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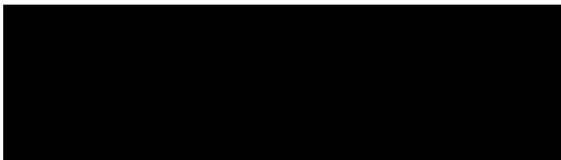
Petitioner:

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a garment supply wholesale company. It seeks to employ the beneficiary permanently in the United States as a purchasing agent. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary had the requisite experience as stated on the labor certification application prior to the priority date of the visa petition. The director denied the petition accordingly.

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.

As set forth in the director's June 1, 2006 denial, the only issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.

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. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 5, 2001.

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 appeal¹. On appeal, counsel submits a verification of experience dated June 16, 2006 from [REDACTED], the president of [REDACTED], a letter from the beneficiary's co-worker, verification of tax paid for the beneficiary from Tax Pay Service Center in Korea and certificate for business registration for [REDACTED]. Other relevant evidence in the record includes a verification of experience dated January 10, 2002. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel asserts that the documents submitted with the petition and being submitted on appeal established that the beneficiary possessed the requisite two years of experience as a purchasing agent for the proffered position.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of purchasing agent. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | | |
|-----|--------------------|---------|
| 14. | Experience | |
| | Job Offered | 2 years |
| | Related Occupation | Blank |

The duties are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on August 15, 2002 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has been unemployed since July 2002; that he worked as a full time (working 40 hours per week) "Purchasing Agent" for [REDACTED] Co., Ltd. at 69-4 [REDACTED] from "September 1994 to June 2002." Prior to that, he represented that [REDACTED] employed him as a full time (working 40 hours per week) "Purchasing Agent" from "May 1986 to August 1994." He does not provide any additional information concerning his employment background on that form.

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) of 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.

The instant I-140 petition was submitted on October 25, 2005 without evidence pertinent to the beneficiary's qualifications as required by the above regulation. The director issued a request for additional evidence (RFE) on April 6, 2006 requesting evidence to establish that the beneficiary possessed the experience listed on the Form ETA 750. In response to the director's RFE, the petitioner submitted an experience letter from the beneficiary's former employer. On appeal counsel submits a second verification of experience from the same employer, a letter from the beneficiary's co-worker at the former employer, the beneficiary's verification of tax paid from tax service authority in Korea and the employer's registration. Counsel asserts these documents are sufficient to establish that the beneficiary worked as a purchasing agent for more than two years prior to the priority date.

The first verification of experience was dated January 10, 2002, and came from [REDACTED] President of [REDACTED]. It is in English language only with the original seal of the president. The

verification of experience verifies that the beneficiary worked for the company from April 1, 1988 to January 10, 2002 for more than 13 years, which meets the minimum two years of experience requirements even though it did not verify the beneficiary's full-time employment. The verification also includes a detailed description of duties performed by the beneficiary. The former employer certified that the beneficiary worked in the Business Department of the company as a Business Analyst and performed duties including analyzing business and operating procedures, conducting organizational studies and evaluations and working simplifications and measurement studies. However, a purchasing agent delineated at Item 13 of the Form ETA 750A delineates the duties for a purchase agent as follows: review and coordinate purchase requests, including request for quotes and proposals using the most efficient and effective means and in accordance with company's objectives and guidelines. The duties the beneficiary performed do not qualify him to perform the duties of the proffered position set forth on the Form ETA 750A Item 13. Therefore, the AAO concurs with the director's determination in her June 1, 2006 decision the petitioner failed to submit evidence to demonstrate that the beneficiary possessed the required two years of experience as a purchasing agent prior to the priority date.

On appeal counsel submits a second verification of experience from [REDACTED], which was dated June 16, 2006. Unlike his first one, [REDACTED]'s second letter comes without the original seal stamp. While [REDACTED] confirmed the beneficiary's employment with his company from April 1, 1988 to January 10, 2002 again in his second verification, he added that the beneficiary served his company as a purchasing agent from April 1, 1988 to January 1, 1991, and then beginning on January 1, 1991 as a business analyst. The second verification of experience stated concerning the beneficiary's work experience as a purchasing agent in pertinent part that:

[The beneficiary] began his employment with our company in April 1, 1988 as a Purchasing Agent. [The beneficiary] served our company as a Purchasing [Agent] from April 1, 1988 to January 1, 1991. As a Purchasing Agent, [the beneficiary] verified inventories, ordered, and obtained materials. He was responsible for keeping all purchasing information accessible. He also provided cost comparison to the Purchasing Department, placed orders as instructed by the company, and maintained accurate records of purchase orders, invoices, and bills and assisted to resolve problems with delivery dated, price changes, back orders, and returns. Finally, [the beneficiary] sent out requests for quotes and evaluated responses to determine the most desirable supplier.

The second verification of experience from [REDACTED] did not verify that the beneficiary was employed as a full time purchasing agent from April 1, 1988 to January 1, 1991, for 2 years and 9 months. If the beneficiary had worked on part-time basis, the alleged 32 months of experience would have been counted as 16 months of full time experience, which would not meet the two years of full time experience requirements. The record does not contain any explanation whether or not the beneficiary's experience as a purchasing agent in a gas service industry in Korea and interrupted for 12 years qualifies him to perform the duties as a purchasing agent in a garment wholesale industry in the United States.

In addition, both of [REDACTED] verifications provide inconsistent information with representations made in the record of proceedings. First of all, [REDACTED] certified that the beneficiary worked for his company until January 10, 2002. However, CIS records show that the beneficiary entered the United States with a B1 visa on January 9, 2002. The petitioner did not explain how the beneficiary worked for a company in Korea while he was in the United States. Second, the submitted certificate for business registration for Sewon Gas shows

that the business commenced and was registered on April 18, 1994. The petitioner did not submit any explanation how the company hired the beneficiary before it started its business and its business was registered. Third, [REDACTED]'s verifications were also inconsistent with the beneficiary's statements on the Form ETA 750B which the beneficiary signed under a declaration that the contents of the form are true and correct under the penalty of perjury. While [REDACTED] verifications stated that the beneficiary worked for his company from April 1, 1988 to January 10, 2002, the beneficiary himself claimed that he worked for that company from September 1994 to June 2002. Finally, the submitted verification of tax paid for the beneficiary issued by the chief officer of [REDACTED] in Korea shows that the beneficiary had income from [REDACTED]

for 1994 through 2001, but for 1992 and 1993 his income was from a company named [REDACTED]. Counsel claims on appeal that S [REDACTED] was known as [REDACTED] before 1993. However, counsel does not submit any evidence to support his assertion. 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). The record of proceeding does not contain any evidence to show that [REDACTED] is the predecessor, or a part of [REDACTED]. *Matter of Ho*, 19 I&N Dec. 582, 591 (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." *Matter of Ho* also states: "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." Because of these defects, [REDACTED] verifications of experience will be given little weight in these proceedings.

Counsel also submits a letter dated June 7, 2006 from [REDACTED], alleged current manager of [REDACTED] with a copy of his identification and certificate of employment from [REDACTED] the president of [REDACTED]. [REDACTED] wrote the letter as the beneficiary's co-worker then, but not on behalf of the company as an employer. [REDACTED]'s letter states in pertinent part that:

My name is [REDACTED] and I am writing on behalf of [the beneficiary]. I have worked with [the beneficiary] from April 1, 1997 to May 15, 2002 at [REDACTED] Ltd. in Seoul, South Korea. [The beneficiary] and I are very good friends today.

I began my employment at [REDACTED] Ltd. I am still employed at [REDACTED] Service Co., Ltd. And I am currently the Manager at [REDACTED]

I first met [the beneficiary] in[sic] May 15, 1997, when he first came to [REDACTED] Co., Ltd. [The beneficiary] started as a Purchasing Agent for our President and was also transferred to the Business Department as a Business Analyst, where we became even closer friends.

While [the beneficiary] was a Purchasing Agent for the company, [the beneficiary]'s main responsibilities were to verify our product inventories and orders. [The beneficiary] also updated the inventory lists, invoices, and the company product bills.

I am writing to confirm, on this date of June 8, 2006, to say that [the beneficiary] workers[sic] from April 1, 1988 to January 10, 2002 at [REDACTED], Ltd. [a]nd that [the beneficiary] began his employment as Purchasing Agent from April 1, 1988 to January 1, 1991.

Although 8 C.F.R. § 204.5(g)(1) permits the consideration of other documentation of the beneficiary's qualifying experience in the circumstances that the required evidence is not available, it still requires other documentation to meet certain evidentiary standards. The statement of [REDACTED] submitted through counsel is not notarized. The declarations that have been provided on appeal are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Therefore, [REDACTED]'s letter cannot be considered as an affidavit in determining the beneficiary's qualifying experience. In addition, in the instant case, the regulatory-required experience letter from the former employer is available, and thus the AAO need not consider other documentation, such as a letter from a co-worker/friend.

The submitted certificate of employment for [REDACTED] and [REDACTED] letter itself indicate that [REDACTED] started his employment with [REDACTED] on May 17, 1997 when he first met the beneficiary. Therefore, Mr. [REDACTED] is not in the position to have the direct knowledge of and to verify the beneficiary's experience as a purchasing agent from April 1, 1988 to January 1, 1991. Moreover the letter itself contains inconsistent information. [REDACTED] stated that he worked with the beneficiary from April 1, 1997 to May 15, 2002 in the first paragraph of his letter, but later he said that he first met the beneficiary on May 15, 1997. While he verified that the beneficiary worked for [REDACTED] as a purchasing agent from April 1, 1988 to January 1, 1991, he stated that he first met the beneficiary on May 15, 1997, when the beneficiary first came to [REDACTED]. It is not clear whether [REDACTED] is trying to say the beneficiary began working for [REDACTED] on May 17, 1997 or April 1, 1988. Furthermore, [REDACTED]'s letter is also inconsistent with other documents in the record. He certified that he worked with the beneficiary from April 1997 to May 15, 2002. However, he did not explain how he worked with the beneficiary from January 9, 2002 to May 15, 2002 while he continued his employment with [REDACTED] in Seoul, Korea but the beneficiary was in the United States. [REDACTED] stated that he worked with the beneficiary from April 1, 1997 while his verification of employment shows that he started his employment with [REDACTED] on May 17, 1997. Because of these defects, the letter from Mr. [REDACTED] as a co-worker will be given little weight in these proceedings.

Therefore, the petitioner did not establish with regulatory-prescribed evidence the beneficiary's two years of experience at [REDACTED] as a purchasing agent. The AAO thus affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired two years of qualifying experience from the evidence submitted into this record of proceeding.

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.