

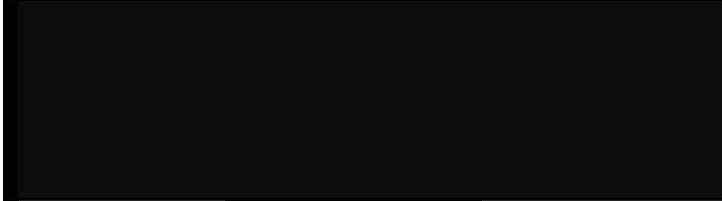


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 02 218 52065

Office: CALIFORNIA SERVICE CENTER

Date: JUN 01 2007

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 sustained.

The petitioner is a freight forwarders/entertainment promoter. It seeks to employ the beneficiary permanently in the United States as a management analyst/operations manager. 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 two 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 December 21, 2005, denial, 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.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 September 17, 1998.

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 management analyst/operations manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 Grade School c

High School	c
College	4
College Degree Required	<u>Bachelor</u>
Major Field of Study	<u>Business Administration or Management</u>

The applicant must also have two 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 is relating to other special requirements blank.

The beneficiary set forth her credentials on Form ETA-750B and signed her 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, she represented that she has been employed by the petitioner as a management analyst/operations manager since August 1998 to present undertaking similar duties as those stated in Part A of the labor certification. Prior to that employment, the beneficiary stated that she was employed by Omni Consortium Inc., of Houston, Texas, as a management analyst/operations manager from January 1997 to May 1998 performing duties similar to those stated in Part A of the labor certification; and prior to the preceding employment experience, the beneficiary stated that she was employed by Uniwide Express Brokerage Incorporated from June 1994 to March 1996 undertaking similar duties as those stated in Part A of the labor certification. (According to a letter dated September 27, 1999, the beneficiary was unemployed from September 27, 1999).

With the petition filed June 26, 2002, the petitioner submitted, inter alia, the following documents: Wage and Tax statements (W-2) from [redacted] of Northten [sic] to the beneficiary for years 1998, 1999, 2000 and 2001; the beneficiary's university diplomas from the University of Santo Tomas, Manila, the Republic of the Philippines reflecting a Bachelor of Science in Hotel and Restaurant Management as well as a Master in Business Administration; the beneficiary's university grades transcripts; and a letter from [redacted] VP-Operations of Omni Consortium Inc., of Houston, Texas, that the beneficiary was employed there since January 2, 1997 as operations manager of its parcel service division at an annual salary of \$26,220.00.

In response to requests for additional evidence, the petitioner submitted, inter alia, two letters of experience: the first dated January 26, 2004 from Uniwide Express Brokerage Incorporated evidencing the beneficiary's employment as a management analyst (operations manager) from June 1994 to March 1996, and, the second dated January 21, 2004, by Omni Consortium Inc., of Houston, Texas, evidencing the beneficiary's employment as a management analyst/operations manager from June from January 1997 to May 1998.

On appeal, the petitioner submits the following documents: a legal brief dated February 15, 2006; job references by [redacted] president and general manager, of Uniwide Express Brokerage Incorporated, dated March 22, 1996, January 26, 2004 and January 31, 2006; a job reference dated March 27, 1997, by [redacted] VP-Operations of Omni Consortium Inc.; a job reference dated January 21, 2004, by [redacted] C.E.O., of Omni Consortium Inc.; and a "Declaration of [redacted]" dated January 31, 2006, formerly of Omni Consortium Inc.

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

(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.

As stated the director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying employment experience. Specifically, the director found that the petitioner attempted to materially alter the petition since it was initially filed such that the petition now varies significantly, and, therefore, the director considered only that evidence (the job reference or experience letters) that was originally submitted with the petition.

In this case the job verification that the petitioner submitted with the petition to prove the beneficiary's work experience as a management analyst/operations manager was a letter from [REDACTED] VP-Operations of Omni Consortium Inc., of Houston, Texas, stated that the beneficiary was employed there since January 2, 1997 as operations manager of its parcel service division at an annual salary of \$26,220.00. The letter did not provide a description of the training received or the experience of the alien.

In response to the director's request for evidence that focused upon the beneficiary's qualifications and job experience, the petitioner submitted, two letters of experience: one dated January 26, 2004 from Uniwide Express Brokerage Incorporated evidencing employment as a management analyst (operations manager) June 1994 to March 1996, and, the other dated January 21, 2004, by Omni Consortium Inc., of Houston, Texas, evidencing employment as a management analyst/operations manager from January 1997 to May 1998. Both of these letters were from prior employers giving the name, address, and title of the employer, and a description of the experience of the alien.

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 appeal¹.

Submitted on appeal were job references by [REDACTED] president and general manager, of Uniwide Express Brokerage Incorporated, dated March 22, 1996, January 26, 2004 and January 31, 2006; a job reference dated March 27, 1997, by [REDACTED] VP-Operations of Omni Consortium Inc.; a job reference dated January 21, 2004, by [REDACTED] C.E.O., of Omni Consortium Inc.; and a "Declaration of [REDACTED] dated January 31, 2006, formerly of Omni Consortium Inc.

The petitioner cooperated with the director and submitted the additional employment reference letters in response to the director's request for evidence. Under the circumstances, the AAO will consider the sufficiency of the evidence submitted on appeal. Further as stated in the pertinent regulation, 8 CFR § 204.5(l)(3)(ii), "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." Satisfactory letters following the regulation were submitted by the petitioner.

There are no inconsistencies in information provided by the beneficiary, or of the beneficiary's prior work

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).

experience from prior employers.

The AAO finds that the preponderance of the evidence does demonstrate that the beneficiary acquired two years of experience as a management analyst/operations manager from the evidence submitted into this record of proceeding and thus the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position that she has performed in whole or in part for the petitioner for the last ten years.

ORDER: The appeal is sustained. The petition is approved.