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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
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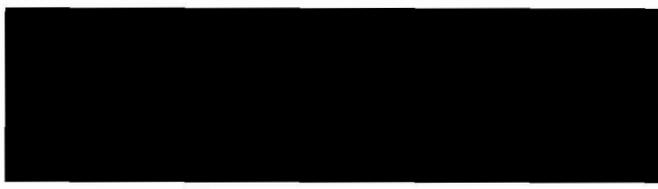
Office: NEBRASKA SERVICE CENTER

Date:

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a residential construction firm. It seeks to employ the beneficiary permanently in the United States as a carpenter. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite qualifying experience as of the visa priority date, and denied the petition accordingly.

On appeal, the petitioner, through counsel, provides additional evidence and maintains that the petitioner has demonstrated that the beneficiary's work experience meets the requirements of the approved labor certification.

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).

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 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.

(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.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt

in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on May 30, 2002.¹

Part 5 of the Immigrant Petition for Alien Worker (I-140), which was filed on May 9, 2006, indicates that the petitioner was established in February 1998, claims a gross annual income of over 403 million dollars, a net annual income of approximately 13 million and employs 1716 workers.

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that the only requirements for the certified position of carpenter is two years of work experience in the job offered as a carpenter or two years of experience in the related occupation of a carpenter helper.

Part B of the ETA 750 was signed by the beneficiary on May 17, 2002. Item 15 of Part B relates to the beneficiary's job experience. It instructs the alien to "list all jobs held during the last three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9."

The beneficiary listed two jobs. First, he states that his employer was [REDACTED] of Atlanta Georgia. No other address is given. The beneficiary claims that he worked 40 hours per week as a carpenter for Mr. [REDACTED] from December 1999 to January 2002.

The only other job claimed by the beneficiary on the ETA 750 is that of the petitioner, for whom the beneficiary states that he began working as a carpenter 40 hours per week in April 2002 and continues to the present or the date of signing of May 17, 2002.

In support of the beneficiary's qualifying employment, the petitioner provided a copy of a letter dated May 24, 2002. The signature is illegible. The letter is typed and states that the beneficiary "worked as a carpenter in this Company from Dec. 1999 to 01-002. During his permanency in this company he showed responsibility, punctuality and motivation in his functions performed."

On December 28, 2006, the director issued a request for evidence, instructing the petitioner to submit evidence that the beneficiary possessed the required work experience as of the priority date of May 30, 2002. He advised the petitioner that the letters from current or former employer(s) must give the name, address, title of the employer and a description of the experience of the beneficiary, including specific dates and specific duties that the beneficiary performed.

In response, the petitioner provided an undated letter from [REDACTED] indicating that the beneficiary worked as a carpenter in this company "from Dec. 1999 until 1-002." Mr. [REDACTED] also states that the beneficiary

¹ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

assembled windows, doors, stairs and worked with cement. He additionally states that the beneficiary was very responsible, punctual and motivated. The letterhead on the letter reflects an address in Harper's Ferry, West Virginia.

Another undated letter from Harper's Ferry, West Virginia on the same stationery, but with slightly different font and slightly different street address, reflects Alejos Rodrigues as the author. The language of the letter is virtually identical to the content of the letter from Mr. [REDACTED] claiming the beneficiary's employment in this company was "from Dec. 1999 until 01-002." Mr. [REDACTED] position with the company is unknown. Additionally, the company is not clearly identified.

A third letter was also submitted in response to the director's request for evidence. It is on a letterhead of Wainwright Farms in McAlpin, Florida. The author is [REDACTED], identifying himself as the president. He certifies that the beneficiary worked for him at Wainwright Farms as a carpenter from November 2000 until March 2001. Mr. [REDACTED] states that the beneficiary's employment ended when he moved to West Virginia.

Determining that these letters contained overlapping dates of employment and contradictions with the jobs and dates of employment listed on the ETA 750, the director concluded that the petitioner had not demonstrated that the beneficiary possessed the requisite two years of experience in the job offered of carpenter or in the related occupation as a carpenter helper. The director denied the petition on May 14, 2007.

On appeal, counsel asserts that the beneficiary has acquired the requisite work experience and submits three additional employment verification letters. The first letter is dated May 29, 2007 and is from [REDACTED].² In this letter, Mr. [REDACTED] states that he beneficiary actually worked "in this company as a carpenter from December 1999 until November 2000 when he moved to Florida. When the beneficiary returned, he was rehired as a carpenter from March 2001 to January 2002. A letter, dated May 29, 2007, from [REDACTED] makes the same claims and additionally identifies Mr. [REDACTED] as a construction supervisor for [REDACTED]. Counsel also provided a duplicate copy of Mr. [REDACTED]'s letter previously submitted to the record. Counsel asserts that this employment equals a total of 26 months of qualifying experience as a carpenter as of the priority date.

We do not find counsel's contentions on appeal to be persuasive. To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(i) of the Act. CIS jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the Act, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany 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 v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). In evaluating

² It is noted that the ETA 750B gives Mr. [REDACTED] address as in Atlanta, Georgia. The record does not make clear where he employed the beneficiary.

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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

In this case, it is noted that the beneficiary signed the ETA 750 B under penalty of perjury and was instructed to list all employment for the three years prior to the date of signing, May 17, 2002, as well as all employment relating to the certified occupation of carpenter. We find that the claim of Florida employment for the Wainwright Farms does not outweigh the lack of credibility arising from the inconsistencies and omissions appearing on the ETA 750B, certified by the DOL, where the qualifying Florida employment should have been claimed.³ It is further noted that the original and amended claims of Mr. [REDACTED] and Mr. [REDACTED] as to the beneficiary's employment additionally does not provide credible confirmation of the beneficiary's claim that he was employed 40 hours per week by Mr. [REDACTED] from December 1999 to January 2002 as is stated on the ETA 750B, given that they later claimed that he was not actually working for Wise for four months. Further, it is observed that on the Form I-140, (Immigrant Petition for Alien Worker), the beneficiary claims that his last arrival in the United States was not until February 2000, as contrasted to the consistent claim that his employment for Wise began in December 1999. It is noted that 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. 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, 591-592 (BIA 1988). Given the lack of reliable documentation provided to corroborate the beneficiary's qualifying employment, this office concurs with the director's assessment that the petitioner has not established that the beneficiary possessed the requisite work experience as of the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

³ *See also Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)