U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

B6

[redacted]

Date: JUN 21 2012 Office: TEXAS SERVICE CENTER File: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. On August 29, 2008, 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.

Section 205 of 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 [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by h[er] 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 petitioner describes itself as a bakery. It seeks to permanently employ the beneficiary in the United States as a baker. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).[1]

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 16, 2001. *See* 8 C.F.R. § 204.5(d).

The NOR concludes that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date and that the documentation submitted to show that the beneficiary qualified for the position was internally inconsistent.[2]

The record shows that the appeal is properly filed 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.

---

[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), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] The AAO notes that the petitioner's former attorney, [redacted] was suspended from the practice of law before the Immigration Courts, Board of Immigration Appeals (BIA), and Department of Homeland Security (DHS) for a period of three years from March 1, 2012 to February 28, 2015. [redacted]'s representations in this matter will be considered.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (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 regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *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]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Here, the Form ETA 750 was filed and accepted for processing by the DOL on April 16, 2001. The name of the job title which the petitioner seeks to hire is "Baker." Under the job description, section 13 of the Form ETA 750, part A, the petitioner wrote, [redacted] ingredients to produce all types of breads, rolls, etc. Measures ingredients, prepare batters and dough. Rolls, cuts, & shapes dough to form products."

Under item numbers 14 and 15 of the Form ETA 750, part A, the petitioner set forth the minimum education, training, and experience that an applicant must have for the position of a landscape gardener. The petitioner indicated on item number 14 that an applicant must have, at a minimum, two years of experience in the job offered.

---

[3] The submission of additional evidence on appeal is allowed by the instructions to the 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).

The beneficiary set forth his credentials on part B of the Form ETA 750 labor certification and signed his name on August 10, 2002,[4] under a declaration that the contents of the form are true and correct under the penalty of perjury. On item number 15, eliciting information of the beneficiary's work experience, the beneficiary represented that he worked as a baker for [redacted], from February 1996 to April 2000.

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

> 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.

Along with the petition and the approved Form ETA 750 labor certification, the petitioner submitted a letter of employment dated July 28, 2002 from [redacted] stating that the beneficiary worked as a baker from February 23, 1996 to April 17, 2000. In the Notice of Intent to Revoke (NOIR) dated August 29, 2008, the director noted that according to the Brazilian corporate database (CNPJ),[5] the CNPJ number submitted for the Brazilian company [redacted] was not a valid CNPJ number.[6] Based on this information, the director concluded that the documentation submitted to verify the beneficiary's work experience was fraudulent.

In response to the director's Notice of Intent to Revoke (NOIR), the petitioner submitted the following evidence to demonstrate that the beneficiary worked at [redacted] between 1996 and 2000:

- A letter from the beneficiary dated September 19, 2008 stating that the original author was no longer employed by the company and thereby supplied incorrect information;
- A letter from [redacted] dated September 15, 2008 stating that the correct CNPJ no. is [redacted] and that the store where the beneficiary worked was closed in

---

[4] This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution will be permitted.

[5] CNPJ (Cadastro Nacional da Pessoa Juridica) is similar to the federal tax ID or employer ID number in the United States. The Department of State has determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual's stated hire and working dates with a Brazilian-based company to that Brazilian company's registered creation date.

[6] The CNPJ number shown on the letter is [redacted]

2001. She also stated that [redacted] used the CNPJ of Bar Campinho, a company with the same ownership;

- A copy of an Individual Job Contract entered into February 23, 1996 between the owner of [redacted] and the beneficiary;
- A copy of the Employee Registry for the beneficiary stating that he worked for [redacted] beginning February 23, 1996; and
- A copy of paystubs from [redacted] to the beneficiary dated March 1996 and April 2000.

On appeal to the AAO, counsel further submits the following evidence to show that the beneficiary had the requisite work experience in the job offered or in a related occupation:

- National Register of Legal Entity from Brazil for [redacted] noting a trade name of [redacted] stating opening as February 17, 1992 and closing of November 3, 2001;
- Certificate of Operation for [redacted] with a trade name noted of [redacted] and [redacted] dated February 17, 1992; and
- A letter from [redacted] dated March 25, 2009 stating that [redacted]

The AAO notes that the original letter of employment dated July 28, 2002 from [redacted] contains a CNPJ number different from those stated in the evidence submitted in response to the director's NOIR. The April 18, 2001 letter lists a CNPJ number of [redacted], whereas the documentation submitted in response to the director's NOIR shows the following CNPJ number: [redacted] In addition, in letters after the letter dated April 18, 2001, [redacted] claimed affiliation with a separate entity not noted previously, [redacted]

Based on the facts stated above and the inconsistencies within the evidence, the petitioner has not established that the beneficiary worked for either [redacted] The July 28, 2002 letter had a different name and CNPJ number than any evidence submitted in response to the NOIR or to the AAO. The letter also has different employment dates for the beneficiary than "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

In addition, the AAO determines that the letter of employment dated July 28, 2002 from [redacted] does not comply with the regulation at 8 C.F.R. § 204.5(g)(1), in that it does not include the name of the author, his or her title, and a sufficient description of the experience or training received by the beneficiary while he worked there between February 1996 and April 2000.

The only independent, objective evidence that the petitioner submitted was two paystubs for March 1996 and April 2000 issued by [redacted] CNPJ number [redacted] for the

beneficiary.[7] These paystubs do not demonstrate that the beneficiary worked for [redacted] CNPJ number [redacted] during the dates stated on the Form ETA 750. The petitioner submitted no independent, objective evidence such as paystubs, employment records, social security records, or other such evidence to demonstrate the beneficiary's previous work experience with [redacted]

Because of the discrepancies in the record concerning the beneficiary's claimed employer, the record does not establish that the beneficiary has the experience claimed.

The AAO affirms the director's NOR that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

[7] In *Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted. The Form ETA 750B does not list [redacted] as one of the beneficiary's former employers.