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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 16 2010

EAC-03-081-54442

IN RE:

Petitioner:



Beneficiary:

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 concerning your case must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center on February 18, 2004. Based on an investigation report from U.S. Embassy in Dhaka, Bangladesh and the widespread scope of the fraud perpetrated by former counsel in this case,¹ the director consequently served the petitioner with notice of intent to revoke the approval of the petition on September 13, 2005 (September 13, 2005 NOIR) and with a subsequent request for evidence on December 19, 2005 (December 19, 2005 RFE). The director reaffirmed the approval of the petition on November 28, 2006. On September 20, 2007, the director issued another NOIR (September 20, 2007 NOIR) affording the petitioner 30 days to rebut the grounds of ineligibility based on which the director found that the petition was approved and reaffirmed in error. 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 petition will remain revoked.

The petitioner is a gas station. It seeks to employ the beneficiary permanently in the United States as an assistant manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification (ETA 750), approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not submitted sufficient evidence in rebuttal to the September 20, 2007 NOIR and had not overcome the grounds for revocation. The director revoked the approval of the petition accordingly.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

A Form I-290B, Notice of Appeal or Motion, was timely filed by the petitioner's counsel without any supporting evidence. Counsel indicated in his appeal that he would be submitting a brief and/or additional evidence to the AAO within 30 days. Counsel was also requesting additional time to provide evidence and/or a brief on the Form I-290B. However, as of this date, more than 27 months later, no further correspondence has been received. This office will adjudicate the instant appeal solely based on evidence already submitted in the record.² The procedural history in this case is

¹ On April 23, 2004, [REDACTED] former counsel in the instant case, pled guilty in United States District Court for the District of Columbia to a one count of conspiracy, four counts of money laundering, and one hundred and sixty-four counts of labor and immigration fraud.

² 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). However, counsel did not submit any additional evidence on appeal.

documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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).

As set forth in the director’s November 1, 2007 NOR, the primary issue in this case is whether the petitioner has overcome the grounds of revocation in the director’s NOIR dated September 20, 2007 and whether the director has good and sufficient cause to revoke the approval of the instant petition.

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 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 either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The Form ETA 750 was accepted on April 23, 2001. The proffered wage as stated on the Form ETA 750 is \$14.50 per hour (\$30,160.00 per year based on working 40 hours per week as set forth on the ETA 750A). On the petition the petitioner claims that it has been established in 1999, to have a gross annual income of \$1,040,733, and to have a net annual income of \$46,461.

In determining the petitioner’s ability to pay the proffered wage during a given period, U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed

and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner claims that it has employed and paid the beneficiary since January 2003, however, it did not submit evidence showing that the beneficiary has worked for and been paid by the petitioner the proffered wage for these relevant years. The record contains the beneficiary's 2004 W-2 forms, one is \$3,584.78 from [REDACTED] and the other is \$20,091.20 from the petitioner. The beneficiary's tax returns in the record show that the beneficiary had wages, salaries, tips, etc income of \$8,623 in 2005 and \$11,200 in 2006. However, without W-2 forms attached, the AAO cannot determine the amount of the beneficiary's compensation from the petitioner. The petitioner demonstrated that it paid the beneficiary a partial proffered wage of \$20,091.20 in 2004, but failed to establish its ability to pay the proffered wage through the examination of wages actually paid to the beneficiary.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's total income and wage expense is misplaced. Showing that the petitioner's total income exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of

funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 116. “[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner’s ability to pay. Plaintiffs’ argument that these figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

As an alternate means of determining the petitioner’s ability to pay the proffered wage, USCIS may review the petitioner’s net current assets. Net current assets are the difference between the petitioner’s current assets and current liabilities.³ A corporation’s year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation’s end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. According to the tax returns in the record, the petitioner’s fiscal year is based on a calendar year. The record contains the petitioner’s Form 1120, U.S. Corporation Income Tax Return, for 2000. The petitioner’s 2000 tax return shows that the petitioner had net income⁴ of \$54,335 and net current assets of \$36,982 that year. However, the petitioner’s federal income tax return for 2000 is not necessarily dispositive because the priority date in the instant case is April 23, 2001. The petitioner did not submit any regulatory-prescribed documentary evidence, such as tax returns, annual reports or audited financial statements for 2001 through the present. Without the evidence, USCIS cannot determine whether the petitioner had sufficient net income or net current assets to pay the full proffered wage of \$30,160 in 2001 through 2003 and 2005 through the present, and to pay the difference of \$10,068.80 between wages actually paid to the beneficiary and the proffered wage in 2004.

³ According to *Barron’s Dictionary of Accounting Terms* 117 (3rd ed. 2000), “current assets” consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. “Current liabilities” are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

⁴ For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return.

From the date the Form ETA 750 was accepted for processing by the DOL, the petitioner has not established that it had the continuing ability to pay the instant beneficiary the proffered wage as of the priority date in 2001 to 2006 through an examination of wages paid to the beneficiary, or its net income or net current assets.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the record does not contain any regulatory-prescribed evidence of the petitioner's financial conditions for any year from the priority date to the present. Given the record as a whole, the petitioner's declination to submit requested evidence of its ability to pay the proffered wage, the AAO cannot conclude that the petitioner has established the continuing ability to pay the proffered wage upon assessing the totality of the circumstances.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. Therefore, the director initially approved the petition in error on February 18, 2004 and reaffirmed the approval of the petition in error on November 28, 2006. The director has good and sufficient cause to revoke the approval of the instant petition.

In addition, although in the September 20, 2007 NOIR, the director specifically and clearly requested that the petitioner submit its federal tax returns, quarterly Forms 941 and the beneficiary's W-2 forms for 2001 through 2006, the petitioner declined to provide the requested documents for these relevant years. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for

denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Similarly the petitioner failed to submit the requested evidence to overcome the grounds of revocation based on which the director found to approve the petition in error.

Another basis on which the director found the petition was approved in error is the beneficiary's qualifying experience. To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to 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 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).

Here, the Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of assistant manager. Item 14 requires two years of experience in the job offered or in the related occupation of manager in any commercial enterprise. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A, a public record. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 17, 2001 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, he represented that he has been unemployed since February 1999. Prior to that, he worked 40 hours per week as a manager for [REDACTED] in Chittagong, Bangladesh from February 1996 to February 1999. He did not provide any additional information concerning her employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

With the initial filing of the petition, the petitioner through its former counsel, [REDACTED] submitted a letter dated December 28, 1999 from [REDACTED], the owner of [REDACTED] at [REDACTED] certifying the beneficiary's work experience as a manager from February 1996 to February 1999 [REDACTED] December 28, 1999 letter). This letter is on the company letterhead, includes the name, address, and title of the writer, and a specific description of the duties performed by the alien and appears to meet the requirements of the regulation quoted above. However, the investigation report dated January 3, 2005 from U.S. Embassy in Dhaka, Bangladesh reveals that this letter is forgery.

In response to the director's September 13, 2005 NOIR, the petitioner through its current counsel submitted another letter dated October 25, 2004 regarding the beneficiary's qualifying experience. This letter states in pertinent part that:

- a) [The beneficiary], son of [REDACTED], who is personally know to me from 15 years.
- b) I know the [the beneficiary] used to work as Manager in [REDACTED] in the years from February 1996 to February 1999.
- c) I myself used to work in the same company as a sales man in the years from Jan 1990 to Jan 2000.

While the regulation requires such a letter from the beneficiary's current or former employer or trainer, this letter is from the beneficiary's former co-worker (Co-worker October 25, 2004 letter). The record does not contain any explanation as to why a letter from the beneficiary's former co-worker was submitted. Therefore, the Co-worker October 25, 2004 letter cannot be considered primary evidence to establish the beneficiary's qualifications for the proffered position. Further, the Co-worker October 25, 2004 letter provided the same statement as the [REDACTED] December 28, 1999 letter, namely that the beneficiary worked as a manager for [REDACTED]. As discussed previously, the investigation report from U.S. Embassy in Dhaka, Bangladesh reveals that [REDACTED] December 28, 1999 letter is forgery because it provided a false statement regarding the beneficiary's work experience. Accordingly, the petitioner failed to establish the beneficiary's qualifying experience for the proffered position with the Co-worker October 25, 2004 letter.

In response to the director's December 19, 2005 RFE, the petitioner through its current counsel submitted a third letter to establish the beneficiary's qualifications. The third letter is provided with an original copy and notarized. It is on the company letterhead, dated February 16, 2006, and from [REDACTED] in Madaripur, Bangladesh [REDACTED] February 16, 2006 letter). This letter states in pertinent part that:

This is to certify that [the beneficiary] was an employee of this company between the period of February 1996 to February 1999.

At this time he was working as a manager and his duties were to order petrol and diesel fix and maintenance of pumps, deposit sales to bank, order supplies and other products, making schedules and supervise other employees, etc.

As counsel notes in his letter dated February 27, 2006, this letter is from management of the company, and contains all of the information necessary, including name, address, and title of the writer, telephone contact numbers, and a specific description of the duties performed by the beneficiary. The director, however, determined that [REDACTED] February 16, 2006 letter was not credible because contradictory information in the beneficiary's Application for Asylum. Moreover, the divergent histories presented at the beneficiary's removal proceedings cast doubt on the bona fides of the documentary evidence in the record in addition to the original doubt cast by the preciously submitted experience letter. The AAO concurs with the director's conclusion that the

beneficiary's inconsistent description of his employment history with the petitioner casts doubt on the bona fides of all his statements provided in the instant case. This office has not, however, found any direct connection between the transcripts in the removal proceedings regarding the beneficiary's current employment with the petitioner and doubt on the authenticity of [REDACTED] February 16, 2006 letter.

However, the AAO finds that the record does not contain any documentary evidence to support the contents of [REDACTED] February 16, 2006 letter. The record does not show that the beneficiary has worked as a manager for a company called [REDACTED] in Madaripur, Bangladesh. Instead, the record contains inconsistent information on the beneficiary's qualifying experience in Bangladesh. First, as the director correctly pointed out in his September 20, 2007 NOIR, the beneficiary stated in his application for asylum filed on March 25, 2002 that he worked in road construction in Bangladesh from 1980 to June 2000. Although this statement was in connection with a since withdrawn application for asylum, the beneficiary still made a false statement before the United States government under penalty of perjury and in connection with an application for immigration benefits. Second, the beneficiary stated on the Form ETA 750B signed on April 17, 2001, under a declaration that the contents of the form are true and correct under the penalty of perjury, that he worked 40 hours per week as a manager for [REDACTED] in Chittagong, Bangladesh from February 1996 to February 1999. Third, the beneficiary stated on the Form G-325A, signed on January 27, 2003, with a warning that severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact immediately beneath his signature, that he worked as a manager for [REDACTED] in Chittagong, Bangladesh from February 1996 to February 1999. Fourth, in response to the director's September 13, 2005 NOIR, the petitioner's current counsel submitted an affidavit of the beneficiary dated October 7, 2005 (the beneficiary's October 7, 2005 affidavit). In the affidavit, the beneficiary stated that he worked at one of [REDACTED] in Madaripur, not in Chittagong, however, he stated that he worked as an assistant manager and he never mentioned his former employer's name, [REDACTED], in this affidavit dated just four months before the [REDACTED] February 16, 2006. These statements in the record contain several inconsistencies with the [REDACTED] February 16, 2006 letter. 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 record does not contain any independent objective evidence to resolve these inconsistencies.

Moreover, as previously mentioned the record contains the [REDACTED] December 28, 1999 letter which was concluded a forgery by the U.S. Embassy in Dhaka, Bangladesh because neither the writer's status nor the beneficiary's employment with that company can be verified. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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." It is proper and reasonable for the director cast doubt on the authenticity of the Huda February 16, 2006 letter submitted without any independent objective evidence in support based on the fact that the petitioner had submitted a fraudulent document regarding the beneficiary's qualifying experience.

It is noted that the [REDACTED] letter was dated February 16, 2006 and submitted in response to the director's NOIR and RFE in which the director notified the petitioner of the defects of the previously submitted experience letters. It appears suspect that the petitioner in the instant case is making changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

The AAO concurs with the director's determination that because of these defects, [REDACTED] February 16, 2006 letter, without any further supporting documents, cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case. The record of proceeding does not contain any other documentary evidence to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered for the proffered position as required by the ETA 750. The AAO finds that the director had good cause to issue a NOIR on the ground that the petition was approved in error because the petitioner failed to establish the beneficiary's qualifications.

Counsel contended that he could not respond the NOIR adequately until he reviewed any transcripts of testimonies given by the beneficiary and the petitioner in the removal proceedings based on which the director concluded that the beneficiary provided inconsistent information about his employment history. However, counsel did not provide any correspondence on this issue before the director revoked the approval of the petition and even more than two years after the instant appeal. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). Furthermore, although the director specifically and clearly requested in his NOIR that the petitioner submit original documentary evidence of the beneficiary's relevant work experience such as transcripts issued by the tax authority in Bangladesh which would show the beneficiary's employer's names and corroborating transcripts of the beneficiary's tax returns issued by the tax authority in Bangladesh to rebut this ground of ineligibility, counsel for the petitioner declined to provide these requested documents in his response and on appeal. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

The AAO finds that no derogatory information which is unknown to the petitioner in this case has not be provided in the director's NOIR and utilized as grounds of the director's revocation. The director properly offered the petitioner opportunities to rebut the grounds of ineligibility, however, the petitioner through counsel did not submit sufficient evidence.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Generally, when something is to be established

by a preponderance of evidence, it is sufficient that the proof establish that it is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The evidence in each case is judged by its probative value and credibility. Each piece of relevant evidence is examined and determinations are made as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. Truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Counsel's assertions on appeal cannot overcome the grounds of the director's revocation. The AAO concurs with the director's decision and determines that the director had good and sufficient cause to revoke the petition's approval based on the insufficient evidence to support factual assertions presented by the petitioner concerning its ability to pay the proffered wage and presented by the beneficiary concerning his qualifications for the proffered position.

In addition, section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182, provides that "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible." By providing a false document to evidence the requisite experience for the proffered position, the beneficiary sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. The beneficiary also signed Form ETA 750, which contained similar misrepresentations of material fact, under penalty of perjury. The AAO will dismiss the appeal and enter a formal finding of fraud into the record. This finding of fraud will be considered in any future proceeding where admissibility is an issue.

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. The director's decision on October 12, 2007 is affirmed and the approval of the petition remains revoked.