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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date AUG 23 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a county hospital. On the I-140 petition, the petitioner seeks to employ the beneficiary permanently in the United States as a medical technologist. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.[1] The director determined that at section H-4, the petitioner had erroneously identified the major field of study as "nursing" and denied the petition.

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.

As set forth in the director's May 15, 2007 denial, the two issues in this case are whether or not the error that the petitioner made on the Form ETA 9089 at section H-4 would preclude the approval of the instant petition; and, as addressed by the director in his NOID and decision, whether the beneficiary meets the minimum educational and work experience requirements stated on the labor certification. The AAO will examine first the petitioner's misclassification of the field of study on the Form ETA 750, and then examine whether the petitioner established that the beneficiary is qualified to perform the duties of the proffered position.

The Petitioner's Field of Study Classification

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.[2] In response to the director's NOID noting that the petitioner had

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[1] On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

[2] 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 AAO will discuss further whether it will consider the letters of work verification submitted to the record on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

identified the requisite filed of study on the Form ETA 9089 as "nursing," counsel submits following evidence to demonstrate its intention to require study in medical technology:

1. A copy of the petitioner's Prevailing Wage Determination Request to the Arkansas State Workforce Agency, dated July 13, 2005. This form indicates a July 13, 2005 date of response that indicates a prevailing wage of $30,597 for a medical technologist, Level One, with a Bachelor of Science in medical technology and minimum work experience of twelve months;
2. Counsel's letter dated July 15, 2005 to the Arkansas State Workforce Agency with the petitioner's job order for a medical technologist;
3. A printout from the state of Arkansas' Job Link website[3] dated August 3, 2005 that lists the proffered position as medical technologist, requiring a bachelor's degree and two years of work experience;
4. A copy of two newspaper advertisements for the petitioner's position of medical technologist in the *Arkansas Democrat Gazette* dated July 17, and July 24, 2005. Neither advertisements lists the academic or work experience requirements;
5. A printout from a website entitled "Careersite" dated September 30, 2005 that lists the petitioner's available position of medical technologist;
6. A copy of counsel's Information Sheet for the proffered position that identifies the job title as medical technologist that requires a four-year degree in "lab medical technology;" and
7. A cover letter that accompanied the petitioner's response to the director's NOID. This letter states that the error in item H-4-B on the certified ETA 9089 is a clerical error by counsel.

On appeal, counsel resubmits some materials submitted in response to the director's NOID as well as the following evidence for the first time:

1. An additional original Prevailing Wage Request Form dated December 7, 2006 for the position of medical technologist, level one, that indicates the prevailing wage is $25,043 per year or $12.04 per hour. This form indicates the position requires one year of prior work experience;[4]
2. A copy of an Internet-based Sponsorship Questionnaire from the ETA Foreign Labor Certification division that asked the petitioner to complete the sponsorship questions. This document identifies the position as medical technologist;
3. A copy of a page from the Arkansas Joblink website dated October 20, 2005 that includes job details, contact information and job information for the proffered position. This

[3] *See* https://www.arjoblink.arkansas.gov/ada/mn_quicksearch_dsp.cfm. (Available as of July 28, 2009.)

[4] The AAO notes that this Prevailing Wage Request Form was filed after the petitioner filed the instant I-140 petition with the certified ETA 750. The record is not clear why the petitioner submitted this document on appeal.

document states under miscellaneous requirements that the beneficiary must possess a Bachelor of Science in medical technology with one year of experience, and also notes in the category "years experience" that the position requires two years of experience; and

4. A partial copy of the biweekly magazine *Advance for Medical Laboratory Professionals* dated August 29, 2005 that contains a job advertisement for a medical technologist position with the petitioner. This advertisement states the minimum job experience is one year and does not indicate the minimum educational requirements. The petitioner also submitted the $948 invoice for this advertisement; and
5. A copy of the petitioner's certified Form ETA 9035E, for the beneficiary's H-1B employment as a medical technologist with the petitioner from February 15, 2007 to February 14, 2008.

The record also contains a copy of the beneficiary's diploma from Southwestern University, Cebu City, The Philippines, dated May 24, 1993, indicating the beneficiary received a bachelor of science in medical technology. The petitioner also submits the beneficiary's official transcript of records from Southwestern University, Cebu City, The Philippines. The record also contains a note from the petitioner to the Nebraska Service Center that states a copy of the certified ETA 9089 was never received by the petitioner, and requests that the United States Citizenship and Immigration Services (USCIS) obtain a duplicate certified copy from the DOL.

On appeal, counsel states that the instant petition was filed and certified on October 28, 2005. Counsel notes that the certified Form 9089 that supports this I-140 petition contains a typographical error: the petitioner inadvertently wrote "nursing" in Item H4-B in the item, major field of study, while the front page of the certified ETA Form 9089 clearly states that the proffered position is for a medical technologist. Counsel states that the petitioner is hampered because the PERM procedures are only two years old, and there are no precedent cases that address the issue of typographical errors. Counsel states that the petitioner only has its equity in the petition and the spirit of the law, and that equity requires that if the petitioner has complied with the spirit and purpose of the law, the application must be approved and certified.

Counsel notes that the spirit and purpose of PERM remains the same as the former labor certification process, in that DOL must still certify to the Secretary of State and to the Secretary of Homeland Security that there are not sufficient U.S. workers who are able, willing, qualified and available, and that the employment of the beneficiary will not adversely affect wages or working conditions of similarly situated U.S. workers. Counsel states that the denial of the petition based on the error in Item H4-B is excessive, and that it is beyond logic and reason that item H4-B would control everything in the labor certification application especially in light of clear and unambiguous intent of the petitioner. In addition to recruitment documents in connection with the filing, the petitioner's intent is reflected in its answers to its answers to items F-3, H-3, H-11, J-12 and K-9 on the Form ETA 9089. [5]

[5] With regard to counsel's references on appeal to other terms of the Form ETA 9089, item F-3 of the ETA Form 9089 indicates an occupational title of "medical technologist," with a skill level of

On August 27, 2009, the AAO issued a Request for Further Evidence (RFE) to the petitioner. The AAO noted the petitioner's statement with regard to the mistaken inclusion of the field of nursing in Item H4-B, and stated that the AAO does not have jurisdiction to change the terms of the Form ETA 9089, even in cases involving typographical errors. The AAO stated that DOL, as the issuing agency for certified Forms ETA 9089, is the only agency authorized to address this issue. The AAO then requested any evidence that the petitioner communicated the typographical error to DOL and whether the DOL authorized any official changes to the labor certification.

In its response to the AAO RFE dated September 28, 2009, counsel states that the petitioner learned of the typographical error in item H-4 only when USCIS issued its NOID on February 20, 2007. Accordingly, the petitioner had no time to notify DOL of the typographical error. Counsel states that the petitioner is aware that the AAO has no jurisdiction to change the terms found in the certified ETA 9089, and that the petitioner requests that the AAO leave the certified labor certification as is-certified for the position of a medical technologist and that the AAO consider the typographical error as simply a typographical error. Counsel states that the error in section H-4 does not preclude the approval of the I-140 petition, and that the intent of the petitioner is that the proffered job is for a medical technologist in a permanent capacity but provides no legal authority to support this argument.[6]

In the instant case, the petitioner's intent with regard to the minimum requirements for the proffered position, based on its job advertisements in newspapers, a magazine for medical technologists, the I-140, other sections of the ETA Form 9089, and earlier Prevailing Wage Statement is clearly documented. The petitioner wants to employ a medical technologist and on several documents, requires a Bachelor of Science in medical technology. However, as stated previously, the AAO has no jurisdiction to correct the ETA Form 750, or to ignore the terms of the labor certification as approved by DOL. In response to the AAO's RFE, counsel provides no evidence that the petitioner ever attempted to contact DOL, the agency with jurisdiction over the matter, to correct the ETA Form 9089, or determine how to proceed in the matter. Therefore, the AAO determines that the beneficiary does not meet the education requirement of the labor certification as currently certified, and the petition cannot be approved. Thus, the AAO affirms the director's decision.

The Beneficiary's Qualifications

Level IV; item H-3 indicates the job title for the proffered position is "medical technologist;" item H-11 indicates the proposed job duties of a medical technologist, as paraphrased previously; item J-12 indicates highest level of education relevant to the requested occupation is "Bachelor's;" and item K-9 indicates the beneficiary's previous job duties while working at Mississippi State University as a "generalist." These duties are identical to those for the proffered position.

[6] The AAO notes that the petitioner has provided no evidence of its effort to inform DOL of the instant issue or to seek DOL's approval of any change. Moreover, the petitioner's response to the AAO's RFE implies that it has no intention of communicating with DOL on this issue.

With regard to whether the petitioner established that the beneficiary had the two requisite years of work experience prior to the 2005 priority date, at the outset, we emphasize that federal circuit courts have upheld our authority to inquire as to whether the alien is qualified for the classification sought.

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977).

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). *See also Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

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

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 as certified by DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted on October 28, 2005.

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. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on October 28, 2005.[7] The Immigrant Petition for Alien Worker (Form I-140) was filed on July 5, 2006.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months

[7] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

On the ETA Form 9089, the "job offer" position description for a medical technologist provides, in pertinent part, that the applicant performs varied or specialized bacteriological, serological, hematological and related examinations, assists in the preparation of pathological specimens, and performs qualitative and quantitative chemical analyses to provide information used in diagnosis and treatment of diseases.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

H.4. Education: Minimum level required: Bachelor's.

4-A. States "if other indicated in question 4 [in relation to the minimum education], specify the education required."

The petitioner left this section blank.

4-B. Major Field Study: Nursing.

7. Is there an alternate field of study that is acceptable.

The petitioner checked "no" to this question.

7-A. If Yes, specify the major field of study:

The petitioner left this section blank.

8. Is there an alternate combination of education and experience that is acceptable?

The petitioner checked "no" to this question.

8-A. If yes, specify the alternate level of education required:

The petitioner left this section blank.

9. Is a foreign educational equivalent acceptable?

The petitioner listed "yes" that a foreign educational equivalent would be accepted.

With regard to work experience, Part H reflects the following information:

6. Is experience in the ob offered required for the job?
The petitioner indicated "yes," and indicated on item 6-A that the position required 24 months of work experience.

14. Specific skills or other requirements: The petitioner did not indicate any.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. 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 impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

With regard to the beneficiary's qualifications, namely, her previous work experience, the regulation at 8 C.F.R. § 204.5(l)(3) also 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 worker.* If the petitioner 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 . . . . The minimum requirements for this classification are at least the two years of training or experience.

With the initial I-140 petition, the petitioner submitted no letters of previous work verification from former or current employers. In response to the director's NOID, the petitioner submitted the following evidence:

1. In a cover letter dated March 6, 2007, Ms. [redacted] the petitioner's human resources director, states that the beneficiary has worked as a medical technologist for four years as an H-1B worker, and that the petitioner is the only hospital serving Ashley County, a rural and underprivileged county with approximately 24,000 residents. Ms. [redacted] states that the petitioner has had no success in recruiting qualified and licensed medical technologists willing to serve the county residents; and
2. A letter dated March 13, 2007 written by Ms. [redacted] further states that the beneficiary has been employed by the petitioner since May 21, 2003 as a medical technologist.

In his decision, the director stated that if the petitioner elected to apply for a new labor certification for the beneficiary, it should note that in response to question 21 on page 6 of the Form ETA 750, the petitioner certified that the beneficiary did not gain any of the qualifying employment experience with the petitioner in a position substantially comparable to the proffered position. The director noted that the only evidence on the record of the beneficiary's previous work experience as a medical technologist was the letter from Ms. [redacted] that detailed the beneficiary's employment with the petitioner.

On appeal, counsel submits the following evidence:

1 An undated letter from Dr. [redacted] Cebu City, The Philippines. Dr. [redacted] states that the beneficiary was employed in his clinic as a medical technologist and worked as a generalist in all areas of the clinic laboratory from June 1, 1995 to January 10, 2001;
2 A letter dated June 8, 2007 from [redacted] Manager, [redacted] Mississippi State University. Ms. [redacted] states that Mississippi State University employed the beneficiary in its College of Veterinary Medicine, Department of Pathobiology and Population Medicine, as a medical technologist from January 23, 2002 to October 31, 2002; and
3. A letter dated January 21, 2005 from [redacted] College of Veterinary Medicine, Mississippi State University. Ms. [redacted] identifies herself as the beneficiary's direct supervisor and provides details on the beneficiary's job duties. She states the beneficiary worked at Mississippi State University from October 29, 2001 to October 31, 2002.

As previously stated, the AAO issued a RFE to the petitioner on August 27, 2009. In its RFE, the AAO noted that Section K of the Form ETA 9089 Alien Work Experience states "list all jobs the

alien has held during the past three years. Also list any other experience that qualifies the alien of the job opportunity for which the employer is seeking certification." The AAO noted that on the Form ETA 9089, the petitioner did not list the beneficiary's employment with it as of May 21, 2003 and provided no further explanation on appeal for this omission.[8] The AAO further noted that the petitioner answered in Job 1 that the beneficiary worked fulltime as a generalist at the Mississippi State University College of Veterinary Medicine from October 12, 2001 to October 1, 2002.

The AAO also noted that the employer in Job 2 is identified as Hansford County Hospital District, Spearman, Texas, where the beneficiary worked as a generalist from February 1, 2001 to September 1, 2001, performing duties identical to those identified at Section H-11. The AAO finally noted that in Job 3, the petitioner identified the employer as Sacred Heart Family Clinic, Liloan, Cebu, The Philippines, and indicated that the beneficiary worked there from March 1, 1995 to January 1, 2001 as a "generalist," and that the job duties listed for this position are identical to the duties described for the proffered position.[9]

The AAO noted that the two letters from Mississippi State University confuse the record. Neither letter mentions the dates of the beneficiary's employment as found on the Form ETA 9089, namely, October 1, 2001 to October 1, 2002. Further Ms. [redacted] states that the beneficiary had worked for Mississippi State University from January 23, 2002 until October 31, 2002, while Ms. [redacted]s letter states that the beneficiary worked at the university from October 29, 2001 to October 31, 2002.

The AAO cited *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) and stated that it could not ignore the inconsistencies between the beneficiary's stated previous employment and the evidence submitted by the petitioner to establish such employment. The AAO requested that the petitioner provide evidence to clarify the beneficiary's previous work experience as a medical technologist with the petitioner and whether it was for comparably similar work duties as those of the proffered position. The AAO also requested that the petitioner clarify the beneficiary's specific dates of employment with Mississippi State University.

On September 29, 2009, the petitioner responded to the AAO's RFE, and submitted an additional notarized letter dated September 25, 2009 from [redacted]. In her letter, Ms. [redacted] states that the

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[8] The DOL FAQ website on page 18 does not preclude the beneficiary from obtaining the requisite work experience from the petitioner; however, it does stipulate that if the beneficiary is already working for the petitioner, the petitioner cannot require U.S. workers to have more work experience than what a beneficiary would have at the time of initial hire, with two exceptions to this issue. *See* page 18 of DOL PERM FAQS at http://www.foreignlaborcert.doleta.gov/perm.cfm (available as of July 29, 2009.)

[9] Although not stated in the AAO RFE, the information on the dates of the beneficiary's employment with the Sacred Heart Family Clinic vary between the letter of work verification submitted on appeal and the information at section K, c. Job 3 of the Form ETA 9089. The Form ETA 9089 indicates the beneficiary worked for the clinic from March 1, 1995 to January 1, 2001, while Dr. [redacted] states the beneficiary worked for the clinic as a medical technologist from June 1, 1995 to January 10, 2001.

beneficiary has been employed by the petitioner since May 21, 2003, and that her job duties are those of a medical technologist. Ms. [redacted] also stated that the beneficiary was employed by the petitioner for the "requisite five and a half years." Ms. [redacted] does not provide any further clarification for why the beneficiary's prior work experience with the petitioner is not included on the Form ETA 9089.

Counsel also submitted a letter from [redacted] Manager, [redacted] Human Resources Management, Mississippi State University, dated September 14, 2009. In her letter Ms. [redacted] verified that Mississippi State University previously employed the beneficiary as a medical technologist, and that the beneficiary worked for the university from October 29, 2001 to November 19, 2001 and then from January 23, 2002 to October 31, 2002.

In response to the AAO RFE, the petitioner submits another letter from Mississippi State University from Ms. [redacted] working in the same office if not the same position as Ms. [redacted] that provides different dates of employment from the dates provided by Ms. [redacted], and contradicts the information provided by Ms. [redacted], the beneficiary's direct supervisor.[10] The AAO does not regard the evidence with regard to the beneficiary's employment with Mississippi State University to be clarified by the submission of the third letter.

Thus, the petitioner has neither clarified the discrepancy between the beneficiary's claimed employment with the petitioner and the omission of this employment on the Form ETA 9089, nor clarified the actual dates of the beneficiary's employment at Mississippi State University. It also has not provided any further corroboration of the beneficiary's claimed employment with Hansford County Hospital District. The AAO acknowledges that even with the slight discrepancy between Dr. [redacted]'s letter and the Form ETA 9089, the petitioner has established the beneficiary's employment with the Sacred Heart Family Clinic for over five years prior to the 2005 priority date. However, it cannot ignore the inconsistencies between the beneficiary's stated previous employment on the ETA Form 9089 and the evidence submitted by the petitioner to establish such employment. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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."

Thus, the petitioner has not established that the beneficiary possesses the requisite two years of prior work experience stipulated by the Form ETA 9089. An additional issue that is not addressed by the director concerns the actual minimum experience requirements for the proffered position. As stated previously, the ETA Form 9089 requires two years of work experience as a medical technologist, while other documents in the record indicate that one year of work experience is sufficient. If the petitioner pursues the matter further, it is advised to clarify why there is a difference in work experience requirements in the various documents submitted to the record.

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[10] Ms. [redacted]'s letter indicates a break in the beneficiary's employment at Mississippi State University between November 20, 2001 to January 23, 2002. Ms. [redacted]'s letter does not identify such a break.

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. The petitioner can file a new I-140 petition with an accompanying ETA 9089 to address the typographical error and the inconsistencies with regard to the beneficiary's previous employment without prejudice.

ORDER: The appeal is dismissed.