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

(b)(6)

[redacted]

DATE: DEC 12 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 a low income housing tax credit – residential housing limited partnership. It seeks to permanently employ the beneficiary in the United States as a tax credit administrator. 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).

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 July 31, 2002. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a U.S. master's degree or foreign equivalent as required by the terms of the labor certification.

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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

[1] 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).

> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is left to USCIS to determine whether the offered position and the beneficiary qualify for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

> 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). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[2] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
>
> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

[2] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

In the instant case, the petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).[3] 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.

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

[3] Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. In the instant case, the petitioner selected Part 2, Box f of Form I-140 for a skilled worker.

> If the petition 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 [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

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 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). 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. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] 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]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

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

EDUCATION
Grade School: N/A.
High School: N/A.
College: 6 years.
College Degree Required: Master's or equivalent.
Major Field of Study: Business Administration or relevant field.
TRAINING: None Required.
EXPERIENCE: None Required.
OTHER SPECIAL REQUIREMENTS: None.

The beneficiary must also 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 the instant case, the labor certification states that the beneficiary possesses a Master's degree in Personnel Management and Industrial Relations from , India, completed in 1991. The labor certification also states that the beneficiary possesses a Master's Degree in Economics from India, completed in 1988.

The record contains a copy of the beneficiary's Master's degree in Personnel Management and Industrial Relations and Master's Degree in Economics and transcripts from , India and , India.

The record contains the following educational evaluations:

- An evaluation from . The evaluation is dated July 12, 2010. The evaluation is signed by The evaluation describes the beneficiary's education as being the equivalent of a U.S. Bachelor of Arts degree in economics and one further year of study in economics and a Master of Business Administration degree in human resource management.

- An evaluation from . The evaluation is dated March 9, 2010. The evaluation is signed by . The evaluation describes the beneficiary's education as being the equivalent of a U.S. Master of Business Administration degree in human resource management.

- An evaluation from . The evaluation is dated July 1, 2010. The evaluation is signed by . The evaluation describes the beneficiary's education as being the equivalent of a U.S. Bachelor of Arts degree in economics and one further year of study in economics and a Master of Business Administration degree in human resource management.

- An evaluation from . The evaluation is dated July 8, 2010. The evaluation is signed by . The evaluation describes the beneficiary's education as being the equivalent of a U.S. bachelor's degree in economics and a master's degree in human resource management.

- An evaluation from . The evaluation is dated July 6, 2010. The evaluation is signed by The evaluation describes the beneficiary's education as being the equivalent of a U.S. Master of Science in Management degree with a specialization in human resources.

- An evaluation from . The evaluation is dated July 12, 2010. The evaluation is signed by . The evaluation describes the beneficiary's education as being the equivalent of a U.S. master's degree in economics and an additional master's degree in management with a specialization in human resources.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

We have reviewed EDGE created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions and agencies in the United States and in over 40 countries." *See* http://www.aacrao.org/About-AACRAO.aspx (accessed July 2, 2012 and incorporated into the record of proceeding). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D. Minn. March 27, 2009), a federal district court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision.

According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. , Director of , "AACRAO EDGE Login," http://aacraoedge.aacrao.org/index.php (accessed July 2, 2012 and incorporated into the record of proceeding). In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), a federal district court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), a federal district court upheld a USCIS conclusion that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also

noted that the labor certification itself required a degree and did not allow for the combination of education and experience. The reasoning in these decisions is persuasive.

EDGE's credential advice provides that the beneficiary's Master's Degree in Personnel Management and Industrial Relations and his Master of Arts in Economics represent the attainment of a level of education comparable to obtaining two bachelor's degrees in the United States. A copy of the EDGE credential advice was provided to the petitioner in our Notice of Intent to Dismiss (NOID) dated September 15, 2014.

Here, the evaluations are not persuasive in establishing that the beneficiary's education from India is equivalent to a U.S. master's degree. None of the evaluations compares the beneficiary's education in India to a U.S. master's degree program. Only the [redacted] and [redacted] evaluations address the actual courses of study followed by the beneficiary. However, the rationale behind these credit assignments is not substantiated. Most crucially, none of the evaluations is peer-reviewed or relies on peer-reviewed materials in reaching their unsubstantiated conclusions. Accordingly, in this matter, we will give deference to the peer-reviewed information provided by EDGE on the equivalency of the beneficiary's foreign education to a U.S. master's degree.

Counsel has previously stated that we should "consider the UNESCO Regional Conventions on the recognition of qualifications for standards of degree equivalency." The [redacted] evaluation relies on a UNESCO document. The relevant language in the UNESCO Regional Conventions relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

> 'Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree, or a two-year master's program following a three-year degree must be deemed equivalent to a U.S. master's, for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's education is, in fact, the foreign equivalent of a U.S. master's degree. The UNESCO recommendation does not address this issue.

In fact, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004)[4] provides:

> Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

Id. at 84 (emphasis added).

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a Master's Degree in Business Administration or relevant field.

On appeal, the petitioner, through counsel asserts that the use of the term "or equivalent" on the labor certification was intended to allow a combination of education and experience. Counsel further states that a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and "the AAO should note that [the beneficiary's] progressive work experience of much more than five years….would suffice, when added to his more than bachelor degree conceded by the AAO."[5]

Although the clearly stated requirements of the position on the certified labor certification application do not include alternatives to a U.S. master's degree or foreign equivalent degree, on appeal, the petitioner contends that the actual minimum requirements do include at least what the

[4] *See* http://unesdoc.unesco.org/Ulis/cgi-bin/ulis.pl?catno=138853&set=4A21BC53_1_64&database=new1&gp=0&mode=e&ll=5 (accessed November 30, 2011).

[5] 8 C.F.R. § 204.5(k)(2) states:

> A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

beneficiary has achieved through a combination of education and experience. The petitioner has provided a copy of the signed recruitment report required by 20 C.F.R. § 656, together with a copy of the request for reduction in recruitment letter, and a newspaper ad for the offered position.

The recruitment report and the newspaper job advertisement indicate that the petitioner is seeking a worker who possesses a Master's degree in Business Administration or its equivalent, and also possesses familiarity with the compliance requirements of the Federal and Missouri State Low Income Housing Tax Credit Programs. Nothing in the recruitment report or the advertisements indicates how the petitioner defines "or equivalent." Additionally the petitioner reported to the DOL that it had received nine resumes in connection to the offered position. The petitioner rejected seven of the resumes, because it found that the applicants lacked knowledge and familiarity with Federal and State Housing Credit Programs. The petitioner also rejected one resume because the applicant did not possess the required degree.

The DOL has provided the following field guidance related to this issue: when the Form ETA 750 indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the [redacted] "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent," "we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor's degree, "the employer must specifically state on the ETA 750, Part A as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job." *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). State Employment Security Agencies (SESAs) should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). Finally, DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [U.S. Citizenship and Immigration Services (USCIS)] to accept the employer's definition." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

The petitioner did not specify on the Form ETA 750 that the minimum academic requirements of six years of college and a master's degree or equivalent might be met through a combination of lesser

degrees. The labor certification application, as certified, does not demonstrate that the petitioner would accept a combination of degrees and/or experience that are individually all less than a U.S. master's degree or its foreign equivalent when it oversaw the labor market test. Nor does the recruitment report or advertisements indicate that U.S. workers were put on notice that they might qualify for the proffered position with anything less than a U.S. master's degree or its foreign equivalent.

Thus, the petitioner has failed to establish that the terms of the labor certification are ambiguous and that it intended the labor certification to require less than a U.S. master's degree or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers.

We note that, even if the petitioner had established its intent to accept a combination of education and experience in lieu of a U.S. master's degree or foreign equivalent degree, the record does not establish that the beneficiary possesses the equivalent of an advanced degree (Master's degree) pursuant to 8 C.F.R. § 204.5(k)(2) , as claimed by the petitioner.

As noted above we find that the beneficiary possesses two foreign bachelor's degrees equivalent to two degrees earned from an accredited U.S. college or university, one in 1991 and the other in 1988.

The labor certification states that the beneficiary qualifies for the offered position based on experience as:

- General Manager/ Tax Credit Administrator with the petitioner from January 1999 until present.
- Senior Personnel Manager with [redacted]., in India from August 1995 until February 1996.
- Senior Personnel Administrator with [redacted] from July 1991 until July 1995.

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(g)(1) states:

> (1) General. Specific requirements for initial supporting documents for the various employment-based immigrant classifications are set forth in this section. In general, ordinary legible photocopies of such documents (except for labor certifications from the Department of Labor) will be acceptable for initial filing and approval. However, at the discretion of the director, original documents may be required in individual cases. Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by

> the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered

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.

The record contains an experience letter from [redacted] President/General Partner on the petitioner's letterhead stating that the company employed the beneficiary as a Tax Credit Administrator from January 28, 1998 until August 20, 2012. However, the letter cannot be used to establish the beneficiary's progressive work experience because the work experience was earned with the petitioner. We will consider employment experience prior to the date the beneficiary began employment with the petitioner.[6]

The record also contains an experience letter from [redacted] Vice President (Operations) and Factory Manager on [redacted] India letterhead stating that the company employed the beneficiary as an Assistant Manager (Personnel) from August 1995 to February 1996.

The record also contains copies of the beneficiary's hiring documents with [redacted] India. These documents establish that the beneficiary was employed as a Personnel and Administration Officer from August 1, 1992 to July 28, 19950.

In support of the beneficiary's five years of progressive work experience, the record contains two affidavits drafted by the beneficiary on October 8, 2012. The beneficiary provides his job duties with [redacted], India and [redacted] India and that all attempts to obtain experience letters from these companies have been unsuccessful. The record contains no evidence of the beneficiary's attempts to obtain additional information from his previous employers. The beneficiary's affidavits are self-serving and do not provide independent, objective evidence of his prior work experience. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(states that the

[6] This position is supported by the Board of Alien Labor Certification Appeals (BALCA). *See Delitizer Corp. of Newton,* 88-INA-482, May 9, 1990 (BALCA). *Delitizer* determined that 20 C.F.R. § 656.21(b)(6) does require that employers establish "the 'dissimilarity' of the position offered for certification from the position in which the alien gained the required experience." *Delitizer Corp. of Newton,* at 4. In its decision, BALCA stated that Certifying Officers should consider various factors to establish that the requirement of dissimilarity under 20 C.F.R. § 656.21(b)(6) has been met, and that, while Certifying Officers must state the factors considered as a basis for their decisions, the employer bears the burden of proof in establishing that the positions are dissimilar. *Delitizer Corp. of Newton,* at 5. In the instant case, the beneficiary did not represent on Form ETA 750, Part B that he had been employed with the petitioner in any position other than the proffered position. As discussed above, in order to utilize the experience gained with the employer, the employer must demonstrate that the job in which the alien gained experience was not similar to the job offered for certification. *See Delitizer Corp. of Newton.* Therefore, we cannot consider the beneficiary's experience gained with the petitioner as qualifying experience to meet the requirements of the labor certification by the priority date.

petitioner must resolve any inconsistencies in the record by independent, objective evidence). 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 California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). However, even if we accepted this as evidence of the beneficiary's prior experience, the total experience claimed is less than five years.

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

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.