



U.S. Citizenship  
and Immigration  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER  
SRC 02 263 50510

Date: APR 01 2008

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 employment-based preference visa petition was initially approved by the Director, Texas Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

Section 205 of the Immigration and Nationality Act (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 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). The AAO finds that the director had good and sufficient cause to revoke the approval of this petition.

The petitioner is a renovation business. It seeks to employ the beneficiary permanently in the United States as a restoration supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's June 14, 2005 NOR, the director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying supervisory employment experience and that the petitioner had not established that the position exists. The director noted inconsistencies in information pertaining to the beneficiary's employment experience and the petitioner's tax returns, and noted that the petitioner's tax returns listed the beneficiary's address as the petitioner's address.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history 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.

Section 203(b)(3)(A)(i) of 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 DOL 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 October 22, 2001.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, *NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> On appeal, counsel submits

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

a brief, a previously submitted letter dated August 28, 2002 from the petitioner in support of the petition, previously submitted letters regarding the beneficiary's previous employment experience, a notarized letter dated June 28, 2005 from the petitioner in support of the petition, four affidavits regarding the beneficiary's previous employment experience, excerpts from two Board of Alien Labor Certification Appeals (BALCA) cases<sup>2</sup> and filing receipts for the petitioner's amended 2002 federal income tax returns, together with copies of the tax returns. Other relevant evidence in the record includes an undated letter from [REDACTED] Property Manager at [REDACTED], Georgia indicating that the beneficiary had assisted [REDACTED] with "turnkey on a property as large as 500 units" since 1997; a letter dated August 9, 2002 from [REDACTED] in Decatur, Georgia indicating that the beneficiary demonstrated "great professionals [sic] and communication skills and ability to make wise decisions" during two remodeling projects; a letter dated August 6, 2002 from [REDACTED] of European [REDACTED] in Norcross, Georgia indicating that the beneficiary has "painted and renovated my office and private home" and performed sheetrock and subfloor repair; a letter dated August 2, 2002 from [REDACTED] Georgia indicating that the beneficiary "has performed contract work for me at two apartment communities, and at least seven other properties" and that the beneficiary "did such jobs as painting, sheetrock repair, sub-floor repairs, carpet cleaning and other services related with turnkey;" a letter dated August 7, 2002 from Fred Raborn of [REDACTED]'s Barber Shop in Roswell, Georgia indicating that the beneficiary painted and renovated his barber shop and "performed and completed the painting and renovation of my business during the years 2000 and 2001;" an undated letter from [REDACTED] of Park Trace Apartments in Norcross, Georgia indicating that the beneficiary "was our turnkey personnel at Park Trace Apartments;" a letter dated March 23, 2001 from [REDACTED], Georgia indicating that the beneficiary works as a representative of [REDACTED]; a letter dated April 4, 2005 from [REDACTED] of [REDACTED] indicating that the beneficiary "and his crew performed renovation in my Barber Shop during the years 2000 and 2001" and that the beneficiary managed a team of four contractors in performance of the project; a letter dated April 5, 2005 from [REDACTED] of Saratoga at Champion's Green Apartments in Alpharetta, Georgia indicating that she had the opportunity to work with the beneficiary on "numerous different occasions" and that the beneficiary "leads his staff with a great example of integrity and they are truly fortunate to have him as their leader;" a letter dated April 5, 2005 from [REDACTED] of European Craftsman Metrology Lab, Inc. in Norcross, Georgia indicating that the beneficiary has "painted and renovated my office and private home" and performed sheetrock and subfloor repair, and that during the work, the beneficiary "supervised 3-6 workers depending on the amount of work;" and an undated letter from [REDACTED] stating that the beneficiary "has

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*of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>2</sup> Counsel states that two BALCA cases are applicable to the instant petition before the AAO, *Matter of Neven Skalko Reproductions*, 00-INA-38 (BALCA May 2, 2000) and *Matter of Ritz Carlton*, 95-INA-266 (BALCA Jan. 29, 1997). Counsel provides one case in support of the proposition that if a position did not exist before an applicant is hired, then the job offer will not be considered bona fide unless the employer can clearly demonstrate that a major change in the business operation caused the position to be created after the alien was hired; and that an employer is justified to switch a worker from an independent contractor to a full-time employee if there is an increase in business and a logical analysis of the employer's resources. Counsel cites the other BALCA case for the proposition that BALCA has recognized that errors by employers in the labor certification process may be inadvertent and harmless provided the labor market has been tested sufficiently to warrant a finding of unavailability of U.S. workers and lack of adverse effect on U.S. workers. However, while 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS) are binding on all its employees in the administration of the Act, BALCA decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

done work for me several times in the past” and that he shows “good supervisory skills with his employees.” The record does not contain any other evidence relevant to the beneficiary’s qualifications.

On appeal, counsel asserts that the director failed to consider all of the evidence in determining whether the beneficiary meets the requirements of the proffered job. Counsel further states that the director failed to recognize a new position as a bona fide job offer. Counsel also asserts that the petitioner has addressed the inconsistencies regarding its tax returns.

To determine whether a beneficiary is eligible for an employment based immigrant visa, 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 restoration supervisor. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	blank
	High School	4
	College	blank
	College Degree Required	blank
	Major Field of Study	blank

The applicant must also have four years of experience in the job offered, the duties of which 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 states:

**Four years of work related experience required.** General skill and knowledge of drywall installation, painting techniques and carpet cleaning and dyeing acquired by work related experience. Knowledge of the various skills and jobs involved in an apartment or home restoration project. Ability to direct a workcrew and meet required deadlines. Valid Georgia Drivers License and dependable car.

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. On Part 15, eliciting information of the beneficiary’s work experience, he represented that he has been self-employed as a construction worker from 1996 to the date he signed the Form ETA-750B on March 29, 2001. He does not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(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.

The director noted in her NOR that the Form ETA 750B does not indicate that the beneficiary has any supervisory or management experience, that the experience letters submitted with the petition do not indicate that the beneficiary has any supervisory or management experience, and that the experience letters submitted in response to the NOIR do not clearly indicate that the beneficiary has four years of experience supervising and coordinating workers involved in the restoration and renovation of apartment complexes. Thus, the director determined that the record does not clearly establish that the beneficiary meets the requirements of the Form ETA 750. Further, the director noted that the Form ETA 750 indicates that the beneficiary will supervise four to six employees, that the petitioner did not have any employees in 2001, 2002 or 2003, that the petitioner has not presented any evidence of wages paid to other workers, that the petitioner has not established that there are employees for the beneficiary to supervise or that the petitioner regularly pays wages to contract employees. The director also noted that there is a discrepancy between the amount paid in contract labor and the amount paid to the beneficiary in 2002. Thus, the director revoked the petition's approval.

On appeal, counsel asserts that the director failed to consider all of the evidence in determining whether the beneficiary meets the requirements of the proffered job. Counsel submits additional affidavits regarding the beneficiary's employment experience and asserts that they evidence the beneficiary's over eight years of experience supervising and coordinating workers involved in the restoration and renovation of apartment complexes.

Specifically, on appeal, counsel submits an affidavit dated June 28, 2005 from [REDACTED] in Norcross, Georgia indicating that the beneficiary "painted and renovated my office and private home" in 1997 and performed sheetrock and subfloor repair, drywall installation, exterior painting and carpet cleaning. Mr. [REDACTED] further states that during the work in 1997, the beneficiary supervised three to six workers depending on the amount of work. He indicates that the information regarding the beneficiary's supervisory experience was not in his original letter because he did not realize it was necessary.<sup>3</sup> He further states that the beneficiary "and his workers" did additional repairs in his home in December 1997, March 1998, June 1998 and in 2000. A previous letter in the record dated August 6, 2002 from Mr. [REDACTED] simply indicated that the beneficiary had "painted and renovated my office and private home" and performed sheetrock and subfloor repair. And, an additional a letter in the record dated April 5, 2005 from Mr. [REDACTED] indicated that the beneficiary had "painted and renovated my office and private home" and

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<sup>3</sup> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

performed sheetrock and subfloor repair, and that during the work, the beneficiary “supervised 3-6 workers depending on the amount of work.” As noted by the director in her NOR, the letters from Mr. [REDACTED] do not indicate that the beneficiary obtained four years of full-time experience supervising and coordinating workers in a variety of activities involved in the restoration and renovation of apartment complexes. The affidavit dated June 28, 2005, which is the most detailed of the three experience references submitted by Mr. [REDACTED] on behalf of the beneficiary, simply indicates that the beneficiary has a few months’ experience supervising renovation work in a private residence and an office. Mr. [REDACTED] did not mention the beneficiary’s supervisory experience in his first letter dated August 6, 2002, and it was not until after the issue of the beneficiary’s supervisory experience was raised in the NOIR that Mr. [REDACTED] mentioned the beneficiary’s supervisory skills. Further, the work performed by the beneficiary in 1997, 1998 and 2000 overlaps with the work he allegedly performed at other job sites, indicating that the work performed by the beneficiary for Mr. Hovy was not full-time employment during these years. This work does not qualify the beneficiary for the proffered position.

Counsel also submits on appeal the affidavit of [REDACTED] of [REDACTED] Barber Shop dated June 29, 2005, indicating that Mr. [REDACTED] contacted the beneficiary in 2000 and 2001 to perform renovations, including painting, drywall installations and window renovations, in Mr. [REDACTED] barber shop and that the beneficiary “brought a crew of 4 contractors with him to do these renovations.” Mr. [REDACTED] indicates in his affidavit that the information regarding the beneficiary’s “crew” was not in his original letter because he did not realize it was necessary. A previous letter in the record dated August 7, 2002 from Mr. [REDACTED] simply indicated that the beneficiary painted and renovated his barber shop and “performed and completed the painting and renovation of my business during the years 2000 and 2001.” The record also contains a letter dated April 4, 2005 from Mr. [REDACTED] indicating that the beneficiary “and his crew performed renovation in my Barber Shop during the years 2000 and 2001” and that the beneficiary managed a team of four contractors in performance of the project. As noted by the director in her NOR, the letter dated April 4, 2005 from Mr. [REDACTED] is not credible because Mr. [REDACTED] did not mention the beneficiary’s supervisory experience in his first letter dated August 7, 2002, and it was not until after the issue of the beneficiary’s supervisory experience was raised in the NOIR that Mr. [REDACTED] mentioned that the beneficiary supervised a crew. Further, Mr. [REDACTED]’s affidavit dated June 29, 2005, which is the most detailed of the three experience references submitted by Mr. [REDACTED] on behalf of the beneficiary, simply indicates that the beneficiary has less than two years of experience supervising the renovation work in a barber shop. It does not indicate that the beneficiary obtained four years of full-time experience supervising and coordinating workers in a variety of activities involved in the restoration and renovation of apartment complexes. Further, the work performed by the beneficiary in 2000 and 2001 overlaps with the work he allegedly performed at other job sites, indicating that the work performed by the beneficiary for Mr. [REDACTED] was not full-time employment during 2000 and 2001. This work does not qualify the beneficiary for the proffered position.

Further, counsel submits on appeal an affidavit dated July 12, 2005 of [REDACTED], the former maintenance supervisor at Harmony Bay Apartments in Roswell, Georgia. Mr. [REDACTED] states that the beneficiary performed contract work on behalf of the apartment complex from 1996 to 2003.<sup>4</sup> He states that he “can personally verify that this individual has 7 years of supervisory experience.” Mr. [REDACTED] asserts that the beneficiary “supervised a group of workers to perform jobs such as painting, sheetrock and drywall repairs,

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<sup>4</sup> To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition’s filing date, which as noted above, is October 22, 2001. See *Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Some of the beneficiary’s experience certified by Mr. [REDACTED] was obtained after the priority date.

sub-floor repairs, carpet cleaning and other services related with turnkey.” He also states that he has “knowledge that the beneficiary performed contract work at two apartment communities and at least five other properties all connected with America’s First Properties, the parent company for Harmony Bay.”<sup>5</sup> The record also contains a letter dated August 2, 2002 from Mr. [REDACTED] indicating that the beneficiary “has performed contract work for me at two apartment communities, and at least seven other properties” and that the beneficiary “did such jobs as painting, sheetrock repair, sub-floor repairs, carpet cleaning and other services related with turnkey.” Another undated letter from Mr. [REDACTED] in the record states that the beneficiary “has done work for me several times in the past” and that he shows “good supervisory skills with his employees.” As with Mr. [REDACTED] affidavit and 2005 letter, the affidavit from Mr. [REDACTED] is not credible because he did not mention the beneficiary’s supervisory experience in his first letter dated August 2, 2002, and it was not until after the issue of the beneficiary’s supervisory experience was raised in the NOIR that Mr. [REDACTED] mentioned the beneficiary’s supervisory skills. Further, Mr. [REDACTED] affidavit dated July 12, 2005, which is the most detailed of the three experience verification letters submitted by Mr. [REDACTED] on behalf of the beneficiary, indicates that the beneficiary has seven years of supervisory experience, but the affidavit does not indicate that any of that experience was full-time. While Mr. [REDACTED] claims the beneficiary was working for him from 1996 to 2003, the other experience letters submitted by the petitioner on behalf of the beneficiary establish that the beneficiary was also working for other employers during several of those years. This work does not qualify the beneficiary for the proffered position.

On appeal, counsel also submits an affidavit dated June 29, 2005 of [REDACTED] Assistant Property Manager at [REDACTED] in Alpharetta, Georgia indicating as follows:

From 1999 to 2001, I worked as the Property Manager for [REDACTED] in Roswell, Georgia. During this period, our company regularly contacted [the beneficiary] to renovate the apartments in our complex. [The beneficiary] always brought one or two contractors with him to do the renovations. [The beneficiary] supervised his contractors in doing interior and drywall repairs and installations, carpet restoration and repairs, carpet dyeing and cleaning, interior painting, and similar turnkey services.

Form 2001 to 2002, I worked as the Assistant manager for KingsBridge Apartments in Georgia where [the beneficiary] also led a team of contractors to do construction repairs and renovations. Since 2004 to the present, I have continued to work with [the beneficiary] at Saratoga Apartments. With his team of workers, [the beneficiary] provides quality workmanship with his drywall renovations, interior repairs, and carpet cleaning.

The record also contains a letter dated April 5, 2005 from Ms. [REDACTED] indicating that she had the opportunity to work with the beneficiary on “numerous different occasions” and that the beneficiary “leads his staff with a great example of integrity and they are truly fortunate to have him as their leader.” Ms. [REDACTED] letters do not indicate that the beneficiary obtained four years of full-time experience supervising and coordinating workers in a variety of activities involved in the restoration and renovation of apartment complexes. The work performed by the beneficiary from 1999 to 2002 overlaps with the work he allegedly performed at other job sites, indicating that the work performed by the beneficiary for Mr. [REDACTED] was not full-time employment

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<sup>5</sup> The regulation at 8 C.F.R. § 204.5(1)(3) requires experience verification letters to come from the beneficiary’s 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. Mr. [REDACTED] does not appear to be the beneficiary’s employer or trainer at the other seven properties listed in his affidavit and, therefore, he cannot certify the beneficiary’s experience with these employers.

during these years. Also, some of the beneficiary's experience certified by Ms. [REDACTED] was obtained after the priority date. This work does not qualify the beneficiary for the proffered position.

Not one of the beneficiary's employment experiences cited by the experience verification letters submitted by the petitioner appears to be full-time, some of the beneficiary's experience was not gained in connection with the restoration and renovation of apartment complexes, some of the beneficiary's experience was gained after the priority date, and the evidence does not demonstrate that the accrual of the beneficiary's individual part-time work experiences constitutes four years of full-time supervisory experience in the proffered position.<sup>6</sup> Therefore, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying supervisory employment experience.

In her NOR, the director also found that the petitioner had not established that the proffered supervisory position exists. She noted that the petitioner did not have any employees or contractors other than the beneficiary, that the petitioner had presented no evidence of wages paid to other workers or contract employees and that the petitioner had not established that there are any employees for the beneficiary to supervise. Counsel states on appeal that the director failed to recognize a new position as a bona fide job offer. Counsel states that due to the expansion of the petitioner's business and the need to hire more independent contractors, the petitioner wishes to hire the beneficiary in the new position of supervisor/manager of restoration. Counsel also states that the petitioner made a harmless error in stating on the Form ETA 750 that the beneficiary would supervise four to six employees. Counsel states that the petitioner meant that the beneficiary would supervise four to six contract employees and that until the position is filled, the petitioner will not be able to hire additional contract workers. Counsel submits notarized letter from the petitioner's president, [REDACTED], dated June 28, 2005, which restates counsel's assertions. However, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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). A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, even if this office accepts counsel's argument that the petitioner's error regarding the beneficiary supervising contract workers rather than employees was harmless, the petitioner has not established that it has sufficient business prospects to support a full-time employee supervisor and four to six contract workers. The petitioner's gross receipts for the years in which tax returns were submitted did not establish significant expansion of the petitioner's business; the petitioner's gross receipts were only \$64,573 in 2000, \$55,555 in 2001, \$66,682 in 2002 and \$107,795 in 2003. The record contains no evidence that the petitioner's proposed expansion outside of Atlanta, Georgia will require four to six additional contract personnel.<sup>7</sup> The petitioner has not overcome the portion of the director's NOR relating to the existence of a supervisory position.

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<sup>6</sup> This office notes that the petitioner has submitted no independent evidence to verify these work experiences, such as contracts for services or payments made for services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

<sup>7</sup> This office notes that a labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(C)(2).

Finally, in her NOR, the director noted inconsistencies in information pertaining to the petitioner's tax returns,<sup>8</sup> and that the petitioner's tax returns listed the beneficiary's address as the petitioner's address. The director noted in her NOR that there was no evidence that the petitioner filed an amended return with the Internal Revenue Service (IRS). Counsel asserts on appeal that the petitioner has addressed the inconsistencies regarding its tax returns by filing amended tax returns with the IRS. Because the petitioner amended its returns in the middle of the proceedings, CIS would require IRS-certified copies to corroborate the assertion that the amended returns were actually processed by the IRS. The mailing receipts submitted on appeal simply indicate that a package was mailed and delivered to the IRS -the tax returns submitted on appeal are not certified copies and do not indicate that they were actually processed by the IRS. As previously noted, 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the petitioner has not overcome the portion of the director's NOR relating to the inconsistencies in its tax returns.

The AAO affirms the director's NOR and determines that the director had good and sufficient cause to revoke the petition's approval based on the insufficiency of the evidence submitted into this record of proceeding concerning the beneficiary's four years of supervisory experience and the existence of the proffered supervisory position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition's approval remains revoked.

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<sup>8</sup> Specifically, in her NOIR, the director noted that the petitioner's 2002 tax return showed that it paid contract labor of \$42,180 and the Form 1099 issued to the beneficiary by the petitioner showed that he was paid \$46,945 that year.