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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

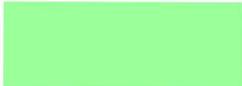


U.S. Citizenship
and Immigration
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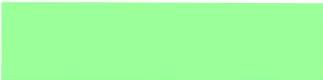


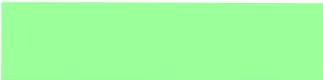
DATE: **JUN 12 2014**

OFFICE: NEBRASKA 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 (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,

A handwritten signature in black ink that reads "Ron Rosenberg".

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 information technology business. It seeks to permanently employ the beneficiary in the United States as a senior network engineer. 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 an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

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).¹ The priority date of the petition is July 29, 2012.²

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

- H.4. Education: master's degree in engineering, business, science, or math.
- H.5. Training: None required.
- H.6. Experience in the job offered: 36 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: bachelor's degree plus five years of experience in the offered job.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: Network programming and engineering. Network Security Maintenance. Network routing -CISCO, MPLS, EIGRP, BGP, and LAN/WAN Router. Network switching -VLAN, CISCO. Product knowledge - CISCO, JUNIPER, with Certifications such as CCNA (Cisco Certified Network Associate), CCSP, CCIP, and additional certifications for Firewall Configurations (Prefer Juniper Products.)

Part J of the labor certification states that the beneficiary possesses a master's degree in computer management from [REDACTED] in Indore, India, completed in 2002. The record contains a copy of the beneficiary's Bachelor of Commerce diploma issued on December 7, 1998, and

¹ 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).

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

his Master of Computer Management diploma issued on December 2, 2002, both from [REDACTED] Indore. The record also contains certificates showing the beneficiary's completion of the following courses: [REDACTED] on April 11, 2008; [REDACTED] on February 26, 2007; Juniper [REDACTED] on January 27, 2006; [REDACTED] and, [REDACTED]

The director found that the beneficiary's education was the equivalent of a United States bachelor's degree and that the beneficiary did not have the required five years of employment experience. As such, the director determined that the petition did not meet the requested visa classification.

The record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on October 11, 2010. The evaluation states that the beneficiary's academic record was the "equivalent of a Bachelor of Business Administration Degree and one year of graduate education in Computer Management from a Regionally Accredited College or University in the United States of America."

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

- Employment for the petitioner as a network engineer since July 29, 2012.
- Employment for [REDACTED] LLC in Muscat, Oman, as a senior network engineer from May 1, 2010, to May 31, 2011.
- Employment for the petitioner in St. Louis, Missouri, as a network security engineer from November 1, 2008, to October 31, 2009.
- Employment for [REDACTED] Inc., in Chadds Ford, Pennsylvania, as a network engineer from September 1, 2007, to October 30, 2008.
- Employment for [REDACTED] Inc., in Chadds Ford, Pennsylvania, as a network security consultant from May 1, 2007, to August 31, 2007.
- Employment for [REDACTED] Ltd. in Singapore as a network and security engineer from August 1, 2005, to April 30, 2007.
- Employment for [REDACTED] Ltd. in Bangalore, India, as a network security engineer from July 1, 2004, to July 31, 2005.
- Employment for [REDACTED] Ltd. in Bangalore, India, as a network security engineer from March 1, 2003, to June 30, 2004.
- Employment for [REDACTED] Ltd. in New Delhi, India, as a pre-sales support engineer from September 1, 2002 to March 1, 2003.

The petitioner submitted documentation to corroborate his claimed employment for [REDACTED] and for the petitioner.

The director's October 11, 2013, decision denying the petition determined that the evidence "[does] not cover five years of experience in the job offered, nor are all the required skills indicated in part H. Number 14 of the [labor certification] listed in the letters."

On appeal, the petitioner submits a printout from the World Education Services online "Degree Equivalency Tool." This printout suggests that the beneficiary's Master of Computer Management degree should be considered the equivalent to a U.S. master's degree. However, it appears that this evaluation was actually an automated response to questions answered by the beneficiary, not an actual review of the beneficiary's academic credentials.

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

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

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

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time

³ 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).

⁴ 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).

⁵ 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).

of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

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

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. See *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).⁶ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

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

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

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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

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

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

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

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

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

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

Eligibility for the Classification Sought

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

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a 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.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is 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.

In the instant case, the petitioner relies on the beneficiary's three-year Bachelor of Commerce followed by a Master of Computer Management from [REDACTED] in Indore, India, as being equivalent to a U.S. master's degree.

As is noted above, the record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on October 11, 2010. The evaluation states that the beneficiary's academic record was the "equivalent of a Bachelor of Business Administration Degree and one year of graduate education in Computer Management from a

Regionally Accredited College or University in the United States of America.”⁷ This evaluation contradicts the online World Education Services evaluation provided by the petitioner on appeal, indicating that the beneficiary’s education is the equivalent of a master’s degree in the United States. USCIS uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm’r 1988).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁸

⁷ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien’s eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the testimony).

⁸ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary’s three-year foreign "baccalaureate" and foreign "Master’s" degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

According to EDGE, the beneficiary's three-year Bachelor of Commerce is comparable to three years of university study in the United States, and the Master of Computer Management is comparable to a bachelor's degree in the United States. Therefore, based on the conclusions of EDGE, the evidence in the record on appeal is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. master's degree.

Furthermore, while the labor certification indicates that the petitioner would accept a bachelor's degree plus five years of experience in the offered job in lieu of a master's degree, the documentation does not establish that the beneficiary has five years of experience in the offered job. The submitted employment verification documents do not provide all of the information required by 8 C.F.R. § 204.5(g)(1) and (1)(3)(ii)(A). Specifically, the petitioner has submitted only a contract of employment from ██████████ LLC, and this document does not verify the duration of the beneficiary's employment, does not provide a description of the beneficiary's duties, and identifies the beneficiary's job title as "General System Analyst," not a senior network engineer as was claimed on the labor certification. The petitioner submitted only copies of job offers to the beneficiary from ██████████ Ltd., for employment as a technical engineer; from ██████████ Ltd., for employment as a monitoring engineer; from ██████████ Ltd., for employment "in our India Delivery Center Network Organization in the ██████████ ██████████ and from ██████████ Inc., for employment as a software engineer. These documents do not reflect the duration of the beneficiary's employment, they do not provide information regarding the beneficiary's job duties during his employment, and the job title listed on each of these letters does not match the title claimed on the labor certification. The petitioner provided a "Certification of Employment" on ██████████ letterhead and signed on April 3, 2007, by ██████████ who identified himself as the company's director. This letter confirms the duration of employment claimed on the labor certification, but it does not verify the beneficiary's job duties during his employment and, thus, is incomplete. In addition, this letter states that the beneficiary worked for ██████████ as a hosting operations engineer, while the beneficiary had claimed to have worked there as a network and security engineer.

Each of the employment documents submitted by the petitioner fails to provide the information required by 8 C.F.R. § 204.5(g)(1) and (1)(3)(ii)(A), as detailed above. As is also detailed above, each of the employment documents submitted by the petitioner bears discrepancies between itself and the beneficiary's claimed employment on the labor certification.⁹ Therefore, the submitted documentation is insufficient to establish that the beneficiary satisfies the minimum requirements of the offered position.

⁹ 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Even if the beneficiary's claimed employment record were accepted as proof of the claimed experience, it does not reflect five years of experience in the offered job of senior network engineer. The beneficiary's claimed employment record shows numerous jobs in the computer industry since 2002; however, the only claimed experience as a senior network engineer is for [REDACTED] LLC in Muscat, Oman, for thirteen months from May 1, 2010, to May 31, 2011. As noted above, the ETA Form 9089 at Part H.6 requires 36 months of experience in the job offered, senior network engineer. Part H.10 states that experience in an alternate occupation is not accepted. Thus, the experience letters would not establish the experience required by the labor certification application, even if such letters could be accepted.

Moreover, the petitioner described the position of senior network engineer as requiring "Network programming and engineering. Network Security Maintenance. Network routing -CISCO, MPLS, EIGRP, BGP, and LAN/WAN Router. Network switching -VLAN, CISCO. Product knowledge - CISCO, JUNIPER, with Certifications such as CCNA (Cisco Certified Network Associate), CCSP, CCIP, and additional certifications for Firewall Configurations (Prefer Juniper Products.)" The beneficiary's claimed employment record does not show any work experience with MPLS, EIGRP, BGP, LAN/WAN Router, or VLAN.

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. The beneficiary does not meet the minimum requirements of the position. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

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 beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain*

language of the [labor certification]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires “Network programming and engineering. Network Security Maintenance. Network routing -CISCO, MPLS, EIGRP, BGP, and LAN/WAN Router. Network switching –VLAN, CISCO. Product knowledge – CISCO, JUNIPER, with Certifications such as CCNA (Cisco Certified Network Associate), CCSP, CCIP, and additional certifications for Firewall Configurations (Prefer Juniper Products.)”

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a master’s degree or a bachelor’s degree plus five years of experience in the offered job. In addition, the petitioner had also failed to establish that the petitioner possesses the required skills for the offered position.

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, USCIS may consider other documentation relating to the beneficiary’s experience. *Id.*

As discussed above, the record contains documentation of the beneficiary’s work history since 2002. However, the beneficiary claimed only 13 months of experience in the offered job of senior network engineer and the beneficiary’s claim is contradicted by documentation submitted that shows he was hired as a general network analyst. In addition, the submitted documentation does not satisfy the requirements of 8 C.F.R. § 204.5(g)(1) and does not establish that the beneficiary’s work provided him with experience with any of the skills required by the labor certification. Even the beneficiary’s own description of his employment history does not claim any work experience with MPLS, EIGRP, BGP, LAN/WAN Router, or VLAN. Therefore, the submitted experience letters do not establish that the beneficiary possessed the required experience for the offered position.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

Ability to Pay the Proffered Wage

Beyond the decision of the director, the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

In determining the petitioner’s ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between

the wage paid, if any, and the proffered wage.¹⁰ If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In the instant case, the priority date is July 29, 2012, and the proffered wage is \$91,000 per year. The petitioner submitted paystubs that indicate the instant beneficiary was paid \$78,091.84 in 2012. Thus, the petitioner must still establish the ability to pay the difference between the proffered wage and the wages actually paid in 2012; that is, \$12,908.16. The petitioner has not established that it paid the beneficiary any wages in 2013.

In addition, according to USCIS records, the petitioner has filed I-140 petitions on behalf of five other beneficiaries. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The evidence in the record does not document the priority date, proffered wage, or wages paid to each of these other beneficiaries, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence.

The record before the director closed on August 29, 2013, with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2012 federal income tax return was the most recent return available. However, the record does not any contain annual reports, federal tax returns, or audited financial statements for the petitioner for 2012.¹¹

¹⁰ See *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011).

¹¹ It is noted that the petitioner submitted a profit and loss statement for 2012. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statement submitted with the petition is not persuasive evidence. The unsupported representations of the petitioner are insufficient to demonstrate the ability to pay the proffered wage.

The petitioner's failure to provide complete annual reports, federal tax returns, or audited financial statements for each year from the priority date is sufficient cause to dismiss this appeal. Accordingly, after considering the totality of the circumstances, it is concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions as of the priority date of the current petition.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed. The appeal is also dismissed because the petitioner has not established the ability to pay the proffered wage as of the priority date.

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.