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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

DATE: JUL 02 2012

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a supermarket. On February 12, 2008, the petitioner filed a petition seeking to employ the beneficiary permanently in the United States as a produce manager. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).<sup>1</sup> As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the Department of Labor (DOL).

With its initial petition submission, as evidence of the beneficiary's claimed experience, the petitioner provided a translation of a letter from a former employer. However, the letter did not demonstrate that the beneficiary had the requisite two years of experience in the job offered, as stipulated on Form ETA 750.<sup>2</sup> On April 25, 2008, the director issued a request for evidence (RFE), directing the petitioner to supply, among other things, evidence demonstrating that the beneficiary obtained the required two years of experience as a produce manager as of the priority date of September 24, 2002. The director indicated that such evidence would need to take the form of letters from current or former employer(s) giving the name, address, and title of the employer as well

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants 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 2 years of training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

<sup>2</sup> 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). 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). 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).

as a description of the experience, including specific dates for the employment and the duties which the beneficiary performed.

In a response dated July 7, 2008, the petitioner submitted the same translation of the letter which was included with the initial petition submission. However, the response also included a copy of the original letter with the translation.<sup>3</sup>

On June 9, 2009, the director issued a second RFE, requesting evidence related to the petitioner's ability to pay as well as evidence demonstrating that the beneficiary had obtained the required two years of experience as a produce management as stipulated on Form ETA 750 as of the priority date of September 24, 2002. Again, the director noted that the evidence must take the form of letter(s) from current or former employer(s) giving the name, address, and title of the employer and a description of the experience of the beneficiary, including specific dates of the employment and specific duties.

The petitioner responded on July 1, 2009, providing the same letter which was submitted both with the initial petition submission and with the petitioner's response to the first RFE. The petitioner provided no other evidence of the beneficiary's experience and did not indicate that such evidence existed.

The director denied the petition on October 8, 2009. In his decision, the director found that the petitioner did not demonstrate that the beneficiary had the minimum experiential requirements for the proffered position as of the priority date.

Counsel filed the instant appeal on October 30, 2009. On Part 3 of Form I-290B, Notice of Appeal or Motion, counsel states the following as the basis for the appeal:

At the time of the application for I-140 Form, the information about the alien's prior experience was not completely submitted.

There is prior experience from September of 1988 until December 28 of 1990. (Which makes his work experience to be of more than 2 years).

Enclosed is the experience letter (with a translation) for alien's job from September 1988 until December 1990...

With Form I-290B, counsel submitted a copy of a letter dated October 20, 2009 from [REDACTED] with an associated translation.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8

<sup>3</sup> The letter stated that the beneficiary worked for [REDACTED] as a supervisor manager of merchandise from January 1, 1991 until August 31, 1992 or one year and seven months.

C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO “shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.<sup>4</sup> In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.

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<sup>4</sup> Even if the evidence submitted on appeal was considered, the appeal would still have been dismissed. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board’s dicta notes that the beneficiary’s experience, without such fact certified by DOL on the beneficiary’s Form ETA 750B, lessens the credibility of the evidence and facts asserted. The letter submitted for the first time on appeal claims that the beneficiary worked as a merchandise supervisor at [REDACTED] from September 25, 1988 until December 28, 1990. The petitioner provided no other evidence, such as pay statements which the employer might have issued to the beneficiary or payroll records from the employer, to corroborate the claimed experience.

On Form ETA 750B, the beneficiary identified only one employment experience which qualified him for the proffered position, working as a supervisor/manager for [REDACTED] from January 1, 1991 until August 31, 1992.

Since the petitioner only claimed that the beneficiary had the experience with [REDACTED] on appeal and the claimed experience was not identified on Form ETA 750 and the petitioner provided no other independent, objective evidence to corroborate the claim, USCIS does not find it credible.