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FILE: [REDACTED]
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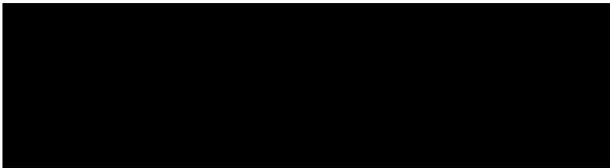
Office: CALIFORNIA SERVICE CENTER

Date: **AUG 21 200**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as an assistant manager and international travel consultant. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying employment experience. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's denial dated July 8, 2005, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 30, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Relevant evidence in the record includes the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; a support letter from the petitioner for the beneficiary dated April 9, 2002, and August 22, 2004; a description of the computer reservation system used by the petitioner; the petitioner's Articles of Organization; a copy of a webpage accessed at [REDACTED] the petitioner's U.S. Internal Revenue Service Form 1040 tax returns for 2001, 2002 and 2003; a statement dated June 1, 2005 from the beneficiary; an explanatory letter from the petitioner dated May 13, 2005; an employment verification from Woodbury Resources Consulting, by [REDACTED] dated May 13, 2005; a list of the personnel of International Airlines Travel Agent Network, Montreal, Canada "printed on 2000-11-02;" an employment verification dated May 31, 2005, from Alex Tours Ltd., by [REDACTED] president; a Citizenship and Immigration Services (CIS) Form G-325A; a CIS Form I-94 Departure Record; a Certificate of Achievement dated August 22, 1997 stating that the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 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).

beneficiary completed a course in Travel Career Development offered by Carlson Travel Academy, Phoenix, Arizona; a letter of appreciation from the beneficiary's client dated September 10, 2002; and copies of the beneficiary's personal identification and documentation.

Along with the above evidence counsel submitted the following documents concerning the beneficiary's education attainments: a translated English language photocopy of a diploma from the University for National and World Economy, Sofia, the Republic of Bulgaria, attesting that the beneficiary attained the title of "Economist" specializing in "International Tourism" as awarded on June 15, 1995; a translated English language photocopy of a transcript of academic courses and grades (no institution or student stated); and a Certificate from the Russian College Kiril and Metodie Company attesting that the beneficiary was "graduated 3th course in Professional-Technical School Kiril and Metodie in Blagoevgrad" for the occupation of Tourist Administrator as dated May 30, 1990.

The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying employment experience, and he denied the petition on July 8, 2005. Specifically the director found, *inter alia*, that two documents submitted, as evidence of employment experience did not state that the beneficiary had sufficient time in the occupation of assistant manager and international travel consultant.

On appeal, counsel asserts that he is resubmitting evidence as well as submitting additional new evidence for consideration.

On appeal, counsel submits a cover letter dated August 9, 2005, and an explanatory letter with a listing of documents; an explanatory letter from the petitioner dated August 8, 2005; an employment verification dated August 1, 2005, from [redacted] Ltd., by [redacted] president; a translation of a Decision No. 141, Sofia City Court (the Republic of Bulgaria) to register the sole proprietorship called "Angel-Tours-Angel Pavlevski" on January 20, 1993; a translation of an identification badge for the beneficiary used in his business named Angel-Tours; a statement dated June 1, 2005 from the beneficiary that he operated Angel Tours in Sofia, Bulgaria, from April 1993 until July 1995; a business reference dated August 2, 2005, by [redacted], president and operational coordinator of the Bulgarian National Rail, Southern Lines; a business reference dated June 8, 2005, by [redacted] president of Bel-Bul International Ltd.; a business reference dated August 5, 2005, by [redacted] president of Linua Nunc, Ltd.; a letter from a former employee of the beneficiary dated August 2, 2005; an invoice dated September 13, 1998 to the beneficiary; an employment reference letter from [redacted] former president of Aquarius Travel dated August 2, 2005; a corporate annual report for 1999, for [redacted], Arizona; and, a Form 1099-MISC issued to the beneficiary by Aquarius Travel, Phoenix, Arizona in 2000 in the amount of \$96,832.85.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany 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).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of an assistant

manager and international travel consultant. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School Blank
 - High School Blank
 - College Blank
 - College Degree Required Blank
 - Major Field of Study Blank

The applicant must also have four years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision.

Item 15 of Form ETA 750A relates to other special requirements and it states the following: three years of experience working with CRS Amadeus or Saber [which are computerize reservations systems]; some experience in visa service; fluency in written and spoken English, as well as Russian or Bulgarian; experience with foreign travel agencies/tour operators; and available to work on Saturdays and Sundays as needed.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury.

On Part 15, eliciting information of the beneficiary's work experience, the beneficiary represented the following: that the beneficiary has been employed fulltime (i.e. 40 hours per week) by the petitioner from March 2001 to present as an independent contractor-travel agent conducting airline ticket sales, organizing and conducting tours as well as conducting marketing efforts "to reach international clientele;" from June 1999 to February 2001, the beneficiary was employed as an independent contractor-travel agent for Aquarius Travel of Phoenix, Arizona, as a travel consultant (independent contractor) conducting ticket sales, offering vacation packages, tours and cruises to Europe, Mexico, Central America, South America and Hawaii and also the beneficiary managed corporate accounts and acted as a Europe Leisure Travel Consultant; from September 1997 to May 1999, the beneficiary was employed as an independent contractor-travel agent for Vacation Creations of Phoenix, Arizona, as a travel consultant (independent contractor) providing international travel arrangements for International Student Associations of ASU as well as conducting airline tickets and travel services to the Bulgarian clientele and the beneficiary managed corporate accounts; from April 1993 to July 1995, the beneficiary was the owner of Angel Tours, Sofia, Bulgaria which he operated as a travel agent managing groups of clients on temporary contracts, supervising vacation packages and escorted tours as well as processing applications for visa service; from September 1992 to April 1993, the beneficiary was an administrative executive, protocol and tour escort for ASOS Tours Inc.² of Sofia, Bulgaria, where he conducted interviews with clients, completed visa and passport applications including documentation, supervised the organizing of tours and vacation packages and escorted tours; and from April 1988 to November 1990 the beneficiary was a travel guide for BTO (the government tourism organization in Bulgaria) "Balcantourist" conducting Russian and Bulgarian groups to Bulgarian sites.

The beneficiary does not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

² According to the petitioner's letter dated may 13, 2005, ASOS Tours Inc. was purchased by Alex Tours in 1995.

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

To summarize, the beneficiary has recounted his employment experience as a travel agent through letters verifying his qualifying experience as well as indirect anecdotal evidence. According to the beneficiary, he was an independent contractor³ for Aquarius Travel of Phoenix, Arizona, for one year and eight months; from September 1997 to May 1999.

Thereafter according to the beneficiary he was employed as an independent contractor-travel agent with Vacation Creations of Phoenix, Arizona, as a travel consultant for one year and eight months, from September 1997 to May 1999.

Before that employment according to the beneficiary he was the owner of Angel Tours, Sofia, Bulgaria for which he stated he operated as a travel agent for two years and three months that is from April 1993 to July 1995. No tax, business revenue or financial indicia verification was submitted, and as will be illuminated, the beneficiary stated that he was attending the University for National and World Economy in Sofia, Bulgaria from August 1991 to May 1995. The beneficiary's statement is not credible.

Prior to this experience, the beneficiary stated he was an administrative executive, protocol identified by [REDACTED] as a manager position, for ASOS Tours Inc. of Sofia, Bulgaria, from September 1992 to April 1993. While [REDACTED] stated that the beneficiary had the duties of a travel agent in his first letter as dated May 31, 2005, in his second letter dated January 8, 2005, he stated that the beneficiary while performing all the travel agent duties recounted in his letter dated May 31, 2005, was actually a manager. The duties of "manager" were not described. As is evident here, the two letters as dated do not support [REDACTED] statements since the first letter submitted is dated May 31, 2005, while the second letter he prepared and submitted clarifying his remarks in the letter dated May 31, 2005, is dated *before* the first letter, that is January 8, 2005. There is no explanation or even an acknowledgement in the record concerning this inconsistency from counsel or the petitioner.⁴

³ According to a letter dated August 2, 2005, the beneficiary was an independent contractor for two travel companies, Aquarius Travel and Vacation Creations both of Phoenix, Arizona. The beneficiary was self-employed.

⁴ Further we note that in the first letter, the term of the beneficiary's employment is noted by [REDACTED] as September 1992 to April 1993 that coincides with his statement of employment experience in the labor certification. However counsel in his explanatory letter first stated that the term of employment with "ASOS Tours, Bulgaria" was "Sep'99 to Apr' 93." This longer term is contradicted by the beneficiary's and Mr. [REDACTED] statements and also by a latter statement by counsel in the same letter that the term was actually

According to the labor certification, Form ETA 750, Part B, the beneficiary stated he attended the University for National and World Economy in Sofia, Bulgaria from August 1991 to May 1995 attaining a Bachelor of International Tourism. However as noted above, the beneficiary also stated that during this almost four year period he was the owner of Angel Tours, Sofia, Bulgaria for which he stated he operated as a travel agent, as well as undertaking a managerial position for ASOS Tours Inc. of Sofia, Bulgaria, from September 1992 to April 1993. It is not credible that the beneficiary could be employed full time in those positions and also attend the university.

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). Under these circumstances we cannot accept [REDACTED] letters as credible or the beneficiary's assertions of qualifying employment experience during the above four year period. Doubt cast on any aspect of the petitioner's proof may, of course, 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 (BIA 1988).

Lastly, from April 1988 to November 1990 the beneficiary stated he was a travel guide for BTO Balcantourist in Bulgaria for two years and seven months. No employment verification was submitted.

There was no employment verification submitted that the beneficiary was employed as an independent contractor-travel agent from Vacation Creations of Phoenix, Arizona.

The total verified employment experience for the beneficiary is one year and eight months. There is no explanation in the record of proceeding why a letter conforming to the regulation at 8 C.F.R. § 204.5(1)(3) was not produced from Vacation Creations of Phoenix, Arizona detailing the beneficiary's employment experience.

Most of the beneficiary's job experience is through self-employment. While counsel has stated that because of the passage of time independent objective evidence was difficult to produce and submit in the case, it is reasonable to assume that if the beneficiary received compensation through his own labors, that he would have produced records of the revenue he received over the years in substantiation of what is indirect evidence of his employment experience. Other than the Form 1099- MISC issued to the beneficiary by Aquarius Travel, Phoenix, Arizona in 2000 in the amount of \$96,832.85, no wage, compensation or business revenue evidence was submitted in this case.

The rest of the evidence submitted is the beneficiary's mostly unsubstantiated statements supported by indirect evidence consisting of anecdotal evidence of business contacts and a former employee who observed him employed as a travel agent. That evidence is noted above and in total is not independent objective evidence of the beneficiary's career in employment positions as described in the labor certification performing duties as described by the petitioner for the offered position that is "assistant manager and international travel consultant." Most of the evidence submitted from Bulgaria received or originally produced in a foreign language other than English does not contain a certified translation as required by 8 C.F.R. § 103.2(b)(3).

The AAO finds that preponderance of the evidence does not demonstrate that the beneficiary acquired four years of qualifying experience from the evidence submitted into this record of proceeding and thus the

seven months with ASOS Tours.

petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

ORDER: The appeal is dismissed.