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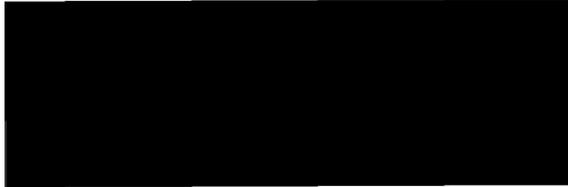
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Office: NEBRASKA SERVICE CENTER

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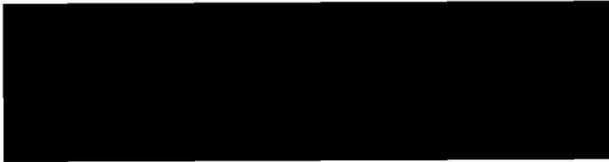
Petitioner:



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 Acting Director, Nebraska Service Center, denied the preference visa petition. Subsequently, the acting director, pursuant to a motion, reopened the matter, and then denied the petition again, affirming his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The previous decisions of the acting director will be affirmed. The appeal will be dismissed.

The petitioner provides construction and specialty services to oil, gas, petrochemical, and other industries. It seeks to employ the beneficiary permanently in the United States as a liaison contract administrator. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) accompanied the petition. The acting director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition.

The record shows that the appeal was properly and timely filed and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and incorporated into the decision. As set forth in the acting director's decision of denial the sole issue in this case is whether or not the petitioner has demonstrated that the beneficiary has the qualifications that the Form ETA 750 stated as necessary qualifications.

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 regulation at 8 C.F.R. § 204.5(1)(3)(ii) states, in pertinent part:

(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 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.<sup>1</sup> *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

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<sup>1</sup> To determine whether a beneficiary is eligible for a third preference immigrant visa, CIS must ascertain whether the alien is in fact qualified for the certified job. 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. The 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 *Madany v.*

Here, the Form ETA 750 was accepted on December 2, 2002. The Form ETA 750 states that the position requires five years of experience in the job offered.<sup>2</sup> The duties of the proffered position are described at item 13 of that form as,

Able to act as a negotiator and liaison officer with Algeria and other Arab countries. Discuss and negotiate contracts and go overseas as interpreter of business. To facilitate import/export, customs, taxation, visas, labor relations.

The Form I-140 petition in this matter was submitted on July 1, 2005. On the petition, the petitioner stated that it was established during 1992 and that it employs 40 to 300 workers, depending on its current workload. Both the petition and the Form ETA 750 indicate that the petitioner would employ the beneficiary in Mountain View, Wyoming. In Part 4 of the visa petition, the petitioner indicated that no immigrant visa petition had previously been filed on behalf of the beneficiary.

On the Form ETA 750B, signed by the beneficiary on October 4, 2002, the beneficiary claimed to have worked for the petitioner, BSI Services, Incorporated since October 1997 as its Liaison-Contract Administrator/Manager of Administration-Algerian Operations. The beneficiary also claimed to have worked for BSI Renovation Project of ██████, in Bethioua, Algeria from July 1990 to September 1997 as a Liaison Contract/Interpreter.

The Form ETA 750B instructs the beneficiary to,

List all jobs held during the last three (3) years [and] any other jobs related to the occupation for which the alien is seeking certification . . . .

The beneficiary, however, listed no other employment.<sup>3</sup>

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).

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*Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

<sup>2</sup> The Form ETA 750 also states that the proffered position requires the ability to speak English, French, Spanish, and Arabic. The beneficiary's ability to speak those languages is not disputed.

<sup>3</sup> The record contains some employment verification letters that will not be listed in this decision. The duties of those other positions do not appear to be related to the proffered position. Further, by not listing them on the Form ETA 750, despite the requirement that he list all related jobs, the beneficiary has disclaimed any relationship between the duties of those other positions and the duties of the proffered position.

In the instant case the record contains (1) an employment verification letter dated October 7, 1998, (2) an employment verification letter dated June 25, 1994 and an English translation, (3) a copy of the beneficiary's résumé, (4) two employment verification letters dated November 3, 2005, (5) an employment verification letter dated May 3, 2006, and (6) an employment verification letter dated May 4, 2006. The record does not contain any other evidence relevant to the beneficiary's claim of qualifying employment experience.

The October 7, 1998 employment verification letter is from the petitioner and states that it hired the beneficiary during July of 1994.

The June 25, 1994 employment verification letter<sup>4</sup> states that the beneficiary worked for Bechtel in Bethioua, Algeria as a translator from July 24, 1990 to December 1991; as a camp supervisor from January 1, 1992 to September 30, 1992; and as captain of the receiving section from October 1, 1992 to June 30, 1994. The beneficiary's résumé recites the same chronology except that the beneficiary's job title from October 1, 1992 to June 30, 1994 was given as Airport Supervision & Transportation.

One of the November 3, 2005 letters is on letterhead of BSI Services of Algeria and is signed by the petitioner's president. In that letter the petitioner's president stated that the beneficiary worked for Bechtel's Algerian project from July 1990 to September 1997 as Interpreter/Contract Administrator. It further states that the duties of that position were to "discuss and negotiate contracts and to facilitate Import/Export, Customs, Taxation, Visas and Labor Relations and to act as a Liaison for BSI Services in Algeria.

The Form I-140 states that the petitioner was established during 1992. Its tax returns fix its incorporation at October 12, 1993. Therefore, as the beneficiary purportedly began working in Algeria beginning during 1990, he could not initially have been working for the petitioner. The petitioner's president's relationship to the company that actually employed the beneficiary in Algeria, which was apparently [REDACTED] and his ability and authority to attest to the beneficiary's employment for some other company, is unclear.

The petitioner's president also signed the other November 3, 2005 letter, which is on the letterhead of BSI in Mountain View, Wyoming, the instant petitioner. In that letter the petitioner's president stated that the beneficiary worked for the petitioner as Liaison/Contract Administrator from October 1997 through the date of that letter. The description of the beneficiary's duties in that letter is the same as that in the other November 3, 2005 letter pertinent to the petitioner's employment in Algeria.

The May 3, 2006 letter is on the petitioner's letterhead and is signed by the petitioner's vice president. The vice president stated that he has worked with the beneficiary since September of 1993, when he was [REDACTED] Airport and Transportation Supervisor. He further stated that initially the beneficiary worked for [REDACTED] and BSI also used his services, and in July 1994 he was hired as administrator for BSI, in which position he was responsible for administrative issues associated with importing and exporting equipment, acquiring foreign

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<sup>4</sup> The June 25, 1994 letter and various other documents in the record are in foreign languages and are accompanied by English translations. The translations are not, however, accompanied by a certification by the translator that the documents are complete and accurate and that the translator is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Although AAO will, in this instance, exercise its discretion and consider the documents and translations, they are accorded less probative value because of the lack of certifications.

workers, and preparing government paperwork. Finally, the vice president stated that the beneficiary has worked in the United States as BSI's administrator/contract administrator since 1997, in which position he acts as liaison with Middle Eastern countries and facilitates import/export, customs, taxation, visas, and labor relations.

The May 4, 2006 letter is on letterhead of [REDACTED] Corporation in Houston, Texas and is signed by the site manager. It states that during September of 1993 the beneficiary worked for [REDACTED] in Algeria as Airport and Transportation Supervisor, arranging for customs, visas, accommodations, and shuttle service. The letter further states that the beneficiary's responsibilities included training in security and operations, that he translated Arabic, French, and English, and assisted foreign workers with customs forms, police issues, the labor board, banking, and other translations.

On October 25, 2005 the acting director issued a request for evidence in this matter. The acting director noted that the petitioner had previously<sup>5</sup> filed an immigrant visa petition for the instant beneficiary, but that the petitioner indicated on the instant visa petition that it had not. The acting director also requested that the petitioner provide evidence that the beneficiary had five years of experience in the proffered position as of the December 2, 2002, the priority date of the visa petition.

In response counsel submitted a letter dated January 11, 2006. In that letter counsel stated that the beneficiary had approximately 12 years of experience in the job offered as of the priority date. As evidence of that experience counsel provided the November 3, 2005 letters described above. Counsel also indicated that the failure to note that the petitioner had previously filed another immigrant visa petition for the beneficiary was inadvertent.

On February 23, 2006 the acting director issued a notice of intent to deny in this matter. In it, he noted that the June 25, 1994 employment verification letter states that the beneficiary worked for [REDACTED] from July 24, 1990 through June 30, 1994 in three different positions, whereas the November 3, 2005 letter on the letterhead of [REDACTED] Services of Algeria states that the beneficiary worked for [REDACTED] Algerian project from July 1990 to September 1997 as Interpreter/Contract Administrator.<sup>6</sup> The acting director observed that the discrepant versions of the beneficiary's employment history had not been explained. The acting director also noted the recent submissions stating that the beneficiary has worked in the United States as administrative manager, rather than interpreter/contract manager as was stated in earlier submissions.

In response counsel submitted a letter dated March 20, 2006. In the letter counsel stated that the change in the title of the job the beneficiary held in Algeria is inconsequential, because "The Job description or the Job responsibilities for both the jobs are identical or same." [sic] Counsel again stated that the petitioner's failure to disclose that it previously filed a petition for the instant beneficiary was occasioned by a typographical error.

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<sup>5</sup> The petitioner filed that previous immigrant visa petition on July 12, 1999. The petition was denied and a subsequent appeal dismissed.

<sup>6</sup> The acting director further noted that the description of the beneficiary's duties in that November 3, 2005 letter were essentially a paraphrase of the job duties listed on the Form ETA 750.

The acting director denied the petition on April 6, 2006, citing the same discrepancies listed in the notice of intent to deny. In a motion submitted on May 9, 2006, counsel asserted that the evidence submitted shows that the beneficiary is qualified for the proffered position as per the terms of the approved labor certification, reiterating the arguments interposed to the notice of intent to deny. On May 24, 2006 the acting director ruled against the petitioner on the motion, finding that counsel had not reconciled the discrepancies between the various versions of the beneficiary's employment history.

On appeal, submitted on June 23, 2006, counsel again asserted that the petition should be approved. In a brief, filed August 2, 2006 to supplement the appeal, counsel again argued that Administrative Manager and Contract Administrator are the same position. Counsel noted that, in a letter pertinent to the instant labor certification, the Wyoming Department of Employment placed "Business Operations Specialists" in parentheses after "Contract Administrator," the job title used by the petitioner.

The acting director found that the employment verification letters in this matter do not demonstrate that the beneficiary has the requisite work experience. That decision was based on the finding that the description of the beneficiary's duties in his previous position or positions has varied substantially, that the description of the beneficiary's duties is not, therefore, reliable, and that the unreliable employment verification letters cannot, therefore, reliably demonstrate that the beneficiary has the requisite employment experience.

The reference by the DOL to the proffered position as "Business Operations Specialists, All Other, O\*NET Code 13,1199.00" indicates that, based on the description of the duties of the proffered position as described to DOL, that is how DOL classified the proffered position. It does not indicate that the petitioner has consistently described the duties of the beneficiary's previous employment, or that they are consistent with the requisite experience as stated on the Form ETA 750.

The Form ETA 750 states that the duties of the proffered position are to act as liaison between the petitioner and foreign governments, to negotiate with those foreign governments, to negotiate contracts with other companies, to facilitate bringing goods and people into foreign countries, to handle labor relations, and to translate.

The Form ETA 750B states that the petitioner worked for the [REDACTED] Renovation Project in Algeria from July 1990 to September 1997, and for the petitioner, [REDACTED] Services, Incorporated, from October 1997 at least through October 4, 2002, when the beneficiary completed that form.

The October 7, 1998 employment verification letter states that the petitioner hired the beneficiary during July of 1994. That chronology is inconsistent with the employment history the beneficiary stated on the Form ETA 750B and his résumé.

The June 25, 1994 employment verification letter states that the beneficiary worked for [REDACTED] in Bethioua, Algeria as a translator from July 24, 1990 to December 1991; as a camp supervisor from January 1, 1992 to September 30, 1992; and as captain of the receiving section from October 1, 1992 to June 30, 1994.<sup>7</sup>

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<sup>7</sup> Although the letter is dated June 25, 1994, it purports to verify employment through June 30.

Although that letter does not describe his duties in those positions, it makes clear that he held three different positions from July 1990 to June 1994.<sup>8</sup> Further, on the Form ETA 750B the beneficiary claimed to have worked for the ██████ Renovation Project during that entire period and continuing through September 1997, whereas the employment verification letter states that he worked for ██████

The petitioner's president's November 3, 2005 letter pertinent to the beneficiary's job in Algeria states that the beneficiary was ██████ Interpreter/Contract Administrator there from July 1990 to September 1997, and that his duties were to discuss and negotiate contracts, to facilitate Import/Export, Customs, Taxation, Visas and Labor Relations and to act as a Liaison for ██████ Services in Algeria. That version of events is contradicted by the Form ETA 750B and the résumé, which state that he held three different jobs during that period.

Further, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires that the alien's former employer, ██████ provide an employment verification letter describing the duties of his previous positions. Even if the petitioner's president's letter were not contradicted by other evidence in the record, it would still not satisfy that regulation and would still not be convincing evidence of the beneficiary's experience.

A May 3, 2006 BSI letter and the May 4, 2006 ██████ letter state that beginning during September of 1993 the beneficiary was an Airport and Transportation Supervisor,<sup>9</sup> arranging for customs, visas, accommodations, and shuttle service; providing security and operations training to employees; and translating. The May 4, 2006 letter states that the beneficiary,

[used his] skills to assist expatriates with customs forms, police issues, the labor board, banking and all other multi language needs . . . [and] was in charge of accommodations for expatriate workers . . . , facilities maintenance, and day to day support.

Those duties are not closely related to the duties of the proffered position, Liaison-Contract Administrator, as described on the approved Form ETA 750 labor certification. Although both descriptions include arranging visas and customs and translating, the duties of the proffered position as described on the ETA 750 involve negotiating with foreign governments and other companies, whereas the letter from ██████ indicates that the beneficiary was mostly involved in more plebian negotiations with workers, hotels, transportation companies, and local police.

Further, the chronology of the beneficiary's work history stated in those letters conflicts with that in the Form ETA 750B; the October 7, 1998 employment verification letter; the June 25, 1994 employment verification letter, and the November 3, 2005 employment verification letter,

Counsel stated that the various versions of the beneficiary's employment history are not in conflict, as only the job titles have changed, and not the underlying duties. This office finds, to the contrary, that the

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<sup>8</sup> The Form ETA 750B and the beneficiary's résumé confirm that fact.

<sup>9</sup> Actually, the ██████ letter does not indicate that the beneficiary's employment with ██████ extended either before or after September of 1993.

chronology of the beneficiary's work history has varied considerably in the various versions of the beneficiary's employment history as is demonstrated above. Under these circumstances this office does not find the employment verification submitted to be credible and therefore accords it little evidentiary value. Further, even if found credible, the duties of the beneficiary's previous positions do not appear to qualify him for the proffered position pursuant to the terms of the approved labor certification.

The petitioner has not demonstrated that the beneficiary is qualified for the proffered position pursuant to the terms of the approved Form ETA 750 labor certification. The petition was correctly denied on that basis, which basis the petitioner has not overcome on appeal.

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.