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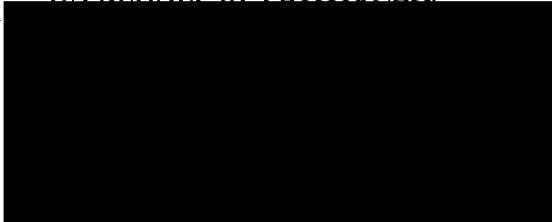
File: [Redacted] WAC-01-160-50823

Office: CALIFORNIA SERVICE CENTER Date:

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“director”) initially approved the employment-based preference visa petition. Prior to the beneficiary adjusting, the director served the petitioner with notice of intent to revoke (“NOIR”) the petition’s approval. In a subsequent Notice of Revocation (“NOR”), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner appealed to the Administrative Appeals Office (“AAO”). On October 16, 2006, the AAO remanded the petition to the Service Center to request further evidence related to the beneficiary’s qualifications. Following issuance of the request, and the petitioner’s response, the director issued a second Notice of Revocation on February 21, 2007, and additionally certified the decision to the AAO for review. The director’s decision will be affirmed.

The petitioner’s business relates to wholesale jewelry. The petitioner seeks to employ the beneficiary permanently in the United States as a gemologist (“diamond expert”). 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 As set forth in the director’s initial revocation, the petition’s approval was revoked based on inconsistencies in the evidence, which arose from information obtained from the beneficiary at a local Citizenship and Immigration Services (“CIS”) office. In the second Notice of Revocation, the director provided that the petitioner had not established sufficiently that the beneficiary had the required two years of experience as a diamond expert. Further, the petitioner failed to overcome the petition’s grounds for revocation, that there were inconsistencies in the evidence as to whether the beneficiary would be employed in accordance with the terms of the labor certification as a diamond expert, and not instead as an Office Manager.

The AAO takes a *de novo* look at issues raised in the revocation 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.¹

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.

Section 205 of the Act, 8 U.S.C. § 1155, provides 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 history of this matter is quite lengthy and complicated, but pertinent, and in order to fully understand its progression, is summarized in a chronology as follows:

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).

- On July 1, 1997, the petitioner filed Form ETA 750 on behalf of another beneficiary² for the position of a gemologist (“Diamond Expert”), 40 hours per week, at a pay rate of \$13.18 per hour, equivalent to an annual salary of \$27,414.40;
- On July 17, 1999, the Form ETA 750 was approved;
- On April 2, 2001, the petitioner filed Form I-140 on behalf of the present beneficiary. On the I-140 Petition, the petitioner listed the following information: date established: September 1, 1986; gross annual income: \$541,881.48; net annual income: not listed; and current number of employees: 4;
- On September 17, 2001, the Service Center issued a Request for Evidence (“RFE”), for the petitioner to provide written notice of withdrawal of the initial labor certification beneficiary’s approved I-140; a copy of the original ETA 750 for the original beneficiary; evidence of the present beneficiary’s prior employment experience; and for the petitioner to provide evidence regarding the petitioner’s ability to pay the proffered wage from the priority date of 1997 to the present;
- On January 23, 2002, the director approved the I-140 petition on behalf of the present beneficiary;
- On February 21, 2002, based on the approved I-140 petition, the beneficiary filed an I-485 application to adjust his status to permanent residence;
- On April 22, 2004, the Service Center issued a notice to the beneficiary’s attorney in response to an application inquiry that the I-485 Adjustment of Status had been approved on January 29, 2004, but that the beneficiary’s I-89 (ADIT processing) needed to be completed at the district office;
- Counsel made subsequent follow up inquiries, however, the beneficiary had not received any further notification. The beneficiary then appeared at the CIS Los Angeles District Santa Ana sub-office for a “walk-in inquiry” on October 12, 2004.³ During the inquiry process, the beneficiary answered questions, and provided information contradictory to information listed in the record of proceeding;
- Based on the inconsistent information, on December 27, 2004, the director issued a Notice of Intent to Revoke (“NOIR”)⁴ the I-140 approval, which raised several points: (1) that the beneficiary informed

² We note that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was formerly permitted by the DOL. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 CFR 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to Citizenship and Immigration Services (“CIS”) based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (to be codified at 20 C.F.R. § 656). DOL’s final rule became effective July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. As the filing of the instant case predates the rule, substitution will be allowed for the present petition.

³ The petitioner and beneficiary assert that he appeared at the CIS Santa Ana sub-office on October 5, 2004, and not on October 12.

⁴ The AAO notes that the NOIR was properly issued pursuant to Section 205 of the Act, *Matter of Arias*, 19 I & N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I & N Dec. 450 (BIA 1987). Both cases held that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” when the

the immigration officer at the District Office that he had worked for the petitioner since September 1998 as an office manager, not as a diamond expert, the position in the certified ETA 750; and (2) that both the beneficiary's Form ETA 750B, and Form G-325A reflect that the beneficiary was unemployed from 1999 to the present, but that the beneficiary stated he had been working from 1998 to the present for the petitioner;

- Based on the conflict in evidence, the Service Center determined that it would initiate an overseas investigation to verify the beneficiary's prior work experience;
- The petitioner responded to the NOIR and asserted that the beneficiary attended an "Infopass" appointment at the local Santa Ana office on October 5, 2004 to inquire about his green card, and was informed that he would be scheduled for an interview within thirty days, and that the beneficiary did not appear on October 12. Further, the petitioner contended that the beneficiary had not been employed with the petitioner since 1998;
- On February 8, 2005, the director issued a Notice of Revocation finding that the petitioner did not overcome the grounds for revocation as set forth in the NOIR;
- On February 28, 2005, the petitioner appealed to the AAO;
- On October 19, 2006, the AAO remanded the petition back to the director to address the issue of the information obtained during the walk-in interview, as well as to allow the petitioner an opportunity to address the issue that the beneficiary had the requisite prior work experience to qualify for the certified Form ETA 750;
- On November 3, 2006, the director issued a Request for Evidence for the petitioner to provide evidence that the beneficiary met the required two years of experience necessary for the certified Form ETA 750, and to submit evidence to resolve inconsistencies in the evidence related to information obtained during the walk-in inquiry process;
- The petitioner responded and provided several affidavits related to the beneficiary's prior experience and the issue of the walk-in inquiry;
- On February 21, 2007, the director issued another Notice of Revocation finding that the petitioner failed to establish that the beneficiary had the required two years of experience, and that other evidence submitted failed to establish the petitioner's intent to employ the beneficiary in accordance with the terms of the certified Form ETA 750;
- On February 21, 2007, the director certified the matter to the AAO;
- On March 2, 2007, the petitioner appealed and the matter is now before the AAO.

The AAO's jurisdiction is limited to the authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation No. 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2005 ed.). Pursuant to that delegation, the AAO's jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv) (2005 ed.).

The regulation at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) states in pertinent part:

(iii) Appellate Authorities. In addition, the [AAO] exercises appellate jurisdiction over decisions on;

...

evidence of record at the time of issuance, 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. *See also* Section 205 of the Act, 8 U.S.C. § 1155.

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under Secs. 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act;

The regulation at 8 C.F.R. § 103.4(a)(4) states as follows: “*Initial decision.* A case within the appellate jurisdiction of the [AAO], or for which there is no appeal procedure may be certified only after an initial decision.” The following subsection of that same regulation states as follows: “*Certification to [AAO].* A case described in paragraph (a)(4) of this section may be certified to the [AAO].” 8 C.F.R. § 103.4(a)(5).

On appeal, we will address both the issue of whether the beneficiary has the requisite experience, and secondly whether the petitioner can establish its intent to employ the beneficiary in accordance with the terms of the certified Form ETA 750. We will first address the issue related to whether the beneficiary has the requisite experience for the position offered.

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 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st 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 two years of experience in the job offered, as a diamond expert with job duties including:

Examine diamonds using knowledge of gems and market prices to evaluate their genuineness, quality, and value. Use polariscope, refractometer and other optical instruments to examine diamonds and detect flaws or defects affecting value. Differentiate between stones and grade stones for perfection, and quality of cut. Appraise stones.

The petitioner listed education requirements of high school in Section 14. The petitioner did not require any training in section 14, and did not list that the experience could be gained in any related occupation. Further, the petitioner did not list any other special requirements for the position in Section 15.

On the Form ETA 750B, the beneficiary listed his prior experience as: (1) [redacted] [no address listed] Diamond Appraiser and Sorter, from July 1994 to October 1996, 40 hours per week; and (2) unemployed, January 1999 to present (the date of signature March 16, 2001).⁵

⁵ Form G-325A submitted with the beneficiary’s I-485 Adjustment of Status application, and signed by the beneficiary on February 14, 2002, similarly lists that the beneficiary was unemployed since 1999.

To document a beneficiary's qualifications, the petitioner must provide evidence in accordance with 8 C.F.R. § 204.5(1)(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:

Letter from [REDACTED] Ramat-Gan, Israel, dated October 15, 2000;
Dates of employment: July 1994 to October 1996;
Title: Diamond Appraiser and Diamond Sorter;
Job Duties: unlisted. Letter provides: "this is to certify that [REDACTED] worked and trained in our company as a diamond appraiser and a diamond sorter."

Following an RFE request, an expanded letter was obtained:

Letter from [REDACTED] Tower, Ramat-Gan, Israel, dated October 1, 2001;
Dates of employment: July 1994 to October 1996;
Title: Diamond Expert/Gemologist;
Job Duties: "examination of diamonds using knowledge of gems and market prices; evaluated their genuineness, quality and value using polariscope, refractometer and other optical instruments to examine diamonds and detect flaws or defects affecting their value."

Following the beneficiary's walk in inquiry, and interview with CIS, CIS requested that the U.S. Embassy in Tel Aviv conduct an investigation on the beneficiary's prior experience. A Fraud Prevention Investigator at the U.S. Embassy in Tel Aviv, Israel, contacted [REDACTED] to confirm details regarding the letters provided. [REDACTED] confirmed the beneficiary's employment, however, stated that the beneficiary:

Did work for him part time as a trainee while studying for his Gemologist degree. [REDACTED] started working for him during the year 1994. At the beginning of his employment he used to observe the other employees while they worked and gradually with experience and knowledge started to work by himself. [REDACTED] was not sure as to the exact date that [REDACTED] ceased working but is sure that he traveled to the U.S. in order to resume an employment with his uncle as a gemologist.

Based on the confirmed experience, two years and three months of part-time experience as a trainee would be insufficient to document the required two years of full time work experience as a diamond expert.

On remand, in response to the RFE, the petitioner provided an affidavit from [REDACTED] as well as from the beneficiary:

Declaration of [REDACTED] notarized on January 23, 2007, which provided:

I regularly train and employ diamond sorters and experts in my business. A diamond sorter is trained to use various instruments, including a polariscope and a refractometer to evaluate precious stones and determine whether or not they are genuine, assess the quality of each stone and sort stones into groups by grade. A sorter is also trained to select the correct stones for various designs. A diamond sorter can be considered an expert when he can assign a value for the stones. Since values change rapidly according to the exchange rates, appraising stones is a specific skill that must continually be practiced.

[The beneficiary] trained at my business more than 10 years ago. I received a phone call from the United States Consulate in Tel Aviv about a year ago asking about his training. I told the woman on the phone that I could not remember exactly the dates that he was here but it was about two years and probably more. The woman from the consulate asked me how many days and hours [the beneficiary] worked and I told her truthfully I cannot remember. It was more than 10 years ago and we do not keep employment or training records that long. I did not say that he worked part-time. I said that I didn't know how many hour per week he worked. Some individuals who train with us work six days a week for whole work-days, but some do not. I cannot remember [the beneficiary's] schedule specifically but it could have been, and likely was, full time.

Our training program is very intensive. A trainee can be considered an expert when he sorts and appraises stones with consistent accuracy. The time it takes for someone to become an expert varies with the individuals. Some people learn faster than others. I cannot remember how long it took for [the beneficiary], but I do remember him as a bright individual who progressed quickly and did exceedingly well.

The petitioner additionally submitted a declaration from the beneficiary, dated January 22, 2007, which provided related to his work experience:

On July 6, 1994, I started working at [REDACTED] . . . I worked there full time, not part-time – the part-time experience came later, in the United States. I apprenticed there six days a week, eight hours a day, learning to sort and appraise diamonds and became an expert in a few months. I continued at [REDACTED] until October 25, 1996. My apprenticeship period was intensive and although I can't state the date exact[ly] . . . where my skills became sufficient to qualify me as an expert, I did an expert's job at [REDACTED] for about two years. Experience at the Diamond Exchange is very prestigious and worth gaining even at no pay.

In October 1996 I started taking college classes in Israel intending to study business management.

In September 1998 I arrived in the United States as a tourist to visit my uncle and grandmother who live in Orange County, California. I did not work anywhere in any capacity. After about ten weeks I left and went back to Israel. At my Infopass appointment I told the officer that in September of 1998 I came for a visit and that I wanted to study business management, not that I worked as a manager.

On January 28, 1999 I came back to the United States. My uncle offered to support me if I were accepted at a college in the United States. I applied . . . and was accepted. In July of 1999 I applied for a change of status and never violated my student visa. I never worked as an office manager and never stated that I did.

While waiting for the decision on my student visa and while I was studying I came to [the petitioner] to practice skills as a sorter so that I would not lose my skills and will keep up with developments in the trade. This is what I did part time and without compensation since I was not allowed to work for compensation. Being an Expert in diamonds involves familiarity with current values and market trends. Without spending time in a diamond trade environment I would have lost touch with the industry and would no longer be considered an Expert. During the initial time in 1999 through 2002 I could only practice as a sorter and not as an expert because that would involve a full-time position and a lot more effort. An Expert generally works full-time and could only be a paid position. I would not do that for free once I got the experience at the exchange.

A diamond sorter sorts stones into categories based on quality and size and can pick out stones that would fit correctly into certain designs. Although one must have a degree of expertise in diamonds in order to do this, an Expert is a sorter who can attach a market value to those various categories by appraising the stones he sorts according to current market values and can predict the needs of certain markets. An expert can anticipate changes in inventory requirements and order specific types of stones from the exchange based on consumption forecasts. A sorter only sorts. Between 1999 and 2002 I only sorted. But I was continually spending time in an industry environment and could keep up with markets and trends. In 2002 when I got my work permit I started working full-time both sorting stones and assigning values to the stones I sorted which is the job of a diamond expert and also continued going to school.

...

The officer with whom I spoke on October 5 may have asked me about it because I was on F1 status. It could be the Officer did not understand me properly although my English is excellent. I said that I was going to school to study management. I did not say that I was a manager.

...

At present and in the last three years I work as an expert. I sort the diamonds but I also assign values. I monitor shifts in values on a daily basis, update our computers and reassess values. I am responsible for inventory and predicting the company's future purchasing needs. I order diamonds from the exchange based on my own predictions. When the owner of [the petitioner] is not at work I am the only one with access to the safe. However, I am not and

have never been the office manager. The proprietor of [the petitioner] is also the manager and he is not about to give up his position.

The revocation provides that based on the statements above, the amount of time that the beneficiary spent as a "diamond expert" cannot be quantified in comparison to the length of time that the beneficiary worked for [REDACTED] as a trainee. Further, the initial letter submitted, dated October 15, 2000, breaks the beneficiary's experience into that of a diamond sorter versus a diamond expert. The beneficiary's declaration distinguishes the activities of a sorter and expert so that they would be two separate positions. Therefore, the beneficiary's experience might follow a progression from trainee to sorter to expert encompassed within the time period July 1994 to October 1996. As noted in the NOR, the exact time which may be assigned to each position is unknown. [REDACTED] cannot state for a fact how long, or what hours the beneficiary worked, or in what position, only that most trainees work full-time and that he considered the beneficiary very intelligent. The beneficiary himself is unable to quantify the amount of time that he worked as an expert, but instead estimates that he performed the work of an expert for approximately two years.⁶

We are therefore left with the beneficiary's statement without any independent corroboration, pay records, etc., which is insufficient to document that the beneficiary has the required two years of experience.

On appeal, counsel contends that they "previously established that this is an apprenticed position and the training is 'on the job.'" Further, counsel contends that CIS previously approved the petition based on the one line letter initially submitted and did not request anything further until after the beneficiary's Infopass appointment.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Further, counsel contends that during the overseas investigation, [REDACTED] claims that he never told the investigator that the beneficiary worked part-time, but rather that some people train part-time and some full-time.

We accept that [REDACTED]'s declaration clarifies what he told the investigator. However, we note that Mr. [REDACTED] provides in his declaration that it was "likely" the beneficiary worked full-time, and that this was based on speculation that the beneficiary would not have become proficient quickly by working part-time. [REDACTED]'s declaration makes it clear that he cannot be certain whether the beneficiary was employed on a full-time or on a part-time basis.

Counsel asserts that CIS has waited "too long to ask for documentation." In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Proving eligibility is the relevant factor, not the length of time that it took to request evidence that the beneficiary is qualified for the position. We note that the length of time seems greater as the petitioner substituted the beneficiary into a position earlier filed. Based on the substitution request, the Form ETA 750 had an earlier priority date, which required the beneficiary to document earlier experience obtained before the priority date.

⁶ See beneficiary's declaration: "although I can't state the date exact[ly] . . . where my skills became sufficient to qualify me as an expert, I did an expert's job at [REDACTED] for about two years."

Counsel contends that CIS asserts there is no indication that the beneficiary assigned value or prices to diamonds while employed with [REDACTED]. Counsel contends that [REDACTED] letter of October 1, 2001 distinguishes these aspects, and that the declaration provides further elaboration of the beneficiary's experience in this area. What the declarations make clear is that neither [REDACTED] or the beneficiary can exactly establish how much time the beneficiary spent as a trainee before progressing to sorting and then to appraising to become an expert.

Counsel asserts that while 8 C.F.R. § 204.5(1)(3) requires evidence of experience, it does not require independent documentation of experience. We note that based on the overseas investigation, the beneficiary's experience was in question, and, therefore, additional evidence was required to overcome doubts in the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), which states: "Doubt raised 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." Further, "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.

Accordingly, the petitioner has not demonstrated that the beneficiary meets the required qualifications as set forth in the certified ETA 750A job offer of two years of experience as a diamond expert.

Further, we must address the issue of inconsistencies in the record, which raises doubts on evidence offered in support of the petition. *See Matter of Ho*, 19 I&N Dec. at 591-592.

Specifically, the record provides contradictory evidence related to the initial date of the beneficiary's employment with the petitioner, based on information obtained from a walk-in inquiry, which, therefore, raises questions related to the evidence. After CIS issued a notice to the beneficiary's attorney that the I-485 Adjustment of Status application had been approved the beneficiary then appeared at the CIS Los Angeles District Santa Ana sub-office for a "walk-in inquiry" on October 12, 2004. The petitioner and beneficiary assert that he appeared at the CIS Santa Ana sub-office on October 5, 2004, and not on October 12.⁷ During the inquiry process, the beneficiary answered questions, and provided information contradictory to

⁷ As noted in the prior AAO decision, CIS file notes contain handwritten notes from a conversation a CIS employee had with the beneficiary, which is written on a page containing a copy of the beneficiary's driver's license. The notes provide that during the "walk-in" inquiry, the beneficiary was asked about his position, and that the beneficiary said that he had worked with the petitioner since September 1998 as an Office Manager, and not as a diamond expert as indicated on Form ETA 750. The record additionally contains a handwritten Form G-14, which provides: "your assistance in furnishing additional identifying information is requested so that we may act upon or reply to your communication." The form lists the following information: date: October 12, 2004; name of applicant: [REDACTED] present address: [REDACTED] date of birth: October 17, 1976; place of birth: Israel. The handwriting appears to be that of the beneficiary reflecting that he completed the form in connection with furnishing additional information at the time of his CIS walk in inquiry. A second form is stamped October 12, 2004, Los Angeles Bureau of Citizenship and Immigration Service, SAA, which represents the Santa Ana sub-office, and the form provides a "Referral to 2nd Floor." The Form lists that on October 12, 2004 the beneficiary was referred by an individual on the first floor of the CIS Los Angeles Santa Ana sub-office building to the second floor of the building related to a walk in inquiry. This form additionally lists handwritten comments that the beneficiary worked for Ever Precious as an Office Manager, with a start date of September 1998.

information listed in the record of proceeding. Specifically, the CIS employee that spoke with the beneficiary recorded that the beneficiary indicated he was employed with the petitioner since September 1998 as an Office Manager, and not as a Diamond Expert, the position listed on the certified Form ETA 750. Based on the beneficiary's responses, CIS undertook an investigation of the beneficiary's claimed prior work experience.

Related to these issues, the beneficiary provides in his declaration:

I was not present in Los Angeles nor did I speak to any officer on October 12, 2004. I did speak to an officer on October 5, 2004 in Santa Ana. My driver's license and employment card were taken at that time. I have never seen the stamp on my file that indicates I was in Los Angeles on October 12 and cannot explain why it would be there.

....

There are two possibilities that I can see that could have led to this situation. First, it could be that my file may have been mixed-up with someone else's and the officer put notes in my file that belonged to someone else. Second, the notes were taken by the officer that I spoke with on October 5, and the date stamp was not set correctly.

....

In September 1998 I arrived in the United States as a tourist to visit my uncle and my grandmother who live in Orange County, California. I did not work anywhere in any capacity. After about ten weeks I left and went back to Israel. At my Infopass appointment I told the officer that I came for a visit and that I wanted to study business management, not that I worked as a manager.

On January 28, 1999 I came back to the United States. My uncle offered to support me if I were accepted at a college in the United States. I applied to Orange Coast College and was accepted . . . I went to school and never violated my student visa. I never worked as an office manager and never stated that I did.

....

The officer with whom I spoke on October 5 may have asked me about it because I was on F1 status. It could be the Officer did not understand me properly although my English is excellent. I said that I was going to school to study management. I did not say that I was a manager.

The director's second Notice of Revocation provides that despite the beneficiary's declaration, other independent evidence "still shows inconsistent and contrary information about the beneficiary's employment with the petitioner." The director specifically notes that the beneficiary's 2002 individual federal tax return submitted lists the beneficiary's occupation as "clerical." Further, the beneficiary's marriage certificate in the record, which is dated October 6, 2003, lists the beneficiary's "usual occupation" as "office manager" for a diamond dealer. The director found that the independent evidence validated the statements made to CIS at his walk-in inquiry.

On appeal, the petitioner provides that it was asked to prove the beneficiary was not present on October 12 in Los Angeles, and that CIS acknowledges instead that the beneficiary was at the Santa Ana office. Specifically, the director noted that the page in the file contained a stamp, which said Los Angeles District Office (SAA), which designated the Santa Ana office.

The petitioner further contests that the "walk-in inquiry is akin to an interview" since an interview would be conducted with an adjudicating officer instead of an information officer who would attend to a walk-in inquiry. The petitioner asserts that the information officer may not be trained to question and evaluate the same way that an adjudicating officer would be.

We note that the petitioner raises valid points. However, the adjudicating officer identified the issue, that the beneficiary stated that he worked for the petitioner in a position other than the proffered position,⁸ which raised questions regarding the petitioner's intent to employ the beneficiary in the proffered position. On that basis, the beneficiary's overseas experience was also questioned.

Counsel provides that Form G-325A, which listed that the beneficiary was unemployed from 1999 to the present was signed on February 14, 2002, prior to when the beneficiary began his employment, and, therefore, did not conflict with any statements. Counsel further contends that this proves "that there is no discrepancy and that the officer misinterpreted the data."

Counsel does not address, however, the two other documents the director noted, although later dated, the tax return listing the beneficiary's work as clerical, and the marriage certificate in which the beneficiary lists his work as an Office Manager.

Counsel further contends that the beneficiary's statement exhibits that he went back to Israel and returned in January 1999, and, therefore, was not working for the petitioner. Further, counsel contends that they have demonstrated the beneficiary was an F-1 student.

While the beneficiary may have returned to Israel, we note that the petitioner did not provide passport stamps to exhibit this, but relies on the beneficiary's statement, we also note that the beneficiary states he would go to the petitioner's business "to practice skills as a sorter so that I would not lose my skills and will keep up with developments in the trade. This is what I did part time and without compensation since I was not allowed to work for compensation." The fact that the beneficiary was a student, does not negate that the beneficiary visited the petitioner's premises to volunteer his labor. Similarly, it is possible that when he came to visit his uncle in September 1998, that he might have volunteered labor.

Counsel contends that the beneficiary has repeatedly stated under oath that he has never worked as an office manager, and that the petitioner has no idea how the officer at the walk-in inquiry would conclude this.

Despite the beneficiary's statements under oath, and counsel's protestations to the contrary, as noted in the director's NOR, two independent objective pieces of evidence additionally record that the beneficiary worked in a capacity other than that of a diamond expert, the tax return, which lists the beneficiary's work as clerical, and the marriage certificate, which lists that the beneficiary was employed as an office manager for a diamond dealer. The petitioner does not address, respond to, or seek to clarify either of these points raised in the director's NOR. Therefore, the petitioner has failed to resolve the inconsistencies in the record. *See Matter of Ho*, 19 I&N Dec. at 591-592.

⁸ The officer recorded notes of the conversation with the beneficiary on a copy of the beneficiary's driver's license.

Based on the foregoing, the petitioner has failed to overcome the basis for the revocation, which was issued for good and sufficient cause pursuant to Section 205 of the Act. 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 director's decision is affirmed.