same church. [REDACTED] declares that the beneficiary worked as an electrician of distribution in CEMIG from 1985 to 1993, as it states in his professional workbook. Councilwoman Dileu states that as a member of the chamber of councilmen, she is able to declare that the beneficiary's resume of work history is true and represents his work in the city.

An affidavit of the beneficiary with regard to the confusion in the record based on the job duties described in his employment records. The beneficiary states that he had great difficulty trying to find a competent attorney to help him file his I-245 application, and that [REDACTED]

was the only attorney who would give him an appointment. The beneficiary states that [REDACTED] made many mistakes on the forms he submitted. The beneficiary states he signed a blank document and [REDACTED] then filled in the form. The beneficiary also states that [REDACTED] did not include the beneficiary's two functions at CEMIG and his other clerical job in the IMCOL furniture factory. The beneficiary states that the contradictory dates in the four letters submitted to the record have been clarified and corrected, and that the letter of employment verification from [REDACTED]s dated December 22, 2006 is correct.

An affidavit of the beneficiary that describes the beneficiary's work duties in a typical day of work as a electrician of distribution with CEMIG in Brazil..

In addition, counsel resubmits the letter from [REDACTED] dated December 22, 2006.

In response to the director's Notice of Certification, counsel states that the main issues in the instant petition are whether the alien is qualified to perform the job duties, whether the labor certification should be invalidated or revoked, and whether the petition should be revoked. With regard to the beneficiary's requisite two years of work experience for the proffered job, counsel states that the beneficiary's first job was with IMCOL, a furniture factory in Governador Valadares, Brazil, and that the beneficiary performed office duties for approximately five years. Counsel states that based on this experience, the beneficiary has acquired more than the requisite two years of relevant work experience. Counsel also states that the beneficiary's second job with CEMIG was both clerical and technical in nature and that he worked for CEMIG from 1985 to 1993.

Counsel then states that the exhibits submitted to the record on appeal provide objective and reliable evidence that the beneficiary is qualified for the proffered position. Counsel further asserts that the confusion between technical and clerical duties in the documents filed with Citizenship and Immigration Services (CIS) are not material as the record now shows that the beneficiary acquired the minimum two years experience required for the proffered position both at his first job at the furniture factory and at his second job as an electrician of distribution with CEMIG.

Counsel then states that the beneficiary was unable to obtain competent legal assistance, and that many mistakes were made on the forms submitted by former counsel. Counsel notes that although the Form ETA 750 states the beneficiary worked at CEMIG until 1998, the beneficiary was in the United States from 1993 to 1998, and could not have worked for CEMIG. Counsel also notes that the last three years of any such claimed employment would not have any difference in establishing the beneficiary's requisite two years of work experience. Counsel reiterates that the beneficiary's work experience with CEMIG from 1985 to 1993 was sufficient to document the requisite work experience, and that the beneficiary also has the five years of work experience with IMCOL. Counsel states that none of the errors made in the initial petition or in subsequent documents were intentional or material. Counsel also notes that the beneficiary's work experience at IMCOL was omitted from the petition because of careless and incompetent work by former counsel during April 2001. Counsel states that former counsel and his staff never investigated or inquired into the beneficiary's work experience prior to his CEMIG employment. Finally counsel states that the inconsistencies in the CEMIG employment resulted from the fact that the dates on the CEMIG letters were taken from the dates on the back of the original labor certification. Counsel states that the central office of CEMIG has now clarified

the correct dates of 1985 to 1993 as the beneficiary's employment with CEMIG. Counsel states that while the various versions of the letters alleging work until April 1998 with CEMIG are incorrect, the letters are not material or intentional.

Counsel states that there is no rational reason why such errors would be purposely promulgated on CIS, as the beneficiary is well qualified to perform the job duties of the proffered position. Counsel reiterates that the differences of opinion and the clerical errors that arose are based on the incompetence of prior counsel and based on the difficulty of explaining the beneficiary's combined clerical and technical job duties while employed at CEMIG. Counsel states that in fact the beneficiary performed both the technical and clerical job duties over a period of many years.

With regard to the invalidation of the instant labor certification, counsel states that 20 C.F.R. § 656.30(a) provides that all labor certifications, unless invalidated by a CIS or consular officer upon a determination of fraud or willful misrepresentation, are valid for an indefinite period and do not require re-certification. Counsel states that the record does not reflect a finding that the petitioner was involved in fraud or material misrepresentation in obtaining the labor certification. Counsel further states that there is no allegation of wrongdoing by the petitioner, or any allegation of concealment of an independent ground of ineligibility by either the petitioner or the beneficiary.

Upon review of the record, the ETA 750 submitted to the record states in Part A that the minimum requirements for the position are two years of work experience as a correspondence clerk. The beneficiary indicated on the Form ETA 750 Part B, that he worked full time from March 1995 to April 1998 as a clerical assistant for Companhia Energetica Minas Gerais, (CEMIG), Brazil, and performed the following duties: "Performed clerical assistant work for power company. Prepared and maintained files. Read incoming correspondence and gathered data to formulate reply. Executed or completed errands. Answered phone calls and provided information. Operated office machinery".

The four letters of work verification found in the record describe the beneficiary's work duties in Brazil as follows:

The first letter of work verification dated August 3, 2001, submitted with initial petition and original Form ETA 750 and written by [REDACTED], identified on the letter as Manager, CEMIG, [REDACTED], states, in pertinent part: "We would like to confirm that [the beneficiary] has worked full time at CEMIG as a clerical assistant from March 1995 [sic] to April 1998."

The second letter of work verification dated August 3, 2003, submitted with the second petition with a different petitioner and the same original Form ETA 750, written by [REDACTED], Manager, Field Services Manager, CEMIG, states: "We declare to whom it may concern that [the beneficiary] CTPS No. [REDACTED]-Serie No. [REDACTED] was employed in this company, as Technical Assistant and Electrician Technician of Distribution, during the period of March 1995 to April 1998."

The third letter of work verification dated April 19, 2005 submitted with the instant petition submitted by the original petitioner with the original Form ETA 750, is also written by [REDACTED], Services Manager for the District of [REDACTED] and states, in pertinent part:

This is to confirm that [the beneficiary] worked for CEMIG from June 1985 to April 1998, fulltime, no less than forty hours per week. He coordinated the local offices of CEMIG in the towns where he worked in the state of Minas Gerais. He had the responsibility to prepare and maintain the files of electrical services provided in the towns, process the correspondence received in the local offices, and gather information and data about the operation of systems in the towns to formulate replies to correspondence. This work constituted about one-third of his responsibilities for the company. The remaining responsibilities were of a more technical nature.

The fourth letter of work verification, submitted in response to the director's NOIR, and also on appeal, is dated December 22, 2006 and is written by [REDACTED], director of personnel administration, Belo Horizonte, Brazil. The translation of this letter states:

The letter states that [the beneficiary] bearing workbook number 87-301, 622 series, was employed by CEMIG from July 1, 1985 to June 1, 1993. The letter states that the beneficiary performed the job of on-site electrician (Electricista de Distribuicao) with the following duties:

Attend the consumers in the field and in small cities in the state of Minas Gerais, Region of [REDACTED]

Distribute the bills personally to each consumer and receive the payment from them. Organize the correspondence, file it, and send it to the central office. Send all customer complaints to the central office.

Process data and information regarding complaints and report them to the company, and provide the service necessary to resolve the complaint, for example, installation of new service, connection and disconnection of electrical service, assume responsibility for delivery of parts and electrical items and their installation of consumers and external services.

In conclusion, the qualification for the job is to be an on-site electrician for consumers and to provide bureaucratic functions. The job is partly electrical and partly bureaucratic. The work is full-time, 40 hours per week.

With regard to the consular investigation, the report on this investigation is dated March 30, 2006. It states that the investigator called the CEMIG Recreation Department and learned from the operator, who had a list of all employees, that [REDACTED] who signed the first three letters of work verification, was a CEMIG employee in [REDACTED]. The consular investigator then spoke with a human resources person, identified as [REDACTED] who stated that there was only one person with the beneficiary's name and that

this person had worked for CEMIG from 1985 to 1993 and then retired for health problems. The human resources person also verified that this employee's CTPS number was the same as a number listed on one of the beneficiary's letters of work verification and that the employee started as a distributor and at the time of his retirement, the employee was registered as electrician of distribution. The human resources person also verified the names of the registered employee's parents and his date of birth.³

Thus, the first three letters of work verification⁴ are in conflict with the final letter of work verification as they stated the beneficiary worked for CEMIG for three years from 1995 to 1998.⁵ More importantly, the beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. However, neither the Form ETA 750 submitted to the record nor the first letter of work verification submitted with the first petition and signed by [REDACTED] identified the beneficiary's duties of an electrician, which, based on the subsequent letters of work verification and the results of the consular investigation appear to have been his primary work duties. It is further noted that the period of times the beneficiary worked for CEMIG changed significantly following the director's description of the results of the consular investigation in Brazil. Only after the consular investigation stated that the human resources personnel in Brazil identified the beneficiary's period of employment as being from 1985 to 1993 did the petitioner, through current counsel, obtain a fourth letter of work verification that indicated the beneficiary worked for CEMIG for eight years rather than three, and from 1985 to 1993, rather than from 1985 to 1998.

It is further noted that the letter from [REDACTED] initially submitted to the record in response to the director's NOIR is submitted with a copy of a cover sheet and two pages of the beneficiary's workbook. However, the workbook document does not corroborate that the beneficiary worked for CEMIG from July 1, 1985 to June 1, 1993. The two pages describe a previous job held by the beneficiary that apparently ended on the April 22, 1989 and then described the beneficiary's employment with CEMIG. However, as correctly noted by the director, the page for the CEMIG employment does not contain a date for the beneficiary's end of employment with CEMIG. Nevertheless the translation of this document states that the beneficiary worked at CEMIG from July 1, 1985 to June 1, 1993. The workbook also did not contain any information as to the beneficiary's place of birth, date of birth, parent's names, and date of emission of the workbook, all of which are contained in the translation. The translation of the workbook 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."

Although the translator certified that the translation of both the workbook and [REDACTED] letter was

³ The employee's parents' names and his date of birth were identical to the beneficiary's information on his parents and date of birth contained in the record.

⁴ The AAO notes that the third letter from [REDACTED] which allegedly contains incorrect dates was obtained by current counsel, and not by former counsel.

⁵ The first two letters state the beneficiary's employment period as March 1995 to April 1998, while the third letter stated an employment period of June 1995 to April 1998.

accurate, the translation of the workbook is not complete with regard to the actual information on the beneficiary's employment in the period of time presently claimed by counsel as the beneficiary's actual employment with CEMIG, namely, July 1, 1985 to June 1, 1993. Furthermore as stated previously, the translator added information in his translation that is not found in the workbook. Thus the beneficiary's workbook and its translation submitted in response to the director's NOIR are given no weight in these proceedings. Based on the inaccurate translation of the workbook, the accompanying translation of Soares' letter is also viewed as questionable, and is given less weight in these proceedings.

With regard to the materials submitted by counsel in response to the director's certification, the AAO views the submission of the beneficiary's entire workbook at this stage of the proceedings as inexplicable. The purpose of the director's Notice of Intent to Revoke was to elicit further information that clarifies whether revocation of the instant petition and the invalidation of the labor certification that was filed with the instant petition are justified. Counsel in his response to the NOIR submitted sections of the beneficiary's work book that failed to establish the actual ending date of the beneficiary's employment with CEMIG, an issue that, contrary to counsel's assertion, is material to the petition. Counsel had the opportunity to submit the beneficiary's entire workbook in response to the director's NOIR. Counsel also had the opportunity to review the workbook and note any previous work experience of the beneficiary. Current counsel chose to not do so. Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

With regard to the NOIR, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's NOIR. *Id.* Thus, the AAO does not accept the submission of the beneficiary's entire work book at this point in these proceedings. Nevertheless, since these proceedings involve the revocation of a petition, the AAO will comment on the materials submitted on appeal.

In submitting the beneficiary's entire work history work, counsel attempts to reconcile the contents of the fourth letter of work verification submitted by [REDACTED] with the beneficiary's actual work history with CEMIG. Counsel points out that page thirteen notes the beginning of the beneficiary's employment with CEMIG, and that page 70 establishes the beneficiary's ending date of employment with CEMIG, namely June 1, 1993. However, counsel, who is also the translator for this document, fails to translate what exactly page seventy represents, why it represents the beneficiary's ending date, and why page thirteen which contains a place to note an ending date for the beneficiary's employment with CEMIG does not indicate an ending date. Furthermore, the translation of the beneficiary's employment with IMCOL is also problematic, since the beneficiary appears to have a break in employment with IMCOL from December 1982 to March of 1983, as suggested by notations on pages ten and twelve, which is unexplained by the translator. Such omissions raise questions about the validity and completeness of the translations submitted on appeal. Again, counsel's additional translation of the workbook does 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."

Furthermore, it is noted that 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). As previously stated, 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. at 591-592. Furthermore, 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. Counsel's explanation that the third letter, which he apparently solicited from [REDACTED] contains incorrect dates of employment with CEMIG because the Form ETA 750 contained incorrect dates of employment is not persuasive. Counsel's explanation only raises questions of whether counsel supplied the dates on the ETA 750 labor certification application to Mr. Byrro to make his letter with the clarified explanation of the beneficiary's work duties coincide with the Form ETA 750. Such actions could be viewed as evidence of fraud or misrepresentation. Thus, counsel's attempt to resolve the inconsistencies in the record with regard to the beneficiary's employment history with CEMIG is not accepted.

In the instant petition, the record shows conflicting periods of employment between the original Form ETA 750, Part B with accompanying letter of work verification, and the consular investigation report and the final letter of work verification. It also reflects conflicting job duties between the original Form ETA 750, Part B, and three subsequent letters of work verification. The original letter of work verification and the original Form ETA 750 contain no mention of the beneficiary's presently claimed work duties as electrician of distribution. It is also noted that the Form ETA 750, Part B, noted that the beneficiary's employment as a clerical assistant was full time work, not consuming only one third of his employment duties as asserted by counsel and by the writers of the second through fourth letters of work verification.

Furthermore the petitioner through counsel submitted a fourth letter of work verification from a different CEMIG manager that affirms the dates of work employment discussed by the consular investigator and the CEMIG human resources person. Although current counsel suggests on appeal that former counsel initiated the erroneous dates in the labor certification, the AAO notes that the third and fourth letter of work verification were obtained by current counsel. Therefore, counsel's explanation of the insufficient assistance of former counsel with regard to these letters with conflicting information is not persuasive.

Furthermore, if current counsel suggests that the inconsistencies in the record are based on the ineffective assistant of former counsel, any appeal or motion based upon a claim of ineffective assistance of counsel requires:

- (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard,

- (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and
- (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not why not.

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The record does not reflect any such actions or complaints made by either current counsel or the beneficiary, although CIS has taken action against former counsel. The record reflects that on July 7, 2003, the director issued a notice of intent to deny the first petition filed on September 17, 2001 by the instant petitioner for the beneficiary which was accompanied by the original labor certification, also submitted with the instant petition. The director noted that the petitioner's counsel was [REDACTED] and that CIS charged [REDACTED] with conspiracy to commit immigration fraud by making false representation in multiple visa petitions filed with CIS, by knowingly accepting visa procured by fraud and by harboring illegal aliens for profit. The director also stated that on May 23, 2003, a Miami jury returned guilty verdicts on all counts against [REDACTED]. The director concluded that since [REDACTED] represented the petitioner, the instant petition could contain fraudulent documents, so she sent a detailed list of items she sought clarification about or additional evidence and information for the original petition. Since that notice is contained in the record of proceeding, which is a public access document, it will not be recited in this decision. Although the beneficiary submitted a G-28 and a letter requesting that the petition be withdrawn, the director did not accept the withdrawal as the beneficiary submitted it.⁶ The director subsequently denied the petition based on abandonment on November 24, 2003.

Within the context of an original Form ETA 750 that did not correctly identify either the beneficiary's dates of previous employment, or job duties, and did not list any previous work employment in Brazil, and two subsequent letters of work employment verification that continued to alter the actual dates of the beneficiary's employment, the record does suggest that the original ETA 750 exhibits some elements of fraud. Within the further context of the subsequent prosecution of the beneficiary's former counsel with regard to immigration fraud, the possibility of fraud in the contents of the instant ETA 750 is heightened. Thus, the director's decision to invalidate the original labor certification appears appropriate.

With regard to the introduction of the beneficiary's earlier job with a furniture factory in Brazil that involved clerical duties, counsel submits such information for the first time on appeal. It is noted that current counsel previously submitted copies of pages of the beneficiary's workbook with partial translations in response to the director's NOIR, with no mention of any earlier work experience. It is also noted that the beneficiary's previous employment with the IMCOL company in Brazil is not identified on the Form ETA 750. The submission of additional work experience on appeal that was not previously mentioned by counsel or included on the Form ETA 750 is without merit. Thus, the petitioner has not provided sufficient

⁶ CIS regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3).

documentation with regard to the beneficiary's employment in Brazil that would establish he possessed the requisite two years of work experience as a clerical assistant, outlined in the Form ETA 750, as of the 2000 priority date.

In sum, the director had good and sufficient cause to revoke the instant petition, pursuant to Section 205 of the Act, 8 U.S.C. 1155 and as discussed in *Matter of Estime*, 19 I&N 450 (BIA 1987)). The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Furthermore, the report of the consular investigation conducted in Brazil has significant material bearing on the grounds for eligibility for the visa classification, namely, the beneficiary's previous work experience. Finally the observations contained in the investigative report do not appear to be conclusory, speculative, equivocal, or irrelevant. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

The burden of proof in these proceedings rests solely upon the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. The AAO concurs with the director's decision to revoke the petition.

ORDER: The decision of the director dated February, 9, 2007 is affirmed. The petition is revoked.