**U.S. Citizenship
and Immigration
Services**

℔5

Date: **OCT 0 9 2012** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
  Beneficiary:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an enterprise IT software systems business. It seeks to employ the beneficiary permanently in the United States as a business system analyst 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. Upon reviewing the petition, the director determined that the beneficiary did not meet the job qualifications stated on the labor certification. Specifically, the director determined that the labor certification required a bachelor's degree in engineering, computer science or math and sixty months of experience in the proffered job, business systems analyst. The director further determined that the petitioner submitted evidence to establish that the beneficiary was awarded a bachelor's degree in engineering but that the petitioner failed to demonstrate that the beneficiary meets the experience requirements of the position.

On appeal, counsel asserts that the beneficiary meets the minimum requirements required for the position.

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 petitioner has submitted evidence to show that the beneficiary possesses a bachelor's degree in engineering. The petitioner has also submitted employment letters pertaining to the beneficiary's work experience. The issue in this case is whether the beneficiary's degree and experience constitute a U.S. master's degree or its foreign equivalent degree.

As noted above, the DOL certified the ETA Form 9089 in this matter. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified, and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See 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 application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Evidence of qualifying experience shall be in the form of letters from former employers which include the name, address, and title of the writer and a specific description of the duties performed. If such evidence is unavailable, other documentation relating to the experience will be considered. 8 C.F.R. § 204.5(g)(1).

In this matter, Part H, line 4, of the labor certification reflects that a bachelor's degree in engineering is the minimum level of education required. Line 6 reflects that 60 months of experience in the job offered is required for the job. Line 7-A reflects that an alternative field of study (computer science or math) is acceptable. Line 8 reflects that no alternative combination of education or experience is acceptable. Line 9 reflects that a foreign educational equivalent is acceptable. On Line 11, the petitioner described the job duties as:

- Analyze requirements, research, design, test & implement Wallstreet Systems Back Office for Foreign Exchange, Money Markets & Derivatives using ORACLE, SQL, IBM MQ Series & Swift Messaging.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's five years of work experience in the job offered, in addition to his experience with the petitioner, he represented the following:

- That he was employed by ███████████ as a business systems analyst from December 1, 2007 to February 28, 2009, and that his job duties consisted of "Analyze requirements, research, design, test & implement Wallstreet Systems Back Office for Foreign Exchange, Money Markets & Derivatives using ORACLE, SQL, IBM MQ Series & Swift Messaging."

- That he was employed by ███████████ as a business systems analyst from November 1, 2002 to November 30, 2007, and that his job duties consisted of "Analyze requirements, research, design, test & implement Wallstreet Systems Back Office for Foreign Exchange, Money Markets & Derivatives using ORACLE, SQL, IBM MQ Series & Swift Messaging."

The petitioner submitted the following employment letters:

- A letter dated June 24, 2010 from ███████████████████ who stated that the beneficiary worked for him on projects around the Wallstreet Systems application at ██████████ from July 2005 to November 2007, and that he tested and implemented Wallstreet Systems front and back office components for FX, money markets & FX derivatives using technologies like Oracle, SQL, IBM MQ Series and financial messaging like Swift.

- A letter dated July 14, 2010 from ██████████ product director of ██████████ ██████ who stated that he worked with the beneficiary from July 20, 2009 to July 2010 and that during that time the beneficiary tested and implemented Wallstreet Systems Front and Back Office components for FX & FX derivatives using technologies like Oracle, SQL, IBM MQ Series and financial messaging like Swift.

- Letters dated June 30, 2010 and March 1, 2011 from ███████████ of ██████████████ who stated that he worked with the beneficiary while they were both employees of ██████████ from January 2003 to December 2004 at the client cite ████████ to implement the Wallstreet Systems Front and Back Office for money markets and securities; and from October 2005 to November 2007 at the client cite ██████████████ to implement projects around the Wallstreet Systems Front Office and Back Office for FX. The declarant further stated that the beneficiary tested and implemented Wallstreet Systems Back Office for FX, money markets, FX derivatives & securities using technologies like Oracle, SQL, IBM MQ Series and financial messaging like Swift.

The petitioner submitted copies of Forms W-2 issued by ████████████████ to the beneficiary in 2005 and 2007.

The petitioner submitted the following documents on appeal:

- A press release from the financial news service PR Newswire – ███████ dated April 4, 2008 in which it is announced the name change from ████████ to ████████████████████

- A screen shot of the Financial Services page of the ████ website which indicated ██████████████████ name changes to ████████████ ████████████

- A letter dated July 1, 2007 from the chief operating officer of ██████████ concerning the beneficiary's annual performance and compensation review for the fiscal year ending March 31, 2007.

- A letter dated March 7, 2011 from ████████████████ The letter indicates that, based upon the company records, the beneficiary was employed as a business analyst from November 2002 to November 28, 2007, and that he was responsible for "analysis, development, testing and implementation of banking software applications...."

The letters submitted as evidence of the beneficiary's work experience are not sufficient to establish that he had at least five years of experience performing the duties of the job offered. As noted above, evidence of qualifying experience shall be in the form of letters from former employers which include the name, address, and title of the writer and a specific description of the duties performed. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, other documentation relating to the experience will be considered. *Id.* In this matter, the beneficiary claims to be qualified for the offered job because he had over five years of work experience in the job offered with ████ ████████ (November 1, 2002 to November 30, 2007). ████████████ has apparently changed its name to ██████████████████████ Although the petitioner submitted a letter from ████ ██████████████████████ confirming the beneficiary's employment from November 1, 2002 until November 28, 2007 as a business analyst, this letter failed to specifically describe the beneficiary's job duties. Counsel notes this deficiency and explains that, because the author of the ████████ letter was not one of the beneficiary's managers, the former employer could not describe his job duties. Instead, the petitioner submits letters from a co-worker and a former supervisor describing the beneficiary's duties while working for clients of ████████████ These letters are insufficient to establish that the beneficiary is qualified for the job offered for two reasons. First, these letters are not from a former employer as required by 8 C.F.R. § 204.5(g)(1). Although other documentation will be considered when a letter from the former employ is unavailable, the fact of unavailability has not been established in this matter. To the contrary, the petitioner has submitted a letter from the beneficiary's former employer, thus confirming the availability of this evidence. However, this letter from the beneficiary's former employer fails to specifically describe his job duties. Second, even if the AAO were to consider the letters from former colleagues no longer associated with the ██████████████these letters fail to specifically describe the beneficiary's job

duties during his five years of purported employment. These letters only cover the periods from January 2003 to December 2004 and July 2005 to November 2007.

Accordingly, it has not been established that the beneficiary has the requisite 5 years of work experience or that he is qualified to perform the duties of the proffered position. 8 C.F.R § 204.5(g)(1).

Beyond the decision of the director, USCIS records show that the petitioner has filed more than 190 immigrant and nonimmigrant petitions; and therefore, the petitioner must establish that it had sufficient funds to pay all the wages from the priority date and continuing to the present. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form ETA 750 job offer, the predecessor to the ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). The petitioner submitted a statement dated July 20, 2010 from its chief financial officer who stated that the petitioner has had gross revenues of over $60 million dollars for the prior twelve months. However, the fact that there is evidence of multiple petitions calls into question the petitioner's ability to pay the proffered wage of all the beneficiaries.

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.