



U.S. Citizenship  
and Immigration  
Services

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File: [REDACTED]  
SRC-05-207-51256

Office: TEXAS SERVICE CENTER Date: **MAY 21 2008**

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 for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director) initially approved the employment-based preference visa petition. Following approval, the director served the petitioner with a Notice of Intent to Revoke the Approval of the Petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a convenience and gas store and seeks to employ the beneficiary permanently in the United States as a Manager, Retail Store. As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's December 13, 2007 decision, the petition's approval was revoked<sup>1</sup> based on a determination that the petitioner did not demonstrate that the beneficiary met the experience requirements as set forth on Form ETA 750.

The AAO maintains plenary power to review each appeal on a de novo basis. 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. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).<sup>2</sup>

The record shows that the appeal is properly filed, 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. The procedural history in this case is long, and will be outlined in greater detail.

The petitioner seeks to classify the beneficiary as a skilled worker. Section 203(b)(3)(A)(i) of 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 establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner's filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d). Therefore, the petitioner must establish that the job offer was realistic as of the priority date, and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential

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<sup>1</sup> With respect to revocation, Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Accordingly, the director has the authority to revoke the petition's approval at any time. Whether the beneficiary is in the United States or not, has no bearing on this issue.

<sup>2</sup> 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).

element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant, which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on April 18, 2001. The proffered wage as stated on Form ETA 750 is \$3,852 per month for an annual salary of \$46,224 per year. The labor certification was approved on May 26, 2004, and the petitioner filed the I-140 Petition on the beneficiary's behalf on July 20, 2005.<sup>3</sup> The petitioner listed the following information on the I-140 Petition: established: March 13, 1996; gross annual income: \$6,685,818; net annual income: "see CPA's opinion letter;" and current number of employees: 3.

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<sup>3</sup> On September 27, 2004, the petitioner had initially filed a Form I-140 petition on the beneficiary's behalf based on the same Form ETA 750. The director issued two Requests for Evidence (RFE), one for the petitioner to show that the beneficiary, a Pakistani national, had registered with the National Security Entry-Exit Registration System (NSEERS). NSEERS was established September 11, 2002 to monitor individuals entering and leaving the U.S. NSEERS required nonimmigrants from Iran, Iraq, Libya, Sudan, and Syria as designated by the Federal Register to comply with NSEERS registration at ports of entry, as well as nonimmigrants designated by the U.S. Department of State, and any other nonimmigrant regardless of nationality, identified by an immigration officer in accordance with 8 CFR § 264.1(f)(2). The NSEERS requirement was expanded to include other groups of nationals, and nationals from the designated groups were to report for Special Registration in four separate "call-in groups." Lebanon, the beneficiary's country of origin, was listed for call-in registration between January 27 and February, 7, 2003. *See* 68 Fed. Reg. 2366 (January 16, 2003). Group 2 additionally included: citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen. *Id.* at 2366. Group 3 included citizens or nationals of Pakistan or Saudi Arabia. *See* 68 Fed. Reg. 33 (February 19, 2003). Group 4 expanded NSEERS and Special Registration to include citizens or nationals of Bangladesh, Egypt, Indonesia, Jordan, and Kuwait. *Id.* at 33. On December 2, 2003, the Department of Homeland Security (DHS) suspended the automatic 30-day and annual re-registration requirements for NSEERS. *See* <http://www.ice.gov/pi/specialregisration/index.htm>, accessed April 5, 2007.

The second RFE requested that the petitioner submit copies of all decisions issued on the beneficiary's behalf. The petitioner responded, but requested that the Form I-140 be withdrawn on behalf of the instant beneficiary. The petitioner then substituted the beneficiary's spouse into the available Form ETA 750 and filed an I-140 petition on her behalf. Form I-140 was then approved on behalf of the beneficiary's spouse on June 20, 2005. The petitioner filed the instant Form I-140 petition on the beneficiary's behalf on July 20, 2005. The approval of the Form I-140 petition filed on behalf of the beneficiary's spouse was revoked on August 8, 2005.

On August 8, 2005, the director approved the petition. Subsequent to approval, on December 21, 2006, the director issued a NOIR. The NOIR was based on discrepancies discovered in the record. The petitioner had submitted a letter related to the beneficiary's prior experience at Sam's Mart, where the beneficiary claimed to have worked from January 1995 to February 2000. A second letter provided by Sam's Mart, submitted with a separate prior application filed on the beneficiary's behalf, listed that the beneficiary was employed at Sam's Mart for a different time period. Form G-325 submitted with the beneficiary's prior adjustment of status application failed to list that the beneficiary was employed at Sam's Mart at all. Additionally, the NOIR provided that the beneficiary attempted to enter the U.S. under a false identity in June 1995. The beneficiary was not admitted to the U.S., and voluntarily returned to Pakistan. The information from his attempt at entry additionally conflicted with the claim that the beneficiary had been employed at Sam's Mart from January 1995 onward, as the beneficiary had returned to Pakistan. The director requested that the petitioner provide the beneficiary's W-2 statements for the years 1995, 1996, 1997, 1998, 1999, and 2000. Further, the director requested that the petitioner provide information as to whether the beneficiary or his wife were related to the petitioner's owner, and if so, the exact nature of their relationship.

The petitioner responded to the NOIR and provided an additional letter from the owner of Sam's Mart, a statement from the beneficiary, as well as the beneficiary's W-2 Forms for 1998, 1999, 2000, and 2001, and a letter from the petitioner confirming that the owner had no relationship to either the beneficiary or his wife.

On December 13, 2007, the director revoked the petition for good and sufficient cause as the petitioner failed to establish that the beneficiary had the required two years of experience. The director found that the petitioner failed to overcome and adequately explain the discrepant information as outlined in the NOIR. The petitioner appealed and the matter is now before the AAO.

At issue is whether the petitioner can demonstrate that the beneficiary met the requirements of the certified labor certification. In evaluating the beneficiary's qualifications, Citizenship and Immigration Services ("CIS") must look to the job offer portion of the alien 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 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

On the Form ETA 750A, the "job offer" position description provides:

Manage a convenience and gas store. Prepare employees work schedules. Prepare payroll and sales tax. Reconcile daily cash with sales receipts. Order inventory. Maintain records of underground petroleum storage tanks in accordance with state and federal environmental laws.

The job offered listed that the position required prior experience of: 2 years in the job offered, Manager. The petitioner listed other special requirements as "Rotating Shifts: 3:00 p.m. to 12:00 a.m. or 12:00 a.m. to 9 a.m."

On the Form ETA 750B, the beneficiary listed his relevant experience as: (1) Stop N Shop, Lake Jackson, TX, from March 2000 to the present (date of signature, April 10, 2001), position: Manager; (2) Sam's Mart, Freeport, TX, from January 1995 to February 2000; position: Manager.

A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which 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.

(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 document the beneficiary's experience, the petitioner submitted the following letter:

Letter from [REDACTED] President, Sam's Mart, dated July 8, 2004;  
Position title: Manager;  
Dates of employment: January 1995 to February 2000;<sup>4</sup>  
Description of duties:

He was responsible to manage a convenience and gas store. He was responsible to reconcile daily cash with sales receipts, prepared reports and make bank deposits and kept operating records and prepared daily record of transaction. He ordered purchases of merchandise and inventory and maintained records of underground petroleum storage tanks in accordance with state and federal environmental laws.

However, as noted in the director's NOIR, the beneficiary had previously filed a prior I-130 petition with CIS and had provided the following letter with that filing:

Letter from [REDACTED] Sam's Mart, dated September 18, 1997;  
"This letter is to confirm that we intend to employ [the beneficiary] upon issuance of work authorization by your office. He will be employed as a Assistant Manager [sic], and his hourly salary will be \$6.50 per hour."

The beneficiary had listed that he had been employed with Sam's Mart since January 1995. The letter with the beneficiary's prior application, dated in 1997, stated that Sam's Mart "intend[ed] to employ" the

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<sup>4</sup> We note that a search of the Texas state corporate information database exhibiting "Franchise Tax Certification of Account Status" provides that Sam's Mart Inc. was not incorporated in Texas until June 18, 1996. See [http://ecpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTP?Pg=tpid&Search\\_NM=sams%](http://ecpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTP?Pg=tpid&Search_NM=sams%) accessed May 8, 2008.

beneficiary following receipt of work authorization, which lead the director to conclude that the beneficiary was not yet working for Sam's Mart and had not been working at Sam's Mart since January 1995 as the first letter provided.

Further, Form G-325 filed with the beneficiary's I-130 petition, signed by the beneficiary and dated January 12, 1998, did not list that the beneficiary was employed anywhere, and specifically failed to list that the beneficiary was employed with Sam's Mart during the time period in question.

Additionally, the beneficiary had attempted to enter the U.S. on January 13, 1995 using the alias of "Imran." The beneficiary was not admitted to the U.S. and returned to Pakistan. As the beneficiary returned to Pakistan, he would not have been employed by Sam's Mart at that time.

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). It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 591-592.

In response to the NOIR, the petitioner provided an additional statement from the owner of Sam's Mart, which sought to reconcile the discrepant information. The third letter from [REDACTED] dated January 4, 2007, provided:

The purpose of this letter is to clarify issues raised regarding the company's employment of [the beneficiary] . . .

By a letter dated July 8, 2004, this company provided verification of employment of [the beneficiary] from January 1995 to February 2000. A prior letter dated September 1997 verified to the Immigration Service that the company intended to employ [the beneficiary] as an assistant manager at a wage of \$6.50 per hour. Both letters are consistent. The company did employ [the beneficiary] from January 1995 to February 2000 except for a brief period of time around May 1995 when [the beneficiary] took some time off and later returned to work in July 1995. The September 1997 letter verified the company's future intention for employment at that time so that [the beneficiary] could demonstrate the company's future intention for employment at that time so that [the beneficiary] could demonstrate that he would have a means of financial support if INS granted his permanent residency application at that time. The fact remains that [the beneficiary] was employed at the time of the 1997 letter and continued thereafter.

The beneficiary additionally provided an affidavit, in which he stated:

I was employed by Sam's Mart from January 1995 to February 2000 . . .

In 1997, I requested that Sam's Mart provide by a letter to show that I would have a job offer to meet the requirements that I would not need welfare if I got pursuant [sic] residency by the INS at that time. Sam's Mart gave me a letter to meet that requirement which I submitted to INS at that time.

I do not know why my lawyer at that time did not list employment with Sam's Mart on the Form G-325 submitted with my application to INS in 1998.<sup>5</sup>

I started fulltime employment at Sam's Mart in January 1995 but was not on the job from May 1995 to July 1995 when I went back to my home country in Pakistan for about 40 days. Later I entered the U.S. illegally and returned to my job at Sam's Mart on July 1995.

Attached are copies of my Form W-2s from years 1998, 1999, 2000, and 2001. I do not have Form W-2s for 1995, 1996, & 1997 because I did not have my social security number and I was paid cash.

The petitioner submitted the following W-2 statements on the beneficiary's behalf:

<u>Year</u>	<u>Employer</u>	<u>W-2 Wages</u>
2001	Sunesara Business Inc. dba Stop N Shop	\$18,000
2000	Sunesara Business Inc. dba Stop N Shop	\$9,000
2000	Jasmine Trading Inc.	\$3,800.59
1999	Sam's Mart Inc.	\$9,600
1999	Indus Entreprises, Inc.	\$2,982.51
1998	Sam's Mart Inc.	\$4,800

Regarding the evidence submitted in response to the NOIR, the director provided that the petitioner failed to submit any objective independent evidence that would demonstrate that the beneficiary had the two years of required prior work experience. The statement provided by Sam's Mart owner did not indicate why he failed to state that he employed the beneficiary in 1997 when he provided confirmation of "future" employment in the letter submitted with the beneficiary's I-130 petition. Further, the beneficiary's affidavit was self-serving, and would not represent independent objective evidence. Regarding the beneficiary's W-2 statements, the director noted that the beneficiary's wages, which were low, would not be indicative of full-time employment. Further, none of the letters provided by Sam's Mart indicated that it employed the beneficiary on a full-time basis.

On appeal, counsel contends that while CIS relies on *Matter of Ho* for the proposition that it is incumbent on the petitioner to provide independent evidence to resolve inconsistencies in the evidence, the instant matter is distinguishable. Counsel provides that in *Matter of Ho*, a report from the American Consulate contradicted the evidence in the case, but in the instant matter CIS had no report, but instead rejected the letters provided without attempt to verify their content.

Various documents in the record contained discrepancies. CIS sought to resolve such discrepancies through issuance of the NOIR, which allowed the petitioner an opportunity to provide independent objective evidence

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<sup>5</sup> Form G-325A provides: Penalties: severe penalties are provided by law for knowingly and willingly falsifying or concealing a material fact.

The beneficiary signed and dated the form. Additionally, changes were made to the form to correct his parents country of birth from India to Pakistan, so that it appears the beneficiary reviewed, changed, and corrected information on the form were required.

to overcome the discrepancies in the evidence. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel additionally asserts in his brief on appeal that CIS “has not articulated a specific cogent reason why the Sam’s Mart, Inc. letters and the additional third party statements do not verify the beneficiary’s work experience. Counsel asserts that there is “no direct evidence controverting [sic] that conflicts with the evidence submitted verifying that the beneficiary worked full time at Sam’s Mart Inc. from 1995 to 2000.” Counsel cites to a redacted AAO decision, which he asserts provides that the director cannot request evidence and then reject it without valid reasoning.

In reviewing the director’s decision, the decision specifically provides:

“In this case, the petitioner has not submitted any independent objective evidence to support his contention that the beneficiary was in fact employed at Sam’s Mart from January 1995 to February 2000. The explanation by the beneficiary is self serving. The explanation from the owner of Sam’s Mart does not explain why he did not indicate that the beneficiary was already working for him at the time the 1997 letter was written. Evidence that the beneficiary was already employed would be more convincing evidence that the beneficiary would have means of financial support than an offer of employment would.

The director requested, received and considered the information provided. The petitioner failed to adequately resolve the conflicts in the evidence. See *Matter of Ho*, 19 I&N Dec. at 591-592.

Regarding the W-2 statements provided, counsel provides that “the employer paid, and the beneficiary accepted substandard wages for fulltime employment.”

In support, the petitioner provided the following additional evidence on appeal:

Letter from Sam’s Mart, dated January 14, 2008, which provided the following:

The purpose of this letter is to confirm that [the beneficiary] was employed by Sam’s Mart, Inc. from January 1995 until February 2000 on a full time basis as a convenience store and gas store manager . . .

For a brief period of time around May 1995, [the beneficiary] took some time off and later returned to work in July 1995.

On September 18, 1997, this company issued a letter verifying a job offer to [the beneficiary] to be used in connection with his application for U.S. Permanent Residency. The letter was written as a job offer in the future and did not state [the beneficiary’s] than [sic] current employment because it was my understanding that the letter was needed to support the

requirement for U.S. Permanent Residency that [the beneficiary] not likely need public assistance in the future . . . The fact remains that [the beneficiary] was employed full time before the time of the 1997 letter and continued thereafter. His pay was not at \$6.50 per hour. If and when he would have been approved for a green card, he would have received a raise to at least \$6.50 per hour.<sup>6</sup>

The letter by this company in July 2004 is not inconsistent. The 1997 letter verified that [the beneficiary] would not need public assistance in the future because he had a job offer to cover the future. The letter in 2004 verified employment in the past. Both letters are consistent.

The evidence in the record includes two prior inconsistent letters from [redacted] a Form G-325 failing to list any employment with Sam's Mart, and an attempted entry record for the beneficiary using a false identity during the time period that the beneficiary reportedly worked for Sam's Mart. As the letters from Mr. [redacted] were inconsistent, the director noted in the NOR that, "Evidence that the beneficiary was already employed would be more convincing evidence that the beneficiary would have means of financial support than an offer of employment would." [redacted] then added a vague sentence "that [the beneficiary] was employed full time before the time of the 1997 letter and continued thereafter." Sam's Mart did not provide any independent objective evidence, such as payroll records, copies of time cards, or other evidence to evidence the beneficiary's employment. [redacted] did not list the beneficiary's rate of pay in order to confirm hours worked, but instead provides vaguely that "his pay was not at \$6.50 per hour." While the beneficiary provides that he was paid in cash, the owner of Sam's Mart must have some evidence or record of the beneficiary's employment beyond a statement in conflict with other evidence in the record. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Further, nothing in the record confirms that [redacted] is the owner of Sam's Mart.

Counsel provides that there is no evidence to controvert the prior employer's statements from or evidence that the Forms W-2 are false. Counsel further cites to the May 4, 2004 William R. Yates, Associate Director for Operations, (HQOPRD 90/16.45) (May 4 Yates Memo) in support of the proposition that if there are doubts regarding the veracity of documentation then a local fraud unit should review the matter.

The May 4 Yates Memo that counsel cites relates to determination of the petitioner's ability to pay under 8 C.F.R. 204.5(g)(2). While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions and policy memos are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Memos serve as guidance only.

Given the inconsistencies in the record, and doubts raised, we would not accept the W-2 copies as legitimate without certified copies of tax returns from the Internal Revenue Service, along with copies of the W-2 statements filed with those returns. The quality of several Forms W-2 are questionable.<sup>7</sup> Doubt cast on any

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<sup>6</sup> Nothing in the record reflects that Sam's Mart filed a Form ETA 750 or Form I-140 on the beneficiary's behalf, so that the relevance of [redacted]'s comment related to paying the beneficiary \$6.50 an hour is unclear.

<sup>7</sup> Specifically, the typed information is not neatly aligned in the "employer identification" box b., or the beneficiary's social security number, box d., on the beneficiary's 2001 W-2 Form. The beneficiary's Form W-2 for 1999 is also a very poor quality copy.

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. at 591.

On appeal, counsel submitted a second affidavit from the beneficiary, dated January 15, 2008, which provided:

I was employed by Sam's Mart from January 1995 to February 2000 on a full time basis as a convenience store and gas store manager . . .

In 1997, I requested that Sam's Mart provide me a letter to show that I would have a job offer to meet the requirements that I would not need welfare if I got permanent residency by the INS at that time . . .

At the time of my application for permanent residency in 1998, I signed a blank G-325 and other application forms. I do not know why my lawyer at that time did not list employment with Sam's Mart on the Form G-325.

I started fulltime employment at Sam's Mart in January 1995 but was not on the job from May 1995 to July 1995 when I went back to my home country in Pakistan for about 40 days. Later I entered the U.S. illegally and returned to the job at Sam's Mart on July 1995.<sup>8</sup>

. . .

I do not have Form W-2s for 1995, 1996 & 1997 because I did not have my social security number and I was paid cash.

As the director's decision notes, the beneficiary's affidavit is self-serving and would not qualify as independent objective evidence. Further, as the beneficiary asserts he was paid in cash, he has provided no independent evidence to verify his pay, or employment during the time period in question. Additionally, since the beneficiary entered the U.S. illegally, he has not and cannot provide any documentation such as passport stamps to verify his departure or U.S. arrival. Without any independent objective evidence to verify the beneficiary's statements, they remain self-serving. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's president, [REDACTED] additionally provided a letter on appeal, which stated:

I am the president [of the petitioner] . . .

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<sup>8</sup> In the statement that the beneficiary provided related to his 1995 attempted entry, the beneficiary stated that he entered the U.S. in February 1995 and stayed two months in New York, and just one day in Dallas, Texas. The beneficiary signed this statement. Accordingly, by the beneficiary's own statement he was not in Texas in January, February, or March 1995. He further admits in his affidavit that he was not in the country from part of May to June 1995 for a time period of 40 or so days. The claim to his employment for much of 1995 therefore remains in question.

I have known [the beneficiary] for nearly 12 years. I first met him at some church activities at Houston sometime in 1996. At that time, [the beneficiary] was employed as a manager at Sam's Mart, a convenience and gas store . . . Freeport, TX . . . He worked on a full time basis from 1995 to 2000. Sometimes I met him at the wholesale warehouse [in] . . . Houston, Texas because we each buying inventory for our stores. He is an honest and hard working person.

Based on his years of experience as manager, I offered [the beneficiary] a manager position in my other store, Stop N Shop located . . . [in] Lake Jackson, TX . . . because I needed somebody to run the store very badly at that time. During the period of employment with me, [the beneficiary] proved his ability to manage the store and my business improved. Based on that, I decided to file Application for Alien Employment Certification on April 8, 2001 because I knew I could rely on him to run the business for me.

It is unclear how the petitioner's president would know that the beneficiary worked for Sam's Mart in 1995 if he only met the beneficiary in 1996. Further, several other points are relevant: the president is an interested party in the present petition, and therefore, his statement is not independent objective evidence; the statement fails to indicate the exact dates that the beneficiary worked for Stop N Shop, as part of his experience obtained at Stop N Shop before the priority date might be relevant; and the experience at Stop N Shop does not appear to be full-time in 2000 as the wages listed on Form W-2 were only \$9,000. The letter does not provide the beneficiary's rate of pay at Stop N Shop.

The petitioner's president additionally offered the following explanation of the beneficiary's low wages at Sam's Mart:

The wages at Sam's Mart at the duration of his employment were very low. Even though he was not paid what a manager should have been paid at that time, he held the title and performed the responsibilities of manager. [The beneficiary] accepted the low wage probably because he could not find work elsewhere.

Further, [the beneficiary] has been employed by the petitioner since June 2007 to the present.

Sam's Mart could have, but did not, provide any paystubs for the beneficiary, which would have provided objective independent evidence, listed the beneficiary's rate of pay, hours of work completed, and other relevant information to verify the issue of the beneficiary's employment. Instead, the petitioner provided information from the petitioner's president, an interested party to the petition. [REDACTED] is only able to provide speculation regarding the beneficiary's pay and his opinion, but not objective evidence of what the beneficiary was paid. [REDACTED] would be qualified to describe the beneficiary's experience at Stop N Shop, but he did not provide any specifics regarding the beneficiary's employment there.

The petitioner also provided three notarized statements from individuals, all dated in January 2008:

Statement from [REDACTED] "My name is [REDACTED] and I verifying [sic] that this person [REDACTED] who used to work in Sams Mart in Freeport Texas from 1995 to 2000, I was his everyday customer during those year [sic]." The statement included a copy of [REDACTED] driver's license.

Statement from [REDACTED] "My name if [REDACTED], and I verifying [sic] that this person [REDACTED] who used to work in Sams Marth [sic] in Freeport Texas from 1995 to 2000, I

was his regular customer and close friend [sic] during that time.” The statement included a copy of a driver’s license for [REDACTED].

Statement from [REDACTED], hereby verifying that I personally know Mr. [REDACTED] who used to work at Sam’s Mart . . . Freeport, TX . . . from 1996 to 2000. I used to be his daily customer.” The statement included a copy of a driver’s license for [REDACTED].

The statements are basic, and fail to address how they are able to remember a gas station clerk or convenience store employee from eight years ago, and where they resided during that time period to exhibit a logical nexus between their address at that time and the convenience store. As other parts of the record conflict and suggest that the beneficiary was outside the U.S. during part of 1995, the statements do not address any gaps in employment, and, therefore, are insufficient. As the beneficiary’s documented pay does not appear to reflect full-time wages, the individual statements also fail to address this issue. The statements do not confirm how many hours the beneficiary worked. For example, the beneficiary could have worked two hours a day. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592. The statements do not resolve the inconsistencies.

We are not convinced by the documentation provided. CIS may reject a fact stated in the petition that it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5<sup>th</sup> Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Counsel cites to *Matter of Chawathe*, [REDACTED] an adopted decision, which provides:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. *See e.g. Matter of Martinez*, 21 I & N Dec. 1035, 1036 (BIA 1977) (noting that the petitioner must prove eligibility by a preponderance of the evidence in visa petition proceedings) . . .

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I & N Dec. 77, 79-80 (Comm. 1989) . . .

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as greater than 50 percent probability of something occurring.)

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<sup>9</sup> The substance of *Matter of Chawathe* related to the issue of whether a corporation was an “American firm or corporation” for purposes of calculating whether the alien had disrupted his U.S. residence in order to meet naturalization criteria.

Counsel asserts that the evidence provided would reflect by the preponderance of the evidence that the beneficiary has the required experience.

We disagree. The record contains conflicting statements. The director provided what evidence might satisfy the independent objective criteria standard. The beneficiary's statement submitted is self-serving and insufficient. As the statements of [REDACTED] were in question, the petitioner should have submitted independent supporting documentation such as time cards, employee records, or other evidence to exhibit employment and hours worked. Instead, the petitioner submitted a statement from the present petitioner's president, an interested party in the petition who sought to verify information that would not be contained in any of his records, but obtained through information from the beneficiary, which would also be self-serving. The additional statements from customers are too vague to be reliable evidence.

Based on the foregoing, the petitioner has failed to establish that the beneficiary met the requirements of the certified ETA 750. Accordingly, the petition's approval was properly revoked for good and sufficient cause. 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.