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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

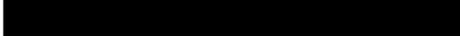
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Date: **MAY 20 2011** Office: NEBRASKA SERVICE CENTER

FILE: 

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner claims to be a distribution trucking company. It seeks to permanently employ the beneficiary in the United States as a truck mechanic. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director's denial concludes that the petitioner failed to establish that the beneficiary possessed the minimum experience requirements of the offered position as set forth in the labor certification.

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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the 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); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). 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. United States Citizenship and Immigration Services (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, 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);

¹ 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.

² The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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).

Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney, 661 F.2d 1 (1st Cir. 1981).

The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve "reading and applying the plain language of the [labor certification]." *Id.* at 834.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at *7.

The required education, training, experience and skills for the offered position are set forth at Lines 14 and 15 of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

- Education: None required.
- Training: None required.
- Experience in the job offered: Three (3) years required.
- Experience in a related occupation: None accepted.
- Other special requirements: None.

Therefore, the plain language of the labor certification states that the beneficiary must possess three years of experience as a truck mechanic by the priority date.

The labor certification, signed by the beneficiary under penalty of perjury on April 30, 2001, states that the beneficiary had worked as a truck mechanic for [REDACTED] in Miraloma, California, since 1991. No other employment experience is listed on the labor certification.

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 regulation at 8 C.F.R. § 204.5(g) also states that evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien

The record contains a letter dated October 23, 2007, on the letterhead of [REDACTED], of [REDACTED], California. In this letter, [REDACTED], stated that the beneficiary worked for their company as a truck mechanic from February 1995 through September 1997. The dates of employment on the letter are inconsistent with the labor certification. The letter also does not describe the beneficiary's duties, as required by the regulations for employment experience letters.

The record also contains a letter dated May 24, 2007 from [REDACTED], human resources for the petitioner. The letter states that the beneficiary has worked for the petitioner as a truck driver on a full-time basis since September 4, 2000. However, this employment is not listed on the labor certification.

The director accepted [REDACTED]'s employment letter at face value and concluded that two years and eight months of experience as a truck mechanic did not satisfy the required three years of experience. Accordingly, the director denied the petition.

On appeal, the petitioner provided a statement from the beneficiary which claims that the petitioner made an error in listing his work experience on the labor certification, and that, contrary to what is stated on the labor certification and on the letter from [REDACTED] he worked for [REDACTED] from 1991 until 1993, and for [REDACTED] from January 1993 until December 1994. The petitioner did not submit a letter from [REDACTED] explaining the alleged error in the stated dates of employment on [REDACTED] October 23, 2007 letter.

The petitioner also provided a letter dated December 20, 2000, from [REDACTED], manager of [REDACTED] of El Monte, California. The letter states that the beneficiary worked for the company as a diesel mechanic from January 7, 1993, until December 10, 1994. This claimed employment is not listed on the labor certification. The letter also does not describe the beneficiary's duties, and does not state whether the employment was full-time.

The petitioner also provided a letter signed by [REDACTED]. The letter claims that the beneficiary worked for him as a diesel mechanic for 18 months in 1992 and 1993. This letter is accompanied by a copy of an IRS Form 1099-MISC purportedly issued by [REDACTED] to the beneficiary in 1992. However, the letter is not on letterhead, does not provide a name and address for the employer, does not provide the name and title of author, does not state the start and end dates of employment, does not describe the beneficiary's duties, and does not state whether the employment was full-time. In addition, the period of employment claimed on the letter is not

mentioned in the labor certification, in the beneficiary's statement submitted on appeal concerning his employment history, and also conflicts with the period of employment claimed with both [REDACTED] and [REDACTED]

As is discussed above, except for the May 24, 2007 letter from [REDACTED], the employment experience letters submitted by the petitioner do not satisfy the requirements of 8 C.F.R. § 204.5(1)(3) and 8 C.F.R. § 204.5(g). The employment dates stated on the letters also vary significantly from the work experience claimed by the beneficiary on the Form ETA 750 and with each other. In addition, the beneficiary's explanation on appeal that the petitioner made an error in listing his work experience on the labor certification is contradicted by evidence in the record. Specifically, the beneficiary did not deny that he, himself, signed the page of the labor certification attesting to the claimed ten years of work experience for [REDACTED]. In addition, on a Form G-325 A, Biographic Information, submitted with his Form I-485, Application to Register Permanent Residence or Adjust Status, the beneficiary testified that his only employer in the United States has been [REDACTED] Miraloma, California, since May 1991. This form was signed by the beneficiary on May 29, 2007.

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). In light of these serious discrepancies, the validity of the beneficiary's employment documentation is highly suspect. Moreover, the fact that the claimed employment with the petitioner, [REDACTED] and for [REDACTED] were not listed on the labor certification only compounds the question of the credibility of these claims. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), where the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750 lessens the credibility of the evidence and facts asserted.

For the aforementioned reasons, the evidence in the record does not establish that the beneficiary possessed the required three years of experience in the offered position. 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)). Thus, the petitioner has not established that the beneficiary possesses the experience required to perform the offered position.

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.