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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 04 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

ON BEHALF OF PETITIONER:

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 in accordance with the instructions on 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner specializes in repairing, remanufacturing, and refurbishing mobile phones. It seeks to permanently employ the beneficiary in the United States as a mobile electronics technician. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).[1]

The petition is accompanied by an ETA Form 9089, Application for Permanent 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 June 21, 2011. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position as set forth on the labor certification by the petition's priority date.

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.

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.[2]

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 also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In determining the requirements for the offered position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006

---

[1] Section 203(b)(3)(A)(i) of the Act 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.

[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 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).

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

Where the job requirements 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 qualifications the beneficiary must possess. *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.

In the instant case, the ETA Form 9089 states the following minimum requirements for the offered position of mobile electronics technician:

H.4. Education: High School.
H.5. Training: None required.
H.6. Experience in the job offered: 24 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: "Knowledge of GSM, CDMA 2000 1x & CDMA 2000 1xEV-DO technologies."[3]

The labor certification states that the beneficiary qualifies for the offered position based on an associate's degree and 81 months of experience as an electronics engineer with [redacted] in South Korea from January 1, 2003 until September 30, 2009. The labor certification also

[3] The record does not contain explanations for all of the acronyms and technologies stated in Part H.14 of ETA Form 9089. According to PCMag.com, a computing and consumer product review website, GSM stands for Global System for Mobiles, and CDMA stands for Code Division Multiple Access. GSM and CDMA are the two major radio systems used to operate cell phone networks. Most of the world uses GSM, but CDMA dominates the U.S. *See* Sascha Segan, *CDMA vs. GSM: What's the Difference?* Aug. 22, 2012, http://www.pcmag.com/article2/0,2817,2407896,00.asp. (accessed May 30, 2013). CDMA2000 is a family of third-generation (3G) mobile technology standards using CDMA channel access method. CDMA2000 1x is the core wireless interface standard, while CDMA2000 1XEV-DO is a later standard usually used to access broadband internet services. *See* Radio-Electronics.com, *CDMA2000 1x/1xrtt Basics Tutorial*, http://www.radio-electronics.com/info/cellulartelecomms/3gpp2 (accessed May 30, 2013).

states that the beneficiary has worked for the petitioner as an electronics engineer since October 9, 2009. The labor certification identifies no other employers of the beneficiary. The beneficiary signed the labor certification on July 12, 2012, declaring under penalty of perjury that the labor certification sections relating to him are true and correct.

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.

In response to the director's request for evidence of September 26, 2012, the petitioner submitted an October 10, 2012 experience letter from president. The letter states that employed the beneficiary as an electronics engineer from January 2003 to December 2004, and as an assistant manager/electronics engineer from January 2005 to September 2009. The letter includes descriptions of his experience at the company.

The experience letter appears to confirm that the beneficiary, as of the petition's priority date, possessed the required 24 months of employment experience as an "electronics engineer." While the letter indicates that the beneficiary worked with GSM and CDMA technologies during his tenure at it does not specifically state that the beneficiary possessed knowledge of "CDMA 2000 1x & CDMA 2000 1xEV-DO technologies" as the labor certification requires.

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(B) requires that a skilled-worker petition include evidence that the beneficiary "meets the education, training or experience, *and any other requirements* of the individual labor certification ..." (emphasis added); *see also Madany*, 696 F.2d at 1015 (USCIS may not ignore a term of the labor certification). Because the experience letter fails to state that the beneficiary gained knowledge of "CDMA 2000 1x & CDMA 2000 1xEV-DO technologies" during his employment with the company, the letter does not establish that the beneficiary possessed the specific skills required in Part H.14 of the ETA Form 9089 labor certification by the petition's priority date.

On appeal, counsel argues that the petitioner's letter in support of the petition and copies of the beneficiary's resume and college transcript establish that he possessed knowledge of the specified technologies as of the petition's priority date.

The petitioner's letter in support of the petition is dated July 12, 2012 and is signed by the petitioner's CEO/president. The letter summarizes the beneficiary's educational background and prior employment history, stating that the beneficiary worked with CDMA and GSM technologies while employed with But the letter does not state that the beneficiary obtained knowledge of "CDMA 2000 1x & CDMA 2000 1xEV-DO technologies" until his employment with the petitioner. Specifically, the letter states that "[f]rom October of 2009, [the beneficiary] has been

working as an electronic engineer with [the petitioner] working on troubleshooting CDMA 800/1900 (CDMA2000 1x & CDMA 2000 1xEV-DO), GSM technologies, remediation procedures for board level, data processing and control of technical equipment and the inspection of electronic equipment, instruments, products and systems to ensure conformance to specifications, safety standards and applicable codes and regulations."

The petitioner's letter does not establish the beneficiary's knowledge of the specified technologies by the petition's priority date because the letter states that the beneficiary gained knowledge of the technologies through his employment with the petitioner. The petitioner indicates on the certified ETA Form 9089, which it also signed under penalty of perjury, that the beneficiary did not obtain the requirements for the offered position through his experience with the petitioner. Specifically, the petitioner states, in Part J.21 of Form 9089, that the beneficiary did not gain any qualifying experience with it in a position "substantially comparable"[4] to the job offered. The petitioner also states, in Part J.22, that it did not pay for any education or training necessary to satisfy the petitioner's job requirements. Thus, if the petitioner relies on the beneficiary's experience with it to qualify him for the job offered, the experience must be in a position that is not substantially comparable to the offered position.

But the petitioner indicates, in Parts H.6, 8, and 10 of the ETA Form 9089, that it will only accept experience in the offered position. The petitioner states: in Part H.6 that the offered position requires 24 months of experience in the job offered; in Part H.8 that no alternate combination of education and experience is acceptable; and in Part H.10 that experience in an alternate occupation is not acceptable. The terms of the labor certification therefore indicate that only experience in the offered position will meet the job requirements. Thus, whether the beneficiary's current position with the petitioner is considered substantially comparable to the offered position or not, the petitioner's statements on the labor certification indicate that the beneficiary's experience with it does not qualify him for the offered position.

A letter from the petitioner stating that the beneficiary gained knowledge of the specified technologies during his employment at would also fail to establish the beneficiary's qualifications for the position. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires letters from "employers" to demonstrate a beneficiary's experience qualifications for an offered position. Because the petitioner did not employ the beneficiary when he gained the qualifying knowledge of the technologies at the AAO would not consider the petitioner as an "employer" for purposes of complying with the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). The petitioner may also lack personal knowledge of the beneficiary's previous employment duties with rendering a statement from the petitioner about the knowledge he gained at unreliable.

The beneficiary's resume also fails to establish his knowledge of the required technologies as of the petition's priority date. The resume indicates that the beneficiary has experience with CDMA and GSM technologies. But, like the experience letter from president, the resume fails to

[4] The regulation at 20 C.F.R. § 676.17(i)(5)(ii) defines a "substantially comparable" job or position as "a job or position requiring performance of the same job duties more than 50 percent of the time."

specify that the beneficiary has knowledge of "CDMA 2000 1x & CDMA 2000 1xEV-DO technologies" as the labor certification requires.

Moreover, even if the beneficiary's resume stated his knowledge of the specified technologies, the resume would not be reliable evidence of the beneficiary's qualifications. Because the beneficiary created his resume, the document would not constitute independent, objective evidence of his qualifications. *See Matter of Ho*, 19 I&N Dec. at 591-92 (the petitioner must resolve inconsistencies in the record by independent, objective evidence); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998), *citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972) (going on record without corroborating, documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

Finally, the beneficiary's transcript from in South Korea also fails to specify the beneficiary's knowledge of "CDMA 2000 1x & CDMA 2000 1xEV-DO technologies" as the labor certification requires. The AAO therefore rejects counsel's argument that the petitioner's letter in support of its petition and the beneficiary's resume and college transcript establish his qualifications for the offered position.

Also, it is unclear from the record whether the beneficiary possessed 24 months of experience in the offered position of "mobile electronics technician." The descriptions of the beneficiary's experience with on the labor certification, the beneficiary's resume and the letter appear to reflect the duties of an electronics engineer, not a technician. The descriptions include duties that appear to differ in scope and nature from those of the offered position. For example, the beneficiary claims on the labor certification to have been "responsible" for developing structurally integrated electronic systems. The beneficiary's experience, as described on his resume, includes designing, developing, and manufacturing electronics and mobile phones. The letter from indicates the beneficiary performed similar duties to those listed on his resume. However, these duties are not the duties of the offered position, which include testing, troubleshooting and repairing mobile phones, not developing and designing them. Therefore, the record does not establish that the beneficiary possessed 24 months of experience in the offered position of "mobile electronics technician," as required by the labor certification. Further, this casts doubt on whether a *bona fide* job opportunity for a "mobile electronics technician" exists. *See Matter of Ho*, 19 I&N Dec. at 591 (doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the petition).

In describing his experience with the beneficiary also states on the labor certification that he performed work "for " The labor certification and the beneficiary's resume identify not as his only previous employer. The record does not explain the relationship, if any, between and The reference to on the labor certification casts doubt on the beneficiary's purported employment history, including the number of employers for whom he has worked and his dates of employment with those employers. *See Matter of Ho*, 19 I&N Dec. at 591 (doubt cast on any aspect of the petitioner's proof

may require the reevaluation of the reliability and sufficiency of the remaining evidence in support of the petition).

In addition, the record contains two "Certificates of Employment" from one dated April 15, 2009; and the other dated October 9, 2012. The employment certificates, however, state information inconsistent with the labor certification, the experience letter and each other. The labor certification, the experience letter and the April 15, 2009 certificate state that the beneficiary started employment with in January 2003. The October 9, 2012 employment certificate, however, states that he began work for the company on June 1, 2003. The unexplained discrepancies among the documents cast doubt on the beneficiary's true start date with and the reliability of the evidence of his qualifications. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (the petitioner must resolve inconsistencies in the record by independent, objective evidence).

Further, the labor certification and the experience letter state that the beneficiary's employment with ended in September 2009. But the October 9, 2012 employment certificate states that he left on August 20, 2009.[5] These unexplained discrepancies cast further doubt on the reliability of the evidence of the beneficiary qualifications for the offered position. *See Matter of Ho*, 19 I&N Dec. at 591 (doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the petition). The petitioner must resolve these inconsistencies with independent, objective evidence. *Id.*, at 591-92.

In conclusion, 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 skilled worker under section 203(b)(3)(A)(i) of the Act.

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.

---

[5] The April 15, 2009 employment certificate states that the beneficiary worked for from January 1, 2003 to April 15, 2009. As the certificate is dated April 15, 2009, the certificate does not appear to indicate that the beneficiary's employment with ended on April 15, 2009. Rather, it appears to indicate that, as of April 15, 2009, he continued to work for