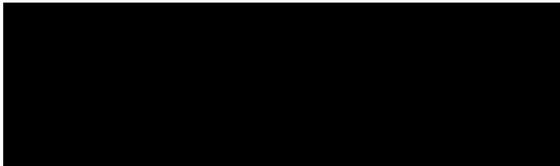


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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Date: **FEB 22 2012**

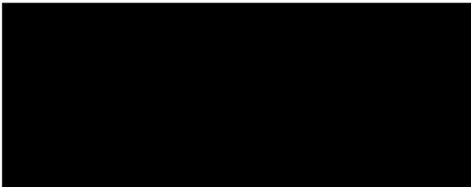
Office: TEXAS SERVICE CENTER

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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an accounting services business. It seeks to employ the beneficiary permanently in the United States as a financial analyst. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with 24 months (two years) of employment experience in the job offered, financial analyst. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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.

As set forth in the director's September 8, 2008 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The director determined that the evidence was inconsistent and failed to establish that the beneficiary had 24 months of work experience as a financial analyst.

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C.S. § 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.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its labor certification application, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977). Here, the labor certification application was accepted on March 30, 2006.

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.<sup>1</sup> On appeal, counsel submits employment letters accompanied by job descriptions. Other relevant evidence in the record includes employment letters and the beneficiary's resume.<sup>2</sup>

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1).

<sup>2</sup> The AAO notes that the petitioner submitted educational evaluations from Hofstra University and [REDACTED] that stated that the beneficiary has acquired an education equivalent to a bachelor's degree in accounting earned at a regionally accredited institution of higher education in

On appeal, counsel asserts that the director's decision was erroneous in that the director failed to consider the totality of the circumstances, including the beneficiary's extensive experience in the finance field.

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'r 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); *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 two years of experience in the job offered.

The ETA Form 9089 at H. 11. describes the job duties for the position offered (financial analyst) as:

Provide analytical support for reporting of business and consolidated financial results. Perform ad hoc analysis and provide automated ledger inputs for integrated and consolidated cash/collection processes of corporate acquisitions. Identify and develop key performance metrics regarding operational efficiency and expense management.

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 work experience, he represented the following employment experiences:

- [REDACTED] s a finance analyst from April 15, 1995 through February 20, 1999.
- [REDACTED] as an auditor from April 4, 2001 through November 2, 2002.
- [REDACTED] as branch manager from November 5, 2002 through June 5, 2004,
- [REDACTED] as assistant branch manager from June 20, 2004 through February 2, 2006.

The beneficiary does not provide any additional information concerning his employment background on that form.

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the United States. The documents are relevant to the issue of the beneficiary's education but irrelevant to the issue of the beneficiary's job experience. Therefore, this information will not be considered in determining whether the beneficiary has the 24 months of job experience as required by the labor certification.

The beneficiary indicated on his resume that his work experience included the following:

- [REDACTED] as collections specialist (June 1988 to May 1990), sales department manager (June 1990 to July 1991), assistant branch manager (August 1991 to February 1994), and branch collections manager (February 1994 to April 1995).
- [REDACTED] as financial analyst/assistant branch manager (April 1995 to June 1996), branch manager (June 1996 to February 1997), operations and customer service manager-Eastern Region (March 1997 to May 1997), and national collections manager (May 1997 to January 1999).
- [REDACTED] as auditor/front desk clerk April 2001 to November 2002.
- Florida Auto Loans, Inc. as branch manager 2002 to 2004.
- Mercantile Bank as assistant branch manager 2004 to present.

The petitioner initially submitted the following evidence:

- An employment letter dated March 12, 2000 from the vice president of [REDACTED] who stated that the beneficiary was employed by the bank as the director of the collections department. He is not described as performing the duties of the offered position.
- An employment letter dated September 21, 2001 from the national collections manager of [REDACTED] who stated that he has known the beneficiary since April 1988 when the declarant was the national credit and collections manager. He further stated that the beneficiary was a hard worker, great leader, and supervisor.
- A translated employment letter from the director of [REDACTED] who stated that the company employed the beneficiary between April 17, 1995 and December 28, 1998, and that he performed the position of manager of collections under an indefinite time contract.
- An employment letter dated September 14, 2006 from the executive vice president of [REDACTED] who stated that the beneficiary was employed at the bank as branch supervisor from June 21, 2004 to February 3, 2006.

On appeal, counsel asserts that the employment letter from [REDACTED] was incorrectly translated. In support of counsel's assertion, the petitioner submitted a second translation which stated that the beneficiary was employed under an employment contract for an indefinite period; that he worked for the bank from April 17, 1995 to December 28, 1998; and that at the time of the beneficiary's retirement he held the position of manager of collections. The petitioner submitted a copy of a document dated October 29, 2008 from [REDACTED] (formally known as [REDACTED] which stated that the beneficiary was employed by [REDACTED] with an indefinite agreement, from April 17, 1995 to December 28, 1998, and that his last position was that of national collections manager. The document listed the beneficiary's positions as branch financial manager/operations assistant manager April 1995

to June 1996, director of branches-operations and finance June 1996 to February 1997, operations and service area manager March 1997 to May 1997, and manager, national collections May 1997 to December 1998. The document also provided a description of the beneficiary's job duties. Counsel asserts that although the title of financial analyst may not appear in the various job descriptions, it is evident that the beneficiary performed the duties of a financial analyst; and therefore, qualifies as experience for the job offered. Contrary to the statements made on appeal, the beneficiary indicated under penalty of perjury on the ETA Form 9089 that he was employed by [REDACTED] as a "finance analyst" from April 15, 1995 to February 20, 1999. It is also noted that the beneficiary stated on his resume that he was employed by Banco Superior as a financial analyst from April 1995 to June 1996, and as a branch manager from June 1996 to February 1997. There has been no explanation given for the inconsistencies and contradictions. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless, the Davivienda Bank letter does not describe the beneficiary as performing the duties of the proffered position for a two-year period. He is described as performing duties associated with branch management, operations management, and collections. Any financial analysis duties performed would have been incidental. At no time is the beneficiary described as working on corporate acquisitions.

The record of proceeding contains a Form G-325A, Biographic Information sheet submitted in connection with the beneficiary's application to adjust status to lawful permanent resident status. On that form under a section eliciting information about the beneficiary's employment history, he represented his employment as follows:

- [REDACTED] as branch manager from November 2002 to June 2004.
- [REDACTED] as assistant bank manager from March 2004 to February 2006.
- [REDACTED] as assistant branch manager from October 2006 to June 2006.
- [REDACTED] as market manager since June 2007.

He did not list his last occupation abroad. The beneficiary made these statements above a warning for knowingly and willfully falsifying or concealing a material fact.

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.

The petitioner submitted on appeal a letter dated October 8, 2008 (with an attached job description) from the regional human resources manager of ██████████ who stated that the bank employed the beneficiary as branch supervisor from June 21, 2004 to February 3, 2006. Contrary to counsel's assertions, the beneficiary stated under penalty of perjury on the ETA Form 9089, Form G-325A, and on his resume that he was employed by ██████████ as an assistant branch manager and did not indicate that he performed the job duties specified in the job description submitted on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. There has been no explanation given for the multiple inconsistencies and contradictions found in the record. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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).

Regardless, even if the AAO were to take into consideration the beneficiary's statement in his resume that he was a financial analyst for ██████████ from April 1995 to June 1996, this is insufficient to demonstrate two years of work experience in the job offered as indicated on the ETA Form 9089.

The AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired two years of experience in the job offered from the evidence submitted into this record of proceeding. The beneficiary's statements concerning his employment history are contradictory and are inconsistent with statements from his alleged former employers. Thus, the petitioner has not demonstrated that the beneficiary is qualified with the necessary experience to perform the duties of the proffered 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.