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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
Services

DATE: MAY 09 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

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. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal on February 1, 2013. The petitioner filed a motion to reopen and reconsider the AAO's decision, and the AAO affirmed its prior decision on August 15, 2013. The matter is again before the AAO on a motion to reopen and reconsider. The prior decision of the AAO, dated August 15, 2013, will be reopened, a new decision will be entered, and the petition will remain denied.

The petitioner describes its business as being [REDACTED]. It seeks to employ the beneficiary permanently in the United States as an "Industrial Engineer/Quantitative Analyst." The director's decision denying the petition concludes that the job offer portion of the labor certification does not meet the minimum requirements for classification as a member of the professions with an advanced degree. The AAO affirmed the director's decision on appeal, as well as the motion to reopen and reconsider its decision that the petitioner subsequently filed.

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.

The instant motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted. The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy. Therefore, the petitioner's motion is properly filed. The AAO conducts appellate review on a *de novo* basis.¹ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal or motion. 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.²

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), which, in pertinent part, 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." *Id.*

¹ 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).

² 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).

At issue on motion is whether the position offered requires an advanced degree and qualifies for classification within the advanced degree professional category under Section 203(b)(2) of the Act.

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).³ The priority date of the petition is August 21, 2011.⁴

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

- H.4. Education: Master's degree in "Industrial Engineering."
- H.5. Training: None required.
- H.6. Experience in the job offered: 36 months.
- H.7. Alternate field of study: "Business Administration or related field."
- H.8. Alternate combination of education and experience: Accepted.
- H.8-A. If Yes, specify the alternate level of education required: Other.
- H.8-B. If Other is indicated in question 8-A, indicate the alternate level of education required: "Combination of education and experience in lieu of a Master's degree."
- H.8-C. If applicable, indicate the number of years experience acceptable in question 8: "4."
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: Applicant must have a combination of education and experience equivalent to a Master's degree in Industrial Engineering, Business Administration, or a related field, with strong statistical background and analytical skills and a minimum of three years of experience in the financial industry. Excellent writing and communication skills are also necessary. (The three years of experience in the financial industry is a necessity of the business to ensure sufficient exposure to the financial services industry to enable the applicant to perform the required duties effectively. This experience may have been gained either as a part of the degree equivalency or separately.) (The 4 years of experience in Block H.8-C. reduces to 2 years for a Bachelor's degree holder in any of the specified fields.)

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree in Industrial Engineering from the [REDACTED] completed in 1998. The record contains a copy of the beneficiary's bachelor's degree and academic transcripts from the [REDACTED] issued in 1998.

³ 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).

⁴ The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

On motion, counsel for the petitioner states that “the regulations and case law required the USCIS to accept DOL’s certification of the *position*.” Counsel further states that the petitioner’s entries in Part H.8-B and H.8-C (that it will accept a combination of education plus four years of experience in lieu of a Master’s degree) and in H.14 (that these four years reduce to two years for those holding a bachelor’s degree in any of the specified fields) “were not ‘applicable’ and therefore irrelevant to this position description.” The AAO disagrees with these assertions for the reasons discussed below.

II. LAW AND ANALYSIS

The Roles of DOL and USCIS in the Immigrant Visa Process

In the decision dated August 15, 2013, the AAO discussed the respective roles of DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process as follows. DOL’s role in the labor certification 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 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 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).⁵ *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.

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

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.

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.

On motion, counsel for the petitioner states that USCIS exceeded the scope of its authority, and infringed upon the authority given to DOL, by determining that the instant position does not qualify for classification under the advanced degree professional category. Specifically, the director and the AAO held that the requirements stated by the petitioner in Parts H.8-C and H.14 of the labor certification demonstrate that the position offered does not qualify as a position under the advanced degree professional category. As noted above, these portions of the labor certification state that the petitioner would accept a master's degree and three years of experience as the primary qualifications or "other" education as the alternate to allow for a "combination of education and experience in lieu of a master's degree" and four years of experience. The labor certification states that this combination may reduce to two years "for a Bachelor's degree holder in any of the specified fields," as part of an alternate combination of education and experience to a master's degree.

As noted above, the regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." This regulation further states that "[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." *Id.*

Counsel cites the regulations at 20 C.F.R. §§ 656.17(h) and (i) which give the DOL authority to determine that the job opportunity's requirements are normally required for the occupation and that "alternate experience requirements [are] substantially equivalent to the primary requirement of the job opportunity for which certification is sought." Counsel seems to state that because the DOL has the obligation to certify that the petitioner's alternate requirements are "substantially equivalent to the primary requirement of the job opportunity," USCIS cannot use these alternate requirements to determine that the position does not qualify for classification under the advanced degree professional category. The AAO does not agree with this assertion. The regulation at 8 C.F.R. § 204.5(k)(4)(i) clarifies this issue and states the following:

(k) *Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.*

(4) Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program—

(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. . . . *The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.*

(Emphasis added).

This regulation demonstrates that USCIS has the authority, based upon the labor certification certified by DOL, to determine whether the job offer portion of the labor certification, which includes both the primary and alternate requirements of the position offered, meets the requirements of "a professional holding an advanced degree or the equivalent." Therefore, even if DOL finds that the alternate requirements as stated on the labor certification are substantially equivalent to the primary requirements to warrant granting certification, USCIS may find that the overall minimum requirements for the position do not meet the minimum requirements for classification as an advanced degree professional position under the definition of "advanced degree" in 8 C.F.R. § 204.5(k)(4)(i), a regulation that applies to USCIS and not DOL.

On motion, counsel references *Hoosier Care, Inc. v. Chertoff*, 482 F.3d 987 (7th Cir. 2007), for the premise that DOL determines the requirements of the proffered position and that USCIS cannot make an inquiry into whether the position as certified by DOL meets the requirements of a particular classification. The decision in *Hoosier Care* is not binding here as the instant matter is not within the Seventh Circuit. The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit). Further, *Hoosier Care* stands for the limited interpretation of what constitutes "relevant" post-secondary education under the skilled worker regulation and has no applicability to the facts of the current case. As stated above, the DOL certifies that there are not sufficient qualified U.S. workers available for the position offered and that the beneficiary's employment will not adversely affect U.S. workers whereas USCIS determines whether the position offered and the beneficiary meet the requirements of the particular visa classification.

The regulations relating to employment classification under the "advanced degree professional," "professional," and "skilled worker" categories, when viewed in their totality, demonstrate that USCIS, and not DOL, has the authority to determine whether a position qualifies under a particular classification of the Act.

First, the regulation regarding classification of an “advanced degree professional,” 8 C.F.R. § 204.5(k)(4)(i), as discussed above, states that a petition under this classification “must be accompanied by an individual labor certification from the Department of Labor” and that “[t]he job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent.” As stated above, the language of this regulation means that USCIS makes this determination after DOL has certified the labor certification.

Second, although not the category at issue in this case, the regulation at 8 C.F.R. § 204.5(l)(3)(i) regarding the “professional worker” category states that “[e]very petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . The job offer portion of an individual labor certification . . . must demonstrate that the job requires the minimum of a baccalaureate degree.” This also demonstrates that USCIS has the responsibility to determine whether the position as stated on the labor certification, and certified by DOL, qualifies as a position offered for classification under the “professional worker” category.

Third, similarly not the category requested here, the regulation at 8 C.F.R. § 204.5(l)(4) regarding the “skilled worker” classification states the following:

(4) *Differentiating between skilled and other workers.* The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. In the case of a Schedule A occupation or a shortage occupation within the Labor Market Pilot Program, the petitioner will be required to establish to the director that the job is a skilled job, i.e., one which requires at least two years of training and/or experience.

This regulation, which applies to USCIS, states that the determination of whether the position qualifies as a “skilled or other worker” position “will be based on the requirements of training and/or experience placed on the job by the prospective employer, *as certified by the Department of Labor,*” which demonstrates that USCIS will make this determination based upon the already certified labor certification. (Emphasis added). The logical interpretation of this regulation is that USCIS, and not DOL, will make the determination of whether the filing meets the requested category because, in deciding whether to certify a particular labor certification, DOL is not even apprised as to what level of classification (“professional,” “skilled worker,” etc.) the employer is seeking for the position offered. It is the Form I-140 that is filed with USCIS, which is not part of the labor certification process, that states which level of classification the employer seeks. This follows the same pattern stated above in the regulations for the “advanced degree professional” and “professional” categories, 8 C.F.R. §§ 204.5(k)(4)(i) and 204.5(l)(3)(i), respectively, which give USCIS the authority to determine that the positions fall within the particular category at issue.⁶ Nothing in the regulations at 20 C.F.R. § 656, pertinent to labor certifications, gives DOL this authority.

⁶ The second sentence of 8 C.F.R. § 204.5(l)(4) states that the “petitioner will be required to establish to the director that the job is a skilled job, i.e., one which requires at least two years of

As stated above, the court in *Madany v. Smith*, 696 F.2d at 1012-1013 (D.C. Cir. 1983), stated that DOL only has the authority to determine that there are insufficient U.S. workers who are able, willing, and qualified for the position offered, and that the beneficiary's employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. See 8 U.S.C. § 1182(a)(5)(A)(i). The court in *Madany* also stated that "all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority." *Madany, supra* at 1012.

Accordingly, DOL has the authority to approve the requirements of the labor certification to ensure that the employment of U.S. workers is not adversely affected. See 8 U.S.C. § 1182(a)(5)(A)(i); see also *Madany, supra* at 1012-1013. USCIS has the authority to determine whether a position offered, as expressed by the labor certification certified by DOL, qualifies for classification under a particular category of the Act and whether the beneficiary meets those qualifications.

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."

training and/or experience" in instances of a Schedule A or shortage occupations. However, the reason this language states that the petitioner must demonstrate to the *director* that the job requires two years of experience is because this refers to Schedule A or shortage occupations in which a certified labor certification application, which states the job requirements, is not required. In those cases, the petitioner must submit a completed labor certification application that is signed by the petitioner and the beneficiary, even though it is not certified by DOL. Therefore, this language in 8 C.F.R. § 204.5(l)(4) does not mean that Schedule A or shortage occupation cases are the *only* instances in which USCIS makes the determination as to whether a position qualifies for classification under the "skilled worker" or "other worker" categories.

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.

As stated above, for a position to qualify in the advanced degree professional category, the job offer portion of the labor certification in both its primary and alternate requirements must require a professional holding an advanced degree or its defined foreign equivalent of a bachelor's degree plus five years of progressive experience in the specialty. *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.

On motion, counsel states that USCIS should focus on the primary requirements of the labor certification. However, as noted above, an advanced degree may be: (1) a professional degree above a U.S. baccalaureate (or foreign equivalent), or (2) a U.S. baccalaureate (or foreign equivalent) followed by at least five years of progressive experience in the specialty. Both of these requirements describe the minimum requirements for classification under section 203(b)(2) of the Act. Therefore, USCIS has the obligation to determine whether both the primary and alternate requirements, as minimum requirements for the position offered, meet the terms of the Act for classification as an advanced degree professional. In this case, Parts H.8-B, H.8-C and H.14 of the labor certification allow for an alternate requirement of unspecified education and four years of experience (which reduces to two years of experience with a bachelor's degree). This language in the labor certification equates to a minimum requirement for the position offered; however, these alternate stated requirements of the job offer portion of the labor certification do not meet the requirements for an advanced degree professional as they allow for less than the regulatory requirements of a bachelor's degree and five years of experience.⁷ *See* 8 C.F.R. § 204.5(k)(4)(i).

⁷ The terms of the labor certification and the petition must require an advanced degree for classification of the *position* in the advanced degree professional category, and the beneficiary must qualify as an advanced degree professional by possessing either a master's degree or a bachelor's degree plus five years of progressive experience following the bachelor's degree. *See* 8 C.F.R. §§ 204.5(k)(1), (2), and (4)(i). If the position does not meet the requirements for advanced degree professional classification, the petition cannot be approved under this category.

Therefore, the position offered 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 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).

Where the job requirements in a labor certification are not otherwise clearly prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. 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 a labor certification is to “examine 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].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification. 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).

In its August 15, 2013 decision, the AAO determined that, beyond the decision of the director, the petitioner had failed to establish that the beneficiary was qualified for the offered position. Specifically, the AAO noted that the record did not include a copy of the beneficiary’s bachelor’s degree, and that the experience letter submitted to document the beneficiary’s experience contained inconsistencies and failed to verify whether the beneficiary’s employment was full- or part-time.

On motion, counsel submits another copy of the beneficiary’s bachelor’s degree and states that a copy was submitted with the original petition. The AAO concurs with counsel’s statement and this portion of the AAO’s decision dated August 15, 2013 regarding the inclusion of the beneficiary’s bachelor’s degree with the petition is withdrawn.

Counsel also submits a letter dated September 10, 2013, from [REDACTED] on [REDACTED] LLC letterhead. The letter states that the beneficiary was employed full-time as an Industrial

Engineer/Quantitative Analyst with [REDACTED] (formerly known as [REDACTED] from September 2005 to March 2009. The letter explains the company's name change and resolves the inconsistencies with its address as noted by the AAO in its prior decision. Therefore, this issue as raised in the AAO's August 15, 2013 decision has been overcome. However, even if the labor certification had required a bachelor's degree and five years of experience to meet the advanced degree category in its alternate requirements, the beneficiary's employment with [REDACTED] LLC only covers a period of time of three years and six months, which would be insufficient to meet the five years of experience to qualify as an advanced degree professional.⁸

While the beneficiary meets the terms as stated on the labor certification which requires a minimum of a Bachelor's degree in "Industrial Engineering" or "Business Administration or related field" and two years of experience, as discussed above, the labor certification terms as certified are insufficient for the position to meet the requirements of the advanced degree professional category. Even if the petitioner had required a bachelor's degree plus five years of experience for the position offered, it would still need to establish that the beneficiary has a bachelor's degree and five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2).

In the instant case, the petitioner claims that the beneficiary may be classified as an advanced degree professional based on a foreign equivalent to a U.S. bachelor's degree followed by at least five years of progressive experience in the specialty due to his experience with [REDACTED] LLC and [REDACTED] LLC. In addition to the experience letter from [REDACTED] LLC, the petitioner submits, for the first time with its second motion, an affidavit from the beneficiary attesting to his experience owning and operating [REDACTED] LLC from September 2002 to September 2005. Also submitted is a copy of Form I-797, granting the beneficiary an extension of stay in E-1 non-immigrant classification from December 15, 2004 to December 14, 2006.

However, the beneficiary's affidavit does not constitute sufficient independent, objective evidence to constitute qualifying experience to qualify him for the instant position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, the Form I-140 states that the position offered is as an "Industrial Engineer/Quantitative Analyst." It is unclear how the beneficiary's experience as the president and CEO of [REDACTED] LLC qualifies him for the instant position.

Additionally, the record contains the following discrepancies regarding the beneficiary's employment at [REDACTED] LLC. The petitioner submitted on motion the following documents:

⁸ As noted above, however, the terms of the labor certification require four years of experience in the job offered which "reduces to 2 years for a Bachelor's degree holder in any of the specified fields" as an acceptable alternate combination of education and experience.

- An Operating Agreement and Business Plan for [REDACTED] LLC, dated November 7, 2002, listing the beneficiary as the president and CEO of the company.
- The Articles of Incorporation for [REDACTED] LLC which were filed with the Florida Department of State on July 28, 2003.
- Commercial invoices for [REDACTED] LLC from March 2004 to March 2005.
- A Clearance letter from the Florida Department of Revenue, dated July 1, 2005, stating that [REDACTED] LLC has no sales and tax liabilities.

It is unclear why the Operating Agreement and Business Plan for [REDACTED] LLC is dated November 7, 2002 and the Articles of Incorporation were not filed until July 28, 2003. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* Therefore, the petitioner has not provided sufficient evidence of the beneficiary's job title and duties of his employment experience with [REDACTED] LLC and that this was continuous full-time employment that qualifies him for the position offered as an "Industrial Engineer/Quantitative Analyst."⁹

For the reasons explained above, the petitioner has also failed to establish that the beneficiary possesses five years of post-baccalaureate experience required for the beneficiary to be classified as an advanced degree professional.

III. CONCLUSION

In summary, the petitioner failed to establish that the position offered or that the beneficiary qualifies for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted; the previous decision of the AAO, dated August 15, 2013 is affirmed. The petition remains denied.

⁹ However, as noted above, the issue of the beneficiary's experience with [REDACTED] LLC is not central to the main issue of the decision that the position offered, both in its primary and alternate requirements, fails to state requirements for the position to be classified as an advanced degree professional.