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

U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 08 004 58760

Office: NEBRASKA SERVICE CENTER

Date: SEP 08 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, arts or business, or as a member of the professions holding an advanced degree. The petitioner seeks employment as an industrial engineering manager, translator, and voice-over performer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel indicates that a brief and further evidence will be forthcoming within 30 days. To date, over a year after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the petitioner qualifies for the classification sought. We will revisit this finding later in this decision. The sole issue raised by the director is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien (or equivalent sections of ETA Form 9089), in duplicate. The record does not contain this required document, and

therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not raise this issue. We will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In a statement accompanying the initial submission, counsel explains the waiver application:

[The petitioner] currently has neither a firm job offer nor an employer completed labor certification. . . .

[The petitioner's] professional experience is in Industrial and Systems Engineering, with a long history in automotive engineering. Additionally, [the petitioner] is completely bilingual, at high levels of professional proficiency, working toward advanced translation certification in both medical and legal certified interpreting. . . .

Further, [the petitioner's] impact on clients and employers is "National in Scope." [The petitioner's] previous clients and employers built automobiles for national, multi-national[,] regional and international markets. Products designed by and decisions implemented by [the petitioner] are vehicles, traversing all of the roads of Mexico, Latin America, and in the case of those imported, the United States and other countries. Additionally, [the petitioner's] translation services were used internationally by Visteon for the production of training and safety materials, videos and documentation, and externally for marketing materials, again with a national and international reach. Also, as a side note, [the petitioner's] ability to translate and provide voice-over in both Spanish and English has been utilized by clients such as the Queretaro Regional Air Authority, both in marketing materials with a nationwide reach, and in-airport materials and announcements, with an international traveler base.

Finally, if Labor Certification were required of [the petitioner], the national interest would be adversely affected. Not only is there a current labor shortage and positions available for engineering Managers with automotive industry experience, there is a current labor shortage for bilingual managers, and certified translators and interpreters. [The petitioner's] knowledge, experience, and technical and language skills are unmatched by most, and his ability to be immediately productive make him immediately contributory in both intrinsic and extrinsic value to the national interest, and to delay his application for lack of a labor certification would deny the United States the immediate benefit of his engineering, management, and language arts knowledge and experience at both regional and national levels.

Counsel, above, described several different occupations – industrial engineering, translation, and voice-over work. Not all aliens are eligible to apply for the national interest waiver; it is limited, by law, to members of the professions holding an advanced degree and aliens of exceptional ability in the sciences, arts or business. The petitioner must specify his intended occupation, and establish either that the occupation is a profession in which the petitioner holds an advanced degree or its defined equivalent, or that the occupation falls within the sciences, arts or business and he has exceptional ability in that occupation. On the Form I-140 petition, the petitioner specified his occupation as "Bi-Lingual Industrial Engineering Manager," and his job title as "Industrial Production Manager." We will

therefore focus more on this aspect of the petitioner's work, and less so on his translation and voice-over work.

With respect to counsel's reference to "a current labor shortage," the labor certification process exists to address such shortages. *See Matter of New York State Dept. of Transportation* at 218. Therefore, an asserted worker shortage would appear to be an argument in favor of obtaining, rather than waiving, a labor certification.

The petitioner submitted copies of certificates and other documents relating to his engineering work for various businesses in Mexico and the United States. These materials relate to the petitioner's qualifications and experience, but do not distinguish the petitioner from others in his field, or otherwise establish that a waiver of the job offer/labor certification requirement would serve the national interest.

The petitioner submitted three letters that related at least in part to employment. [REDACTED] Staffing Resources Manager of CAEtech, Farmington Hills, Michigan (an automotive supplier), wrote: "We found your resume on Monster.com. We are very interested in your qualifications and background. We continue to seek qualified professionals for both contract and direct hire opportunities." This is a rather general statement of interest.

President of T & T Tools, Inc., Spring Lake, Michigan, wrote a rather more specific letter:

It was a pleasure talking with [your spouse] and you at the BBQ last week. As I mentioned, T & T Tools, Inc. is very interested in the opportunity to expand our business into Mexico and Central America, [and] I believe your skills and abilities [would] assist in this expansion.

It would be appreciated if you could arrange to visit our operation in Spring Lake, Michigan so that we [can] further discuss a strategy aimed toward international expansion.

The third letter is clearly from a longtime acquaintance of the petitioner, referring to "the good old times as teenagers." [REDACTED] President of Drum Drying Resources, Fremont, Michigan, wrote:

I just wanted to let you know that it was great seeing you again after such a long time. You're still the same person from back in the 70's, just older. . . . Amy and I enjoyed your company and we found our discussion on the business opportunities in Mexico to be quite interesting.

As you know, DDR is attacking a niche market within the realm of machine manufacturing for the food processing industry, and Mexico/Latin America definitely have a need for this type of product. With your experience and help, I believe we can launch a successful sales operation down there. The insight you have from your past

experience in the autoindustry [*sic*], coupled with your knowledge and experience in Latin America will be invaluable in laying the groundwork necessary to expand in Mexico and Latin America[.]

The above letters indicate that some businesses in Michigan considered that the petitioner may have skills useful to them. They do not, however, establish that the petitioner merits the special additional benefit of an exemption from the job offer requirement that normally applies to the classification that the petitioner has chosen to seek.

The record shows that, on February 22, 2007, the petitioner ordered two volumes of *Law and the Courts*, as well as a pocket-size copy of the United States Constitution. Eight days later, on March 2, 2007, the petitioner took a written interpreter's examination administered by the Michigan State Court Administrative Office Foreign Language Certification Program. He scored 73% on the examination; the minimum passing score is 80%. The letter advising the petitioner of the test results informed him that he would be allowed one more opportunity to take the test, "but not before March 2008." Nevertheless, in a résumé, the petitioner stated: "Although I am not yet certified, I consider myself capable of performing as a Court Interpreter, as well as a Telephone Interpreter." A crucial purpose of the certification process is to ensure that workers in a given field meet objective standards of competency, rather than rely solely on their subjective assessments of their own abilities. While the petitioner considers himself qualified to act as a court interpreter, clearly the court disagreed.

We note that, on his Form I-485 adjustment application, the petitioner identified himself as a "lay member" of the American Bar Association, offering "credentialed legal and para professional translation and interpretation." It is not clear how the petitioner is "credentialed," as the record proves that the State of Michigan denied him a court translator's credentials.

On March 20, 2008, the director issued a request for evidence. The director instructed the petitioner to submit evidence of the national scope of his proposed work, and to establish that he has "had a degree of influence on [his] field that distinguishes [him] from others with comparable academic/professional qualifications." In response, the petitioner submitted a statement from counsel that is virtually identical to the statement that had accompanied the initial filing, with the addition of a paragraph indicating that the petitioner "is currently involved with a drum drying manufacturer in Michigan." Counsel stated: "The clients of Drum Drying Resources are nationwide, with facilities in Arizona, Montana, Michigan, and several other locations." Counsel claimed that Drum Drying Resources is the only remaining United States-based company in its field.

The petitioner stated that he has "been providing consulting services to Drum Drying Resources, LLC and to T & T Tools, Inc." The petitioner stated that his work at Drum Drying Resources includes interacting with customers to determine their needs, monitor order fulfillment, supervise installment, and so on. The petitioner identified various clients in the food and chemical industries who use drum drying technology in the preparation of various products. The petitioner asserted that his work with T & T Tools, Inc., involved developing strategies to facilitate the company's efforts to penetrate the Mexican and Latin American markets.

There is no evidence that the petitioner was working for either of the two named businesses at the time he filed the petition; the initial submission contained only expressions of interest from officials of the two companies. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The petitioner submitted background information about Drum Drying Resources, T & T Tools, and their clients. These materials do not and cannot establish that it is in the national interest for the petitioner, rather than a qualified United States worker, to work for those companies.

The petitioner submitted five new letters. The body of one letter, from _____ of Hardt Chemical, North Wales, Pennsylvania, reads, in its entirety:

Thank you again for your assistance with this drying project. As you requested, I have enclosed samples of two liquids that I am trying to drum dry. I have also included a sample of the competitive material.

Any comments would be much appreciated.

This letter does little except to establish that the petitioner works in the drum drying industry.

_____ Director of A Cuadro Producciones, Corregidora, Mexico, acknowledged the petitioner's "collaboration as a voice-over specialist in diverse movie and professional video productions . . . for over 10 years." As noted previously, this voice-over work appears to be entirely distinct from the petitioner's industrial engineering career.

The remaining three letters are all from officials of Visteon Corporation, Van Buren Township, Michigan. _____ Senior Manager for Restructuring Operations, referred to the petitioner as his "former business associate" and stated:

Most recently as a Quality Manager, [the petitioner] was very successful at managing the quality process and discipline at Visteon's plant in Queretaro, Mexico. His focus and dedication led to a successful restructuring event at the plant, and his leadership contributed significantly to a continued high quality of manufacturing during what was then a very critical period of time at his plant.

[The petitioner's] work in Human Resources, Engineering, and then as Engineering Mgr. and Quality Mgr. was a major factor in the continued growth of our company.

The letters from _____ and _____ are essentially identical. Both letters indicated that the petitioner "was a very dedicated and successful manager within

the company and was well respected by other areas with Visteon Corporation,” and that the petitioner “has the ability to help a company or organization succeed.”

The director denied the petition on May 31, 2008. The director stated “it is unclear whether the petitioner is pursuing translating opportunities or engineering,” and that the petitioner had not established his influence in his field. The director also noted the petitioner’s submission of two nearly identical witness letters. Regarding the petitioner’s translating work, the director noted that the petitioner did not pass the court interpreter certification examination in March 2007.

On appeal, counsel asserts that the petitioner “has been highly successful in Mexico as a process and systems engineering executive while simultaneously being a highly successful & sought after interpreter and voice-over artist. He intends the same here.” The petitioner has established some success in his field(s), but the evidence submitted does not readily support the claim that he has been “highly successful & sought after.”

Regarding the petitioner’s failing grade in the court interpreter examination, counsel states that the court interpreter examination “is a highly specialized examination directed specifically to legal terminology, and not to a person’s general ability to be an effective translator.” Nevertheless, the examination results offer a telling contrast between the petitioner’s opinions of his own abilities, and objective measurement of those abilities. The examination appears to have revealed deficiencies in the petitioner’s ability to translate “legal terminology,” but nevertheless the petitioner wrote “I consider myself capable of performing as a Court Interpreter.”

Counsel describes aspects of the petitioner’s career, and asserts that the petitioner has skills above the minimum requirements for the occupation, but does not explain why it is in the national interest (as opposed to his employer’s interest) to waive the job offer/labor certification requirement. As we have already noted, it cannot suffice simply to assert that the petitioner has above-average job skills.

Counsel protests that the director “gives little no weight [*sic*] to letters of recommendation supplied with the petition.” The director, in the denial notice, noted several deficiencies in those letters (including common authorship of at least two letters); counsel does not address these points on appeal. Counsel states that more comprehensive letters are forthcoming, but to date we have received nothing to supplement the appeal.

The record shows that the petitioner has had a productive career, with some success both in production management and in translation/voice-over work. The record, however, does not offer objective support for the petitioner’s opinion of his talents and the importance of his work. The petitioner has not established that he so stands out from his peers in importance or influence that a waiver of the job offer requirement would serve the national interest. We affirm the director’s decision to deny the waiver.

Our agreement with the director’s decision is, by itself, sufficient grounds to warrant dismissal of the appeal. Review of the record, however, reveals another matter of concern. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or

review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At no time in this proceeding has either counsel or the petitioner specified whether the petitioner seeks classification as a member of the professions holding an advanced degree, or as an alien of exceptional ability in the arts, sciences or business. Each classification has specific requirements; it cannot suffice simply to declare that the petitioner seeks classification under section 203(b)(2) of the Act.

In the denial notice, the director stated: “The self-petitioner desires Service approval in the position of Industrial Production Manager. The Service accepts that an advanced degree or exceptional ability is required by the occupation, and that the petitioner holds the requisite advanced degree or exceptional ability as required under Service law.” The record does not appear to support this finding.

The regulations at 8 C.F.R. §§ 204.5(k)(2) and (3) set forth key definitions and requirements for the two classifications:

(2) Definitions. As used in this section:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

(3) Initial evidence. The petition must be accompanied by documentation showing that the alien is a professional holding an advanced degree or an alien of exceptional ability in the sciences, the arts, or business.

(i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

(ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

On Form I-140, the petitioner indicated that his intended occupation of Industrial Production Manager has the Standard Occupational Code (SOC) 11-3051. According to the Bureau of Labor Statistics, only 43% of workers in that occupation ages 25-44 hold bachelor's degrees.¹ Such an occupation is clearly not a profession requiring at least a bachelor's degree for entry into the occupation.

Elsewhere in the record, the petitioner submits information regarding SOC 11-9041, corresponding to the job title "Engineering Managers." If the petitioner is indeed an engineer, then he is a member of the professions because engineers are listed at section 101(a)(32) of the Act. The petitioner does not explain why he has claimed two different job titles with two different SOCs. The petitioner has, therefore, effectively made contradictory claims as to whether or not he is a member of the professions.

¹ Source: <http://online.onetcenter.org/link/details/11-3051.00#Education> (printout added to record August 25, 2009).

Furthermore, even if the petitioner is a member of the professions, he must hold an advanced degree or its defined equivalent. The petitioner admits that he has not completed his studies for a master's degree, and therefore he must show that he holds a United States baccalaureate degree or a foreign equivalent degree, followed by at least five years of progressive experience. In 1984, the petitioner received an *Ingeniero Industrial y de Sistemas* degree from the *Instituto Tecnológico y de Estudios Superiores de Monterrey*, Mexico. The petitioner claimed that this degree is equivalent to a Bachelor of Science degree, but he submitted no credential evaluation to that effect from a competent evaluator.

Of particular concern is a High School Equivalency Certificate issued by the Michigan Department of Labor & Economic Growth, indicating that the petitioner "has successfully completed all the requirements prescribed by the American Council on Education for the General Education Department Examination." According to this document, the State of Michigan did not consider the petitioner to have the equivalent of even a high school education until he completed the equivalency requirements. The certificate is dated June 8, 2007. This indicates that a state government in the United States did not consider the petitioner to have the equivalent of a high school education, let alone a college degree, before 2007. The evidence submitted does not permit us to conclude, with any confidence, that the petitioner's 1984 Mexican degree is equivalent to a United States bachelor's degree.

We stress that this is not a definitive finding that the petitioner is not a member of the professions holding an advanced degree. Rather, it is a finding that the petitioner has not met his burden of proof to establish that he is one. It may be that he qualifies for that classification, but failed to submit sufficient evidence to show this.

There remains the classification of alien of exceptional ability in the sciences, arts or business. The petitioner has not explained whether his intended work is a science, art, or business. If it does not fit into one of those categories, then the classification is not available to him. (Not every occupation is a science, art, or business.)

As listed above, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

The petitioner has not specifically claimed to have met certain criteria of exceptional ability, but the petitioner's claims and evidence relate to those standards, as discussed below.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

We have already discussed the petitioner's academic background, and explained why questions about that background prevent us from making firm findings about the significance of the petitioner's educational background. He states that he has nearly completed a master's degree, but he nevertheless took a GED high school equivalency examination just two months before the petition's filing date. The scant and conflicting evidence prevents us from finding that the petitioner meets this requirement.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The petitioner satisfies this requirement, having documented more than ten years of employment in industrial management. (His translating and voice-over work are admittedly part-time side ventures.)

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The petitioner has documented his participation in numerous training classes, but he has not shown that he possesses a level of licensure or certification that sets him apart from others in the field.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The petitioner has not established that his earnings have significantly exceeded the norm in his occupation.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner has not established any memberships that require or demonstrate a degree of expertise significantly above that ordinarily encountered in his occupation.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

Counsel cites a "certificate acknowledging [the petitioner's] receipt of the Shingo Prize, a very high level national prize recognizing outstanding professional achievement." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA

1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We must examine the evidence submitted to support this claim.

The petitioner submitted no background information or documentation about the Shingo Prize. The petitioner submitted only the certificate itself, in Spanish. 8 C.F.R. § 103.2(b)(3) requires the petitioner to submit a certified translation with foreign-language documents, but the petitioner did not provide any translation, despite his claim to be a translator himself. Without the required translation, the certificate does not even show that the petitioner won the Shingo Prize; he may have received the certificate for being involved with the prize committee. (The certificate refers to the petitioner's "*participación*.") Repeated references to "*Región Centro de Mexico*" seem to indicate that the prize was regional, not national as counsel claimed. An English-language legend on the certificate reads: "Shingo Prize for excellence in manufacturing." This suggests that the prize is awarded to companies rather than to individuals at those companies.

Because the petitioner has not proven anything except that he possesses an untranslated certificate relating to the Shingo Prize, the petitioner has not established that he received "a very high level national prize." Counsel's unsupported claims regarding the nature and significance of the certificate raise broader doubts about the credibility of the claims and assertions made in support of the petition. 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). 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. *Id.* at 582, 591-92. In light of the petitioner's unsupported (and likely inaccurate) claims regarding the Shingo Prize, we can give little weight to the many other exhibits that the petitioner has submitted without explanation or background.

For the reasons explained above, the petitioner has not demonstrated that he qualifies for classification either as a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, arts or business.

The appeal will be dismissed 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.