



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date:

DEC 04 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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a software consultancy and application development company. It seeks to employ the beneficiary permanently in the United States as a Senior Laboratory Database Administrator pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not demonstrated that the beneficiary had experience in the job offered as required by the ETA Form 9089. The director further found that the petitioner failed to establish that the beneficiary satisfied the educational requirements as stated on the ETA Form 9089. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely 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.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further 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." *Id.*

The AAO maintains plenary power to review each appeal on a *de novo* basis. *See, 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The ETA Form 9089, part H, states that the position requires a Master's Degree in Neuroscience and 36 months experience in the job offered. Part H.9 states that the petitioner will accept a "foreign educational equivalent."

The beneficiary possesses a Bachelor of Science degree in Medical Biochemistry from [REDACTED] and a Master of Science degree in Neuroscience from the [REDACTED]. Thus, the issue is whether the beneficiary's Master of Science Degree from the [REDACTED] is equivalent to a United States master's degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

In support of the petition, the petitioner submitted an evaluation of the beneficiary's degrees prepared by [REDACTED]. The evaluation concludes that the beneficiary "has the equivalent [of] a bachelor's degree in biochemistry with a specialization in medical biochemistry and a master's degree in neuroscience from an accredited college or university in the United States."

In addition, in determining whether the beneficiary possessed a U.S. bachelor's degree in commerce/accounting or a foreign equivalent degree, this office has reviewed the Electronic [REDACTED] created by the [REDACTED] according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." 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." According to the registration page for [REDACTED] is "a web-based resource for the evaluation of foreign educational credentials."

[REDACTED] provides a great deal of information about the educational system in the United Kingdom, and it confirms that a Bachelor of Science degree awarded after three of four years of university study represents "attainment of a level of education comparable to a bachelor's degree in the United States." [REDACTED] further confirms that a Master of Science degree, awarded after one to three years of post-graduate study and defense of a thesis, represents "attainment of a level of education comparable to a master's degree in the United States." Therefore, the beneficiary's Master of Science degree from the [REDACTED] may be deemed as a foreign equivalent degree to a U.S. master's degree. The portion of the director's denial based on the petitioner's failure to establish that the beneficiary meets the educational requirements for the position as set forth in the ETA Form 9089 is withdrawn.

As noted above, the director also denied the petition because the petitioner failed to demonstrate that the beneficiary had experience in the job offered as required by the ETA Form 9089. Part H Item 6 of the ETA Form 9089 indicates that the 36 months of experience in the job offered are required for the position. The beneficiary's work experience is listed in Part K of the ETA Form 9089. The beneficiary's experience is listed in Part K as follows:

Employer	Position	Dates of Employment
[REDACTED]	Clinical Data Scientist	February 25, 2005 – February 25, 2008
[REDACTED]	Clinical Data Scientist	March 22, 2004 – February 25, 2005
[REDACTED]	Quality Control Assistant	March 17, 2003 – October 17, 2003

	Clinical Data Scientist	May 13, 2002 – November 1, 2002
	Medical Lab Assistant	April 8, 2002 – May 10, 2002
	Healthcare Assistant	July 1, 1999 – January 31, 2002

It is noted that the ETA Form 9089 in this case was filed on April 13, 2006. Therefore, although the ETA Form 9089 states that the beneficiary was employed by the petitioner, [REDACTED] as a [REDACTED] from February 25, 2005 until February 25, 2008, this latter date is obviously incorrect. It also appears that the start date listed on the ETA Form 9089 may be incorrect as the record contains an offer letter from the petitioner to the beneficiary dated March 1, 2005. Further, the offer letter states that the beneficiary is being offered employment as a “Staff Consultant,” not as a Clinical Data Scientist as listed on the ETA Form 9089. Because of these inconsistencies, it is unclear if the beneficiary was ever employed by the petitioner as a Clinical Data Scientist and, if she was so employed, for how long.¹ 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).

Prior to the denial, on December 22, 2006, the director issued a request for evidence (RFE), requesting, among other things, “evidence to establish that the beneficiary met the experience requirements of the labor certification by April 13, 2006 [the priority date].” The RFE further specified “Evidence of experience must be in the form of letter(s) from the beneficiary’s current or former employer(s) giving the name, address, and title of the employer and a description of the experience of the beneficiary, including the dates of employment and specific duties.” In response, counsel submitted offer letters from [REDACTED]. As noted by the director, these offer letters did not describe the specific duties of the beneficiary nor did they list the exact dates of employment. Therefore, the director found, the letters did not establish that the beneficiary had 36 months of experience in the job offered as required by the ETA Form 9089.

On appeal, counsel has submitted **experience letters** from [REDACTED] and from [REDACTED] which provide the dates of the beneficiary’s employment. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO

¹ Part J Item 21 of the ETA Form 9089 asks “Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?” In the instant case, the petitioner answered “No” to this question. As noted above, the ETA Form 9089 also indicates that the proffered position requires 36 months in the job offered. Therefore, it does not appear that the petitioner is relying on the beneficiary’s experience as a Clinical Data Scientist with [REDACTED] to qualify for the proffered position.

will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

Even if this office were to consider the experience letters submitted on appeal, they would be insufficient to establish that the beneficiary met the qualifications listed on the ETA Form 9089. First, the letters fail to provide a specific description of the duties performed by the beneficiary as required by 8 C.F.R. §204.5(g)(1). Further, the letters represent 18 months of experience, rather than 36 months of experience as required by the ETA Form 9089. Therefore, the letters are insufficient to establish that the beneficiary had the experience specified on the labor certification as of the priority date. The petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position with 36 months of experience in the proffered position. This portion of the director's decision is affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.