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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B6



DATE: APR 13 2011 Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]
LIN-07-203-55184

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:
[REDACTED]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a health and beauty products development/distribution company. It seeks to employ the beneficiary permanently in the United States as a public relations specialist. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (the DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary met the minimum requirements stated on the labor certification at the time the Form ETA 750 was accepted.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. Further elaboration of the procedural history will be made only as necessary. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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 the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is August 11, 2003, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).³ The Immigrant Petition for Alien Worker (Form I-140) was filed on July 9, 2007.

The job qualifications for the certified position of public relations specialist are found on Form ETA-750 Part A. Item 13 describes the job duties to be performed as follows:

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

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).

³ 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 is clear.

Plans and conducts public relations programs designed to create and maintain favorable public image for company; Promotes goodwill through such publicity efforts as speeches, exhibits, films, tours, and question/answer sessions; Represents company during community projects and at public, social, and business gatherings; Congers with production and support personnel to coordinate production of television advertisements and on-air promotions.

The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification and reflects the following requirements:

Block 14:

Education (number of years)

College	4
College Degree Required	Bachelor or equivalent
Major Field of Study	Journalism/Communications or Arts

Experience:

Job Offered	6 months
(or)	
Related Occupation	6 months as News Editor

Block 15:

Other Special Requirements	Because of our business operations in Japan, the worker must be fluent in Japanese as well as English.
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To determine whether a beneficiary is eligible for an employment based immigrant visa, United States Citizenship and Immigration Services (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). According to the plain terms of the labor certification, the applicant must have a four year bachelor's degree in journalism, communications or arts and six months of experience in the job offered or related occupation.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's education, he represented that he attended Kansai Gasidai University in Japan from April 1993 to March 1997

and received a four year bachelor of arts degree in English, and San Bernardino Valley College in California from January 1998 to June 1999 and received an associate degree. In eliciting information of the beneficiary's work experience, he represented that he has been working for the petitioner in the proffered position since September 2001. Prior to that, he worked for RPJ Communication, Inc. in California as a news editor from October 2000 to March 2001. He does not provide any additional information concerning his employment background on that form.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's certification of graduation from Kansai Gaidai University in Japan. It indicates that the beneficiary entered the university in April 1993 and graduated in March 1997 with the degree of Bachelor of Arts. The petitioner additionally submitted a credentials evaluation, dated April 8, 1998, from American Education Research Corporation (AERC). The evaluation describes the beneficiary's degree from Kansai Gaidai University as a Bachelor of Arts degree in English and concludes that it is equivalent to a bachelor's degree in English awarded by a regionally accredited university in the United States. The AAO concurs with the evaluation that the beneficiary possesses a single source foreign degree equivalent to a U.S. bachelor of arts degree prior to the priority date. We find that the minimum educational requirement set forth on the Form ETA 750 is a bachelor of journalism/communications or a bachelor of arts. Counsel asserts on appeal that the proffered position is a public relations specialist, that it is the petitioner's intent that the position does not require that an individual have an emphasis in Arts, and that the duties contemplate an individual with critical thinking skills and knowledge, which are evidenced with the attainment of a four year Bachelor's of Arts degree or a Bachelor's degree in Journalism or Communications. We concurs with counsel's assertion and find that the petitioner's such intent could be read from the plain meaning of the language on the Form ETA 750 by DOL and USCIS. Thus, the AAO concludes that the beneficiary meets the minimum education requirement as he possesses a bachelor of arts degree in English.

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.

With the initial filing, the petitioner did not submit any evidence to demonstrate that the beneficiary possessed the requisite experience set forth on the Form ETA 750. On December 23, 2008, the director issued a request for evidence (RFE) requesting evidence that the beneficiary obtained the required six months experience in the related occupation from RPJ Communications before August 11, 2003 among other things. In response to the director's RFE, the petitioner submitted a letter dated January 27, 2009 from [REDACTED] the president of Team J Station, Inc. confirming the beneficiary's employment with RPJ Communications, Inc. from October 2000 to March 2001. On February 19, 2009, the director determined that this letter only establishes five months of experience because no specific dates of employment were included, and therefore, denied the petition.

The regulation at 8 C.F.R. § 204.5(1)(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 regulation at 8 C.F.R. § 204.5(g)(1) also provides in pertinent part that: "If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered."

On appeal, counsel submitted another letter dated March 16, 2009 from [REDACTED]. This March 16, 2009 letter specifically indicates that the beneficiary was employed by RPJ Communications, Inc. as a news editor from October 1, 2000 to March 31, 2001. The letter also states that [REDACTED] worked at RPJ Communications, Inc. from January 2000 until October 2002 responsible for programming and a disc jockey and that RPJ Communications, Inc. is no longer operating or in business. The business entity database maintained by the California Secretary of State shows that RPJ Communications, Inc. has been suspended. See <http://kepler.sos.ca.gov/cbs.aspx> (accessed March 21, 2011). Therefore, this letter supports the beneficiary's claim to have the requisite six months of experience in the related occupation as set forth on the Form ETA 750. The beneficiary's W-2 forms for 2000 and 2001 issued by RPJ Communications, Inc. show that the beneficiary was paid \$18,560 in 2000 and \$7,100 in 2001 which indicate that the beneficiary worked for at least six months on a full-time basis with this company according to the beneficiary's ETA Form 9035, Labor Condition Application for H-1B

Nonimmigrants, submitted in the record on appeal. The submitted H-1B approval also shows that the beneficiary received an H-1B nonimmigrant visa from RPJ Communications, Inc. for employment as a news editor. The totality of independent objective evidence supports the contents of the March 16, 2009 letter from Kohei Yamakawa. The letter includes the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary, and thus, meets the requirements set forth at the 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A).

Therefore, the AAO finds that with the evidence submitted on appeal, it is more likely than not that the beneficiary possessed six months of experience in the related occupation prior to the priority date. Further the beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," and, thus, qualifies for preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional. The director's February 19, 2009 decision will be withdrawn and the petition will be approved.

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 met that burden.

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