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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 03 2009

SRC 07 105 51733

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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a landscaping and construction company. It seeks to employ the beneficiary permanently in the United States as a landscaper. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). The petition is accompanied by a photocopy of an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the Department of Labor (DOL).

In the denial, the director did not accept the two employment experience letters submitted by the petitioner due to questions pertaining to their authenticity. Accordingly, the director found that the petitioner did not establish that the beneficiary possessed the required experience for the offered position. On appeal, counsel submitted additional evidence of the validity of the experience letters.

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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 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.[1]

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, the petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. at 159; *see also Matter of Katigbak,* 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it

[1]The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by 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).

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. Iwine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coorney,* 661 F.2d 1 (1st Cir. 1981).

The priority date of instant petition is December 19, 2006, the date the labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). Here, the Form I-140, Immigrant Petition for Alien Worker, was filed on February 15, 2007. On Part 2 of the Form I-140, the petitioner indicated that it was filing the petition for a professional or a skilled worker. The job offer portion of the submitted labor certification (Part H of ETA Form 9089) states that the minimum level of education required for the position is a high school degree, and the minimum *months* of experience required is two (2).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(A) requires the petitioner to submit experience letters from the beneficiary's employers when the offered position has an experience requirement. The letters must provide the name, address, and title of the employer, and a description of the experience of the beneficiary. *Id.*

The record contains two translated experience letters from the beneficiary's prior employers in Iran. The first letter is from [redacted] of Al Hawraa Engineering Consultants, dated October 15, 2006. The letter states:

> This is to confirm that [redacted] has been employed by this company on a full time basis since February 2, 2003 until the present. His duties, among other things, include designing, planning, supervising and performing landscape projects, consulting with our patrons, engineers and advisors in order to assure strict compliance with the plans and specifications of each project. His services have been extremely satisfactory.

The second letter is from [redacted], dated October 22, 2006. The letter states:

> This is to confirm that [redacted] has been employed by this company on a full time basis since February 2, 2000 until January 2003. His duties, among other things, include designing, planning, supervising and performing landscape projects; consulting with our patrons, engineers and advisors in order to assure strict compliance with the plans and specifications of each project. His services have been extremely satisfactory.

In the denial, the director noted the identical language in both employment experience letters. The director questioned the legitimacy and authenticity of the letters, and rejected them as evidence of the beneficiary's employment experience. Accordingly, the director concluded that the petitioner failed to establish that the beneficiary possessed the required experience for the offered position as set forth in the labor certification.

On appeal, counsel explained the identical wording of the letters by claiming that the beneficiary's prior employers use the services of the same individual to prepare their English correspondences. In support of this assertion, counsel submitted letters from [redacted] dated September 30, 2007, and [redacted] dated October 25, 2006.[2] The letters both state that each employer independently wrote different experience letters in Farsi and submitted them to the same individual that both companies use to prepare their English correspondences. Both letters claim that the translator had, purportedly out of convenience, prepared identical English experience letters from the different Farsi employment experience letters.

As is stated above, the submitted experience letters state that the beneficiary was employed by Al Hawraa Engineering Consultants from February 2, 2003 until the present and by [redacted], from February 2, 2000 until January 2003. However, the photocopy of the labor certification in the record states that the beneficiary was employed by "Behsazan Mahak Co." from February 2, 2000 through December 16, 2006. Therefore, the dates of employment in the labor certification differ from the dates of employment stated in the experience letters. The labor certification does not mention Al Hawraa Engineering Consultants as a current or former employer of the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* at 591; *see Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976)(noting that employment not listed on a labor certification is not credible).

Taking into consideration the errors and inconsistencies pertaining to the submitted employment experience letters, it is concluded that the letters are not sufficient to establish that the beneficiary possesses the two months of experience required to perform the proffered position. Counsel's assertions on appeal are not persuasive. 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)).

Beyond the decision of the director, the petitioner has also not established that the offered position qualifies for classification as a third employment-based professional or skilled worker pursuant to section 203(b)(3)(A) of the Act.

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

> *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate

[2]The date the letter was authored appears to be incorrect. The denial was issued on September 14, 2007. Therefore, it is unclear how the letter could have been prepared on October 25, 2006.

> degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(l)(4) states:

> *Differentiating between skilled and other workers.* The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. In the case of a Schedule A occupation or a shortage occupation within the Labor Market Pilot Program, the petitioner will be required to establish to the director that the job is a skilled job, i.e., one which requires at least two years of training and/or experience.

On the Form I-140, the petitioner indicated that it was filing the petition for a professional or a skilled worker. The job offer portion of the submitted labor certification states that the minimum level of education required for the position is a high school degree, and the minimum *months* of experience required is two (2). The position does not require a baccalaureate degree nor at least two years of training and/or experience. Since the job offer portion of the labor certification does not require a professional or a skilled worker, the appeal must be dismissed.[3]

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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.

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[3]It is also noted that the record does not contain an original labor certification as required by 8 C.F.R. § 204.5(g)(1). Further, the photocopy of the labor certification is not signed by the beneficiary. USCIS will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien and attorney. 20 C.F.R. § 656.17(a)(1).