U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: WAC 02 190 50974 Office: CALIFORNIA SERVICE CENTER Date: SEP 23 2004

IN RE: Petitioner: [redacted]
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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The petitioner is an automotive firm. It seeks to employ the beneficiary permanently in the United States as a transmission mechanic. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had failed to establish that the beneficiary had the requisite two years work experience required by the offered position.

On appeal, the petitioner[1] submits additional evidence and asserts that it establishes the beneficiary's eligibility for the position offered.

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 other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

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

(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 of 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.

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[1] It is noted that the petitioner filed the appeal, although the underlying record shows that an individual claiming to be an international immigration representative filed a Notice of Entry of Appearance as Attorney or Representative (Form G-28). As no evidence demonstrating that this person is an authorized representative pursuant to the requirements of 8 C.F.R. § 292.1 appears in the record, she will not be deemed to represent the petitioner.

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. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is September 20, 1995. The visa petition indicates that the petitioner was established in 1975 and has seven employees.

As set forth in Part A, Item 14 of the approved labor certification (ETA-750), the beneficiary must have two years of experience in the job offered of transmission mechanic. Item 15 of the labor certification lists other special requirements that an applicant for the job of transmission mechanic must possess. It states that an applicant "must have clear driving record and a valid driver's license."

Part B of the ETA-750, signed by the alien beneficiary on September 15, 1995, directs the alien to list all jobs for the past three years and to list any job related to the occupation for which the alien is seeking certification. The only job initially appearing in this section names "Proveedora Industrial Y Automotriz" in Ciudad Juarez, Mexico as the beneficiary's employer from 1987 to 1988. It states that the beneficiary worked 40 hours per week as a transmission mechanic for this firm. By letter to the DOL alien labor certification office, dated May 16, 1996, the beneficiary amended this section of the ETA-750B by adding an additional job at "Servicio Juarez," in Ciudad Juarez, Mexico. He states that he worked as a transmission mechanic at this firm, 47 hours per week, from November 1991 to October 1993.

Along with the ETA-750, the petitioner initially submitted a letter, dated September 1995, from the general manager of Proveedora Industrial Y Automotriz. He states that the beneficiary worked as a transmission mechanic in his firm from 1987 to 1988. The petitioner also submitted a copy of a California driver's license issued to the petitioner on December 21, 1990, when he was nineteen years of age as evidence that he possesses a valid state driver's license. It gives a San Bernadino, California address as the beneficiary's residence.

On August 13, 2002, the director requested additional evidence pertinent to the beneficiary's qualifying past experience as a transmission mechanic. The director instructed the petitioner to submit evidence demonstrating that the beneficiary possesses the requisite employment experience described by the terms of the ETA-750A. Pursuant to 8 C.F.R. § 204.5(l)(3), the director requested the petitioner to submit evidence of the beneficiary's prior experience in the form of employers' letters describing the alien's qualifying experience.

In response, the petitioner submitted a letter from Pedro Tello of the "Auto Servicio Tello," of Ciudad Juarez, Mexico. This letter, dated October 21, 2001, states that the beneficiary has worked as a transmission mechanic for that firm "from January 1, 1994 to present, complying with 47 hours of work." The petitioner also submitted another copy of a California driver's license issued to the beneficiary on December 11, 1999, as well as a report from the California Department of Motor Vehicles showing no accident or arrest record. The motor vehicle report, as well as the driver's license, gives the beneficiary's address as Moreno Valley, California.

In denying the petition, the director found that the 1995 employment verification letter, submitted by the petitioner from Proveedora Industrial Y Automotriz was too vague to be considered as acceptable evidence of

the beneficiary's qualifying experience as a transmission mechanic, but accepted the letter from Auto Servicio Tello as documenting one year and 9 months of qualifying experience.

On appeal, the petitioner asks that consideration be given to another employer's letter that purports to document the additional three months of employment experience that the beneficiary needs to meet the terms of the labor certification. The petitioner submits this letter, dated February 19, 2003, on appeal. It is from [redacted] signed by the proprieto[redacted] states that the beneficiary worked at his firm 45 hours per week, from January 1990 to October 1991, as a transmission mechanic.

The beneficiary's employment letter from [redacted] submitted on appeal, does not overcome the basis of the director's decision and, along with other discrepancies in the evidence submitted, does not credibly document that the beneficiary has accrued two full years of qualifying experience as of the visa priority date of September 20, 1995. First, the letter from [redacted] states that the beneficiary worked for that firm full-time between January 1, 1994 and the "present," or the date of the letter, October 21, 2001. The beneficiary's California license, issued on December 11, 1999, however, contradicts that evidence by listing the beneficiary's residence as located in California. Second, the letter from Servicio [redacted] ates that the beneficiary was working for that firm full-time between January 1990 to October 1991, however, the beneficiary's California driver's license, issued on December 21, 1990, also contradicts this assertion by listing a California residential address. Moreover, the original and amended ETA-750B, completely omits mention of the beneficiary's employment with Auto Servicio Tello and Servicio Automotriz Jomy's.

CIS must look to the labor certification to determine the qualifications for the position. It 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). It is the petitioner's burden to present credible evidence in support of a visa preference petition. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability of the remaining evidence offered in support of the visa petition. *Matter of Ho,* 19 I&N Dec. 582, 591 (BIA 1988).

In this case, the employers' letters submitted to the record fail to credibly establish that the beneficiary possesses at least two years of employment experience as a transmission mechanic required by the terms of the labor certification. Depending on the point of view, the evidence relating to the validity of the beneficiary's driver's license is also problematic. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date. *See Matter of Katigbak,* 14 I&N Dec. 45, 49 (Comm. 1971). As the petitioner has not established that the beneficiary meets the requirements of the approved labor certification as of the priority date of September 20, 1995, the petition may not be approved.

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.