



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **DEC 24 2014**

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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:

SELF REPRESENTED

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 an architectural firm. It seeks to permanently employ the beneficiary in the United States as an architectural and civil drafter. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses the experience required by the terms of the labor certification.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).<sup>1</sup> The priority date of the petition is November 26, 2013.<sup>2</sup>

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's in engineering management.
- H.5. Training: None required.
- H.6. Experience in the job offered: 26 months.
- H.7. Alternate field of study: Architecture.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 26 months as an architect.
- H.14. Specific skills or other requirements: Proficient in Architectural software such as: Revit Architecture, Auto Cad (2D-3D), Photoshop, Google Sketch Up. Master in Engineering Management or equivalent with minimum of 2 years of experience.

Part J of the labor certification states that the beneficiary possesses a Master's degree in Engineering Management from [REDACTED], completed in 2013. The record contains a copy of the beneficiary's Master of Science in Engineering Management diploma and transcripts from [REDACTED], issued in 2013.

Part K of the labor certification states that the beneficiary possesses the following employment experience:

- Architectural Drafter with the petitioner in [REDACTED] California from January 7, 2013 until the date of signing, June 6, 2014.

<sup>1</sup> See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

<sup>2</sup> The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

- Architectural Consultant with [REDACTED] California from November 1, 2011 until January 7, 2013 (40 hours/week).
- Structural Drafter with [REDACTED] California from January 1, 2011 through November 2, 2011 (35 hours/week).

The director's decision denying the petition states that the evidence submitted did not demonstrate that the beneficiary had 26 months of experience. The director denied the petition accordingly.

On appeal, the petitioner states that the letters in the record establish that the beneficiary possesses in excess of the 26 months of experience required by the terms of the labor certification through her work with the petitioner [REDACTED]

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.<sup>3</sup> We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>4</sup> We may deny a petition that fails to comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision.<sup>5</sup>

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

[A]ny 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.

A "profession" is defined as "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." The occupations listed at section 101(a)(32) of

<sup>3</sup> See 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., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>4</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, 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).

<sup>5</sup> *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

the Act are “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

In the instant case, the petitioner claims that the beneficiary may be classified as an advanced degree professional based on her Master’s degree earned at [REDACTED] and her experience with various architectural and engineering firms.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, U.S. Citizenship and Immigration Services (USCIS) may consider other documentation relating to the beneficiary’s experience. *Id.*

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (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 evaluating 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). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 \*7 (D. Or. Nov. 30, 2006).

The record contains the following experience letters:

- A June 10, 2009 letter from [REDACTED] Executive Director of [REDACTED] stating that the beneficiary worked as an expert in the architecture division in a full-time capacity from October 16, 2007 to April 30, 2009.
- A December 28, 2010 letter from [REDACTED], principal with [REDACTED] outlining the terms of an unpaid architectural internship involving the beneficiary.
- A July 7, 2011 letter from [REDACTED] offering the beneficiary a part-time, 25-30 hour per week position as a structural draftsperson and office manager from July 17, 2011 to September 24, 2011.
- A September 9, 2011 letter from [REDACTED] stating that the beneficiary’s part-time, 25-30 hour per week employment as a structural draftsperson and office manager would be extended from September 25, 2011 to March 15, 2012.
- A November 4, 2011 letter signed by [REDACTED] and the beneficiary establishing the beneficiary’s position as a consultant with the firm beginning on November 1, 2011 for an initial duration of 90 days.

- A February 1, 2012 letter from [REDACTED] extending the beneficiary's employment with [REDACTED] from March 15, 2012 through April 30, 2012 and stating that the employment was pursuant to an internship and the beneficiary would be working in a part-time capacity of 30-35 hours per week.
- A March 28, 2012 letter from [REDACTED] stating that the beneficiary would continue to be employed as an architectural drafter and that she would continue to work 35-40 hours per week.
- An August 4, 2014 letter from [REDACTED] Principal Architect, of [REDACTED] stating that the beneficiary was employed as an architectural consultant from November 1, 2011 to January 7, 2013. The petitioner also submitted a 2011 and 2012 IRS Form 1099 showing wages paid to the beneficiary by [REDACTED]
- An August 5, 2014 letter from [REDACTED] stating that the beneficiary was employed with the company from December 1, 2010 to November 1, 2011 in a part-time, 35 hour per week position as a structural drafter. The petitioner also submitted a 2011 Form 1099 showing wages paid of \$6,337.50 for the year.
- A September 15, 2014 letter from the petitioner's office manager stating that the beneficiary worked as a full-time Junior Architectural (CAD) Drafter from January 7, 2013 through January 30, 2014.

The petitioner also submitted two letters of recommendation, the first dated September 12, 2014 from [REDACTED] civil engineer with the [REDACTED] and the second dated September 25, 2014 from [REDACTED] BIM Project Manager for [REDACTED]. Both letters state that the beneficiary is proficient in her job and both authors stated that they would recommend her for any architectural position in the United States. To be properly considered as letters of experience pursuant to the regulations, the letters must be written by an "employer." See 8 C.F.R. § 204.5(g)(1). These letters of recommendation were written by persons with whom she worked as an employee of the petitioner. As a result, they may not be considered as verification of the beneficiary's employment for purposes of establishing that she had the required experience required by the terms of the labor certification as of the priority date.

The experience claimed with [REDACTED] was not listed on the ETA Form 9089. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's *dicta* notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, predecessor to the ETA Form 9089, lessens the credibility of the evidence and facts asserted. In addition, the beneficiary did not list [REDACTED] as an employer on her Form G-325A, Biographic Information, which accompanied her Form I-485 Application to Register Permanent Residence or Adjust Status. The transcripts submitted from [REDACTED] indicate that the beneficiary received her bachelor's degree in December 2008, indicating that she would have been a student during the majority of the time the letter asserts that she worked for that firm. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). For these reasons, the letter from Farhad Soltani does not provide sufficient evidence of the beneficiary's experience as an architect or architectural and civil drafter to demonstrate that she had the required experience as of the priority date.

The letter from Mr. [REDACTED] outlines the terms of an unpaid internship, but does not state any actual work done by the beneficiary for [REDACTED] whether any work was done in a full-time or part-time capacity, or what duration the beneficiary worked. As a result, it is insufficient to establish that the beneficiary possesses any experience required by the terms of the labor certification.

The July 7, 2011 letter from [REDACTED] offered the beneficiary a part-time, 25-30 hour per week position as a structural draftsman and office manager from July 17, 2011 to September 24, 2011. The August 5, 2014 letter from Mr. [REDACTED] indicated that the beneficiary had been employed with the company from December 1, 2010 to November 1, 2011 in a part-time, 35 hour per week position as a structural drafter. On the beneficiary's Form G-325A, submitted in conjunction with her Form I-485, and signed under penalty of perjury, the beneficiary stated that she worked for [REDACTED] from January 2011 to November 2011 as a structural drafter. The labor certification lists the dates of the beneficiary's employment with [REDACTED] as January 1, 2011 through November 2, 2011. In addition, the Form 1099 submitted states total wages paid for the year of \$6,337.50, which is compensation less than that which would have been earned during a 10 month period as outlined by Mr. [REDACTED] or the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner stated that the beneficiary erred in providing an offer letter instead of a letter of experience for the position. The petitioner further explains that the offer letter was intended to match start and end dates for the beneficiary's internship pursued in conjunction with her Master's degree. The petitioner fails to demonstrate why the dates listed by the beneficiary of her employment on the Form G-325A and on the labor certification did not match the dates specified in the letter from Mr. [REDACTED] or whether the time worked for [REDACTED] was in a part-time or full-time capacity. In addition, internships pursued for education credit may not be used to demonstrate that the beneficiary has the experience required by the terms of the labor certification. Instead, internships are part of the degree requirement presented on the labor certification as they are considered equivalent to educational courses and are therefore considered in determining whether the beneficiary meets the educational requirements of the proffered position. As a result, the letter from Mr. [REDACTED] is insufficient to establish that the beneficiary has the experience required by the terms of the labor certification.

The letters submitted from Mr. [REDACTED] contain conflicting information. First, the hours that the beneficiary worked appear differently on the different letters. The February 1, 2012 letter states that the beneficiary would continue to work in a part-time capacity of 30-35 hours per week while the March 28, 2012 letter states that the beneficiary would continue to work a full-time schedule of 35-40 hours per week. DOL precedent establishes that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994). In order to accurately calculate the amount of experience possessed by the beneficiary, the petitioner must establish when she was

working in a part-time and full-time capacity. The period of time that the beneficiary was working in a part-time capacity will be counted accordingly instead of being afforded full-time consideration. Second, the letter dated February 1, 2012 seems to indicate that [REDACTED] did not continuously employ the beneficiary for the time claimed as the letter states that the beneficiary would be employed from March 15, 2012 through April 30, 2012, a start date some six weeks in the future from the date of the letter. *Matter of Ho*, 19 I&N Dec. at 591-592, states that “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.”

On appeal, the petitioner states that the beneficiary erred in providing an Optional Practical Training job offer letter instead of a letter of experience. Regardless of the type of letter provided, the information contained in the letters do not clearly establish the amount of experience acquired by the beneficiary and no outside, objective evidence was submitted to establish the nature of the beneficiary’s employment. The 2012 IRS Form 1099 indicates a total compensation of \$27,762 which is less than the salary of someone working in a full-time capacity at the stated rate of \$18 per hour. Similarly, the 2011 IRS Form 1099 indicates a yearly compensation of \$2,400 for the two months during which [REDACTED] employed the beneficiary in that year. That salary also indicates a part-time position at the \$16 per hour rate instead of a full-time salary. Due to the inconsistencies in the letters submitted and inconsistencies between the letters and IRS Forms 1099, the petitioner has not established that the beneficiary worked in a full-time capacity with [REDACTED] during the time claimed so that we are unable to determine whether she has the experience required for the proffered position.

The petitioner submits on appeal a printout of the procedures to apply for Curricular Practical Training (CPT) and transcripts indicating the beneficiary’s enrollment in Capstone courses with a course outline stating that CPT was required. Any experience gained by the beneficiary as she worked pursuant to the Capstone course would have been used towards her degree and thus would count towards the education requirement of the labor certification. The beneficiary’s Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, states that the beneficiary was “enrolled in [a class] which offers for-credit internship option.” The beneficiary’s Form I-20 specifies that the internship was with [REDACTED] from May 1, 2012 through November 26, 2013. The evidence in the record thereby suggests that the work that she did in her internship for these companies during this time was used to satisfy educational requirements and could not then also be counted towards the experience requirement on the labor certification. Any experience gained with these companies prior to May 1, 2012 is either unsubstantiated by the record or part of the educational requirements for the beneficiary’s degree.

Concerning the experience claimed while working for the petitioner, representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary’s experience with the petitioner cannot be used to

qualify the beneficiary for the certified position.<sup>6</sup> Specifically, the petitioner indicates that question J.19 is not applicable. The petitioner indicates in question J.20 that the beneficiary possesses

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<sup>6</sup> 20 C.F.R. § 656.17 states:

(h) *Job duties and requirements.* (1) The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation

.....  
(4)(i) Alternative experience requirements must be substantially equivalent to the primary requirements of the job opportunity for which certification is sought; and

(i) If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

(ii) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).

(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

(i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or

(ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

experience in an alternate occupation as specified in question H.10. In response to question J.21, which asks, “Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?,” the petitioner answered “no.” The petitioner specifically indicates in response to question H.6 that 26 months of experience in the job offered is required and in response to question H.10 that experience in an alternate occupation, architect, is acceptable. In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially comparable<sup>7</sup> and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the beneficiary indicates in response to question K.1 that her position with the petitioner was as an architectural drafter, and the job duties were comparable to the duties of the position offered. Specifically, the beneficiary’s response to question K.1 states that the position duties were:

Prepare detailed drawings of architectural designs and plans for buildings and structures according to specifications provided by the architect. Drawing, drafting and preparing construction drawings with using CAD (computer aided design) programming and other technical software such as Autodesk (Revit), Google Sketch up, Photoshop, Excel, and Office Word.

The response further specifies that the requirements for the position are: “Master’s degree in engineering management or equivalent, or Bachelor’s degree in architecture with 5 years experience” and proficiency in various architectural softwares.

The job duties for the proffered position specified in question H.11 are:

- (i) The term “employer” means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.
- (ii) A “substantially comparable” job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

<sup>7</sup> A definition of “substantially comparable” is found at 20 C.F.R. § 656.17:

5) For purposes of this paragraph (i):

- ...
- (ii) A “substantially comparable” job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

Create computerized Drawing for various types of projects using Revit and Auto CAD, detailing construction for various phases as the project progresses. Coordination with consultants (Structural, Mechanical, Electrical, Plumbing and Landscape architects). Prepare detailed drawings of architectural designs and plans for buildings and structures according to specifications provided by the architect with using Autodesk (Revit, CAD), Google Sketch up, Photoshop, Excel, and Office.

The specific skills specified in response to question H.14 are a “Master in Engineering Management or equivalent with minimum of 2 years of experience” as well as proficiency in various architectural softwares.

Outside of the coordination with consultants included in the job duties contained in H.11, the positions require the use of the same architectural softwares in creating or preparing architectural designs pursuant to specifications provided by an architect. The job duties as written in K.1 and H.11 do not significantly differ to the extent that we may conclude that the beneficiary would be performing differing job duties more than 50 percent of the time.

On appeal, the petitioner states that:

- A. The main responsibility [of Architectural and Civil Drafter] is coordination with structural, mechanical, electrical and plumbing engineers and contractors. Coordination / exchange of information with consultants and contractors include investigation and determination of conflicts of the architectural design with the designs of the engineers and other consultants; monitoring design revisions and managing to exchange design revisions with consultant’s drawings
- B. Supervise and inspect technologists and engineering systems on construction projects.
- C. Analyze building codes based on space and site requirements, and prepare reports to determine their effect on architectural designs.
- D. Prepare detailed drawings of architectural and structural features of buildings and topographical relief maps used in engineering projects. The drawings created by architectural civil drafter should provide guidelines for structures including technical details, dimensions, materials, specifications and mathematical calculations.

Requirements for this job include: extensive knowledge of building materials, standardized building techniques, zoning resolutions and building codes, engineering practices and mathematics to complete drawings, extensive knowledge of Computer Aided Design and Drafting (CAD and Revit) and the ability to program drawings directly into automated manufacturing systems and prepare variations on a design, specialization in types of buildings such as commercial, residential, institutional and mixed-use.

The description provided by the petitioner on appeal differs from the job description provided on the labor certification. On appeal, a petitioner may not materially change the associated job responsibilities of the proffered position in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1988). Instead, the job

duties are found on the labor certification. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). The job description as provided on the labor certification does not significantly differ from the job duties of the proffered position, and according to DOL regulations, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position.

Furthermore, on the Form G-325A, submitted in conjunction with the beneficiary's Form I-485, and signed on June 26, 2014, the beneficiary indicated that she had no current employer, had not been employed since January 2013, and did not list the petitioner as an employer in the five years prior to the filing of the Form I-485. This assertion, signed under penalty of perjury, is in direct contradiction to the assertions made on the ETA Form 9089 and in the letter submitted from the petitioner. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). Therefore, we may not consider any experience gained with the petitioner towards the position requirement of 26 months of experience.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.