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: OCT 2 4 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner describes itself as an amusement ride company. It seeks to permanently employ the beneficiary in the United States as a supervisor. 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 an ETA Form 9089, Application for Permanent Employment 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 May 15, 2006. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the minimum experience required to perform the offered position by the 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 Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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[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 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).

In evaluating the labor certification to determine the required qualifications for the position, United States 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 (9th Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: None required.
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: None accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: None listed.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a self-employed supervisor in the amusements business for two years in SC from January 2, 2002 until January 31, 2004. No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

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.

With the petition, the petitioner submitted a copy of an undated, signed experience letter from as Owner, on computer-generated letterhead ("first letter") stating that the company employed the beneficiary for "five years," from 1995 to 2000. The first letter states that the beneficiary's duties included "[h]andling a team of 25 employees, making sure they were happy at all times, and performing the jobs to our standards," "being outdoors at the park with the employees," and "[v]arious administrative duties, including filing, payroll etc." The address for is listed as The letter does not indicate the beneficiary's job title, and does not indicate whether the beneficiary worked full-time or part-time, or as a seasonal employee.[3]

[3] As detailed herein, Ms. indicated on appeal that she did not write or sign the first letter. Therefore, it cannot be accepted as a credible letter from the beneficiary's former employer under 8

Additionally, the first letter details experience that was not listed on the labor certification. Part K of the ETA Form 9089 requires the petitioner to list all jobs the beneficiary had held during the three years prior to filing the labor certification, and it also requires the petitioner to list any other experience that qualifies the beneficiary for the proffered job. On the labor certification, the petitioner listed the beneficiary's employment in SC, but it did not list her employment with in South Africa. Therefore, there is an inconsistency between the information listed on the labor certification regarding the beneficiary's prior qualifying experience and the documentation provided in support of the petition. 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). Evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence is evidence that is contemporaneous with the event to be proven and existent at the time of the director's decision.

On October 3, 2007, the director issued a Notice of Intent to Deny (NOID), and requested original employment letters and corroborating evidence of the beneficiary's employment with and self-employment, including payroll records, pay receipts, tax returns, or similar documents.[4] The petitioner responded to the NOID on November 1, 2007. The petitioner did not submit original employment letters. Instead, the petitioner submitted a copy of a second, signed letter from dated October 20, 2007, written on plain paper ("second letter"). The second letter states that Ms. was the original owner of from February 1994 to 2000 and that the company was sold in 2000. Ms. states that the beneficiary was employed at as a company supervisor during 1995 to the end of 1999, that she was a dedicated team leader with good organizational skills, that she worked with great diligence and attention, and that she was punctual, responsible and extremely hard working. The second letter further states the beneficiary was not issued a registered tax number as her earnings were less than ZAR 60,000[5] per year and people making less than that amount are exempt from tax payments. She states that the beneficiary "did pay PAYE during this period."[6] It is unclear how Ms.

C.F.R. § 204.5(l)(3)(ii)(A). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

[4] 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 labor certification, lessens the credibility of the evidence and facts asserted.

[5] The currency of South Africa is the Rand.

[6] Employees' tax in South Africa, which comprises of Pay-As-You-Earn (PAYE) and Standard Income Tax on Employees (SITE), refers to the tax required to be deducted by an employer from an employee's remuneration paid or payable. *See* http://www.sars.gov.za/TaxTypes/PAYE/Pages/default.aspx (accessed October 4, 2013).

provided this tax information for the beneficiary, as she sold the company seven years prior to writing the second letter, and the petitioner claims on appeal that such records are only kept for five years under South African law. The second letter does not indicate whether the beneficiary worked full-time or part-time, or as a seasonal employee. The second letter also does not detail the beneficiary's duties as a supervisor and does not give the address of Therefore, the second letter does not establish the beneficiary's 24 months of experience as a supervisor with

In its response to the NOID, the petitioner failed to submit any evidence of the beneficiary's self-employment in SC from January 2, 2002 until January 31, 2004, including payroll records, pay receipts, tax returns or similar documents. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Further, the petitioner failed to submit payroll records, pay receipts and/or tax returns from Mt. Amusement in response to the NOID. Instead, the petitioner submitted a letter dated October 18, 2007 from South Africa, stating that the beneficiary "was employed by and that "we have no personnel record for her on file as it is over five years old." The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).[7]

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[7] The regulation at 8 C.F.R. § 103.2(b)(2) states, in part:

> (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.
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> (ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

Mr. does not indicate how he is related to [8] Thus, it is not clear whether he prepared the company's tax returns, maintained its bookkeeping records, oversaw its human resources functions or otherwise gained knowledge about its employees and personnel records. Further, the letter does not indicate the beneficiary's job title or job duties at or the dates of her employment. The letter from Mr. is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor with

In response to the NOID, the petitioner also provided a copy of a character reference dated September 29, 2006, from stating that she has known the beneficiary for most of her life and that she is aware of the work that the beneficiary did "with her years" at The letter does not indicate the beneficiary's job title, job duties or work schedule at The letter from Ms. is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor with

The petitioner also provided a copy of a letter dated October 22, 2007, from a former co-worker of the beneficiary, advising that she worked for from 1996 to 1998 and that during her employment, the beneficiary was her supervisor. The letter does not indicate the beneficiary's job duties or work schedule at This letter is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor with

Further, the petitioner provided a copy of a character reference dated October 22, 2007, from stating that she has known the beneficiary since 1988 and confirming that the beneficiary worked as a supervisor at "for five years between 1995 and 1999." The letter does not indicate the beneficiary's work schedule at This letter is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor with

The petitioner also provided a copy of a letter dated August 22, 2007, from a former co-worker of the beneficiary, advising that he worked for from 1994 to 1996 and that during his employment, the beneficiary was hired as a team supervisor. The letter does not indicate the beneficiary's job duties or work schedule at The letter from Mr. is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor with

In its response to the NOID, the petitioner also submitted an excerpt from the South African Revenue Service (SARS) website indicating that anyone who receives income from employment that exceeds a specified annual equivalent (R60,000 for the 2008 year of assessment) must complete an income tax return in South Africa. It further states that anyone who receives commission or a travel

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[8] is over 1000 miles from South Africa, where was located. *See* http://maps.google.com/ (accessed October 4, 2013). It is unclear if had an office near from 1995 to 2000.

allowance must complete a tax return, irrespective of whether the annual equivalent is more than R60,000.[9] Additionally, the excerpt reviews the withholding requirements for employers on employees' income. It states that SITE is deducted by an employer from an employee's full-time employment income below the specific threshold for a year of assessment (R60,000 for 2007/8), and that PAYE is deducted from an employee's full-time employment income in excess of the SITE threshold for a year of assessment. Commission, travel allowances, and employment income of a person who works part-time (less than 22 hours per week) are subject to PAYE irrespective of the amount received. Thus, according to the SARS website, where any portion of an employee's earnings is subject to PAYE, he/she must complete a tax return even though the total earnings for the year of assessments does not exceed the filing threshold.

The second letter from Ms. states that the beneficiary "did pay PAYE" from 1995 to 1999. Therefore, pursuant to the excerpt from the SARS website provided by the petitioner, if the beneficiary was subject to PAYE, she would have been required to complete a tax return even if her total earnings for each year of assessment did not exceed the filing threshold.[10]

Even if the beneficiary did not file personal income tax returns in any year from 1995 to 2000, payroll records should have been prepared by for each of those years, paychecks and/or pay receipts should have been issued to the beneficiary for each of those years, and should have filed tax returns for each of those years. None of those records were provided in response to the NOID. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner's response to the NOID did not establish with independent, objective evidence that the beneficiary was employed for 24 months as a supervisor at

On March 8, 2010, the director issued a Request for Evidence (RFE) to the petitioner. The director requested, in part, additional evidence of the beneficiary's work experience. The petitioner responded to the RFE on April 8, 2010, and provided, in part, copies of the previously submitted letters from The petitioner also submitted excerpts from the internet regarding personal taxation in South Africa. One excerpt states that individuals whose annual income is less than "ZAR 60,000 are not liable to filing annual tax returns." The second excerpt states that there is a threshold that exempts employees from the requirement to file and pay tax in South Africa, and that the "tax-free threshold is currently ZAR 54,200 for those below the age of 65 and ZAR 84,200 for those aged 65 and older." However, the record contains no evidence to establish the beneficiary's earnings at no evidence

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[9] It is not clear whether the beneficiary earned any commissions and/or travel allowances during her employment with

[10] 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. at 591-592.

to establish the exemptions for filing income tax returns in South Africa from 1995 to 2000, and no evidence to establish that the beneficiary met the exemption requirements in each relevant year.

The director denied the petition and concluded that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date.

On appeal, the petitioner's counsel states that the director looked only to whether the claimed experience was included in the labor certification, and that the director did not give any weight to the fact that the beneficiary documented the qualifying experience at the time the petition was filed.[11] The petitioner's counsel states that the first letter from Ms.

> meets the regulatory requirement cited by [USCIS] in its decision, as it is a letter from [the beneficiary's] former employer, it includes the name, address and title of the writer, and it contains a specific description of the duties performed by [the beneficiary]. *See* 8 C.F.R. § 204.5(g)(1).

The petitioner's counsel also noted that the petitioner's former counsel provided inadequate assistance of counsel to the petitioner.[12] He states that "the fact that [the petitioner] was receiving advice from inadequate counsel further explains the reason that the company did not list all of [the beneficiary's] prior employment on the labor certification." However, the Form I-140 in this case is not signed by an attorney. Similarly, the ETA Form 9089 is not signed by an attorney. The record contains no evidence that the petitioner was represented by anyone other than its current counsel.

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[11] As previously noted, the AAO conducts appellate review on a *de novo* basis and considers all pertinent evidence in the record.

[12] Any appeal or motion based upon a claim of ineffective assistance of counsel requires:

> (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard,
> (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and
> (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not why not.

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the petitioner's current counsel claims that its former counsel was incompetent, the petitioner did not properly articulate a claim for ineffective assistance of counsel under *Matter of Lozada*. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a Notice of Intent to Dismiss, Request for Evidence and Notice of Derogatory Information (AAO's NOID/RFE) dated June 21, 2013, the AAO stated to the petitioner, in part:

> The second letter is inconsistent with Ms. first letter, as the first letter indicates that beneficiary's dates of employment with were 1995 to 2000. The second letter is also inconsistent with the beneficiary's Form G-325A, Biographic Information, signed by the beneficiary on August 6, 2007 and filed in support of her application to adjust status. The Form G-325 states that the beneficiary worked for from February 1995 to January 2000. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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). Please resolve these inconsistencies with independent, objective evidence of the beneficiary's employment with
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> Also, the signature of is visibly different on the first and second letters. Copies of the letters are attached. Please resolve this inconsistency with independent, objective evidence. *See id.*
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> Additionally, please explain why a supervisor who handled "a team of 25 employees" earned a salary that was so small, it did not require the issuance of a registered tax number to the beneficiary. *Id.*
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> In addition, on the Form G-325A, the beneficiary listed her last employment abroad as being with at from February 1995 until January 2000, and she lists her residence from January 1996 until January 2000 as The distance between the addresses in is over 1600 kilometers.[13] Please explain how the beneficiary lived in and worked over 1000 miles away in from January 1996 until January 2000. *Id.*

In response to the AAO's NOID/RFE, the petitioner's counsel states that the beneficiary's employment with was seasonal, as was open to the public from mid-September through mid-January. The petitioner's counsel also states that the beneficiary worked on behalf of for an additional six weeks prior to the opening of the season to procure employees from throughout South Africa for her employer for the upcoming season. The petitioner's counsel further states that the beneficiary lived with her brother in while she was

[13] *See* http://maps.google.com/ (accessed June 10, 2013).

working for and that she lived in during the majority of the calendar year.

Prior to its response to the AAO's NOID/RFE, the petitioner did not indicate that the beneficiary's employment with was seasonal, and none of the evidence submitted by the petitioner in support of the petition, the NOID and the RFE indicated that the beneficiary's employment with was seasonal. The petitioner did not indicate that the beneficiary's employment with was seasonal until the AAO pointed out the deficiencies in the evidence. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Further, none of the evidence submitted by the petitioner in support of the petition, the NOID and the RFE indicated that the beneficiary worked approximately four months each year in for and an additional six weeks each year in to procure employees for [14] 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'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In response to the AAO's NOID/RFE, the petitioner submits a statement dated July 10, 2013 from the beneficiary. The beneficiary states that her employment with from 1995 to 2000 was seasonal. She indicates that she worked six weeks of each season from her home in recruiting staff and then worked four months of each season in [15] She states that she does not remember the exact date that she stopped working for but that it was either at the end of December 1999 or the beginning of January 2000. The beneficiary's statement is self-serving and does not provide independent, objective evidence of her prior work experience. *See Matter of Ho*, 19 I&N Dec. at 591-592. 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. at 165.[16]

The petitioner also submits a statement from the beneficiary's brother, confirming that the beneficiary lived with him during the summer months from 1995-2000. This letter is not

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[14] Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

[15] The proffered job requires 24 months of experience in the proffered job of supervisor. The job duties of the proffered job are listed on the labor certification as "[s]upervise and coordinate activities of amusement ride workers." There is no indication that duties as a recruiter involved supervisory duties. If the beneficiary spent only four months of each year as a supervisor with she would not have earned 24 months of qualifying employment in the proffered job.

[16] Evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence.

independent, objective evidence of the beneficiary's 24 months of experience as a supervisor at

The petitioner also submits email correspondence from dated July 10, 2013. It states that Ms. let her secretary write and sign the first letter. The email states that Ms. wrote the second letter and signed it. Of the two employment letters submitted to the record from Ms. the first letter was not written or signed by its purported author. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Neither letter indicates that the beneficiary's employment with Mt. Amusement was seasonal, neither letter states that was open to the public from mid-September through mid-January, and neither letter states that the beneficiary worked as a recruiter for for 6 weeks prior to each season from her home in South Africa.

The petitioner's counsel states that pay receipts, tax returns, payroll records and similar documents are only kept for five years under South African law and that the records are no longer available. In support of this statement, the petitioner submits a letter dated May 15, 2013 from Registered Accounting Officer & Tax Practitioner with South Africa, stating that "the Tax Records of personal tax kept with the South African Revenue Services only date back five years. Anything older is no longer available." Mr. does not disclose his relationship to the beneficiary. If the beneficiary did not file tax returns in South Africa prior to her departure in 2000, it is unclear why she would require the services of a Registered Accounting Officer & Tax Practitioner, or how Mr. knows when she left South Africa. In addition, while his statement addresses the beneficiary's tax records, it does address the availability of pay receipts, tax returns and payroll records of The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).[17] The letter from Mr. is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor at

In response to the AAO's NOID/RFE, the petitioner also resubmits letters from As previously detailed, these letters are not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor at

The petitioner also resubmits the letter dated October 18, 2007 from As previously noted, this letter is not independent, objective evidence of the beneficiary's 24 months of experience as a supervisor.

The petitioner also resubmits excerpts from the internet regarding personal taxation in South Africa. As previously noted, even if the beneficiary did not file a personal income tax return in any year

[17] The petitioner did not provide a letter from SARS indicating that the beneficiary's tax records are not available.

from 1995 to 2000, payroll records should have been prepared by for each of those years, paychecks and/or pay receipts should have been issued to the beneficiary for each of those years, and should have filed tax returns for each of those years. None of these records were provided in response to the AAO's NOID/RFE. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. *Id.*

The petitioner has not established that the beneficiary obtained 24 months of experience as a supervisor prior to the priority date. Thus, the AAO affirms the director's decision 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. 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.