

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

[REDACTED]

Date: **OCT 24 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:

[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.

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,

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 a construction company. It seeks to employ the beneficiary¹ permanently in the United States as a “tracer.” 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 “two years” of qualifying employment experience. 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 May 15, 2008 denial, the 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. Specifically, the director noted that the petitioner could not furnish the original certified Form ETA 750 so a duplicate labor certification was requested from DOL, and the duplicate did not list the job duties associated with the proffered position (“a tracer in stone work and marble”). The director consulted the Building Stone Institute’s (BSI) website (http://www.buildingstoneinstitute.org/tech_glossary.html) for the definition of a tracer, and found

¹ We note that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was permitted by the DOL at the time of filing this petition. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 C.F.R. §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to U.S. Citizenship and Immigration Services (USCIS) based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (codified at 20 C.F.R. § 656). DOL’s final rule became effective July 16, 2007, and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. As the filing of the instant case predates the rule, substitution will be allowed for the present petition.

the term “tracery” defined as follows: “Curvilinear mullions or openwork on windows, window heads, stone panels, etc.” Based upon this definition, the director determined that the position of “tracer” of stone work/marble was a specialized occupation within the stone work/marble industry and that the experience letters supplied by the petitioner did not establish that the beneficiary had the experience required by the Form ETA 750 (four years in the proffered position).² The director stated that the record did not establish that the beneficiary had “experience in developing curvilinear mullions or openwork on windows, window heads, stone panels etc.” (with those duties being taken from the BSI glossary definition for tracery).

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.

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 (Act. Reg. Comm. 1977). Here, the labor certification application was accepted on April 27, 2001.

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.³

On appeal, counsel submits a brief, a copy of an excerpt from the U.S. Department of Labor’s *Dictionary of Occupational Titles*, Fourth Edition, which defines the term “Tracer” as used in conjunction with stonework/construction, and three letters attesting to the beneficiary’s work experience as a stonecutter. Counsel asserts that the director erred in denying the Form I-140 petition. Specifically, counsel states that the director used an improper source in determining the duties of the proffered position, and too narrowly construed the parameters of the position’s requirements. Counsel states that the record establishes the beneficiary’s qualifications for the position offered.

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

² The director’s reference in his May 15, 2008 decision denying the petition that the Form ETA 750 requires two years of experience as a tracer in stone work and marble is erroneous. The Form ETA 750 requires four years of experience in the proffered position.

³ 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).

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 four years of experience in the job offered as a tracer, six years of grade school education and four years of high school education.

The beneficiary set forth his credentials in a Form ETA 750 and signed that document on December 7, 2006 under a declaration that the contents of the form are true and correct under the penalty of perjury. In that document (Section 15 – Work Experience) the beneficiary attested to the following experience:

- The petitioner - September 2003 - October 2005; the beneficiary stated his duties in stone work during this time frame. It is noted that the employment period listed is after the April 27, 2001 priority date.
- Budokam S.C. - Masonry Company, Poland - March 1988 – June 1991; the beneficiary stated his duties in stone work during this time frame.⁴

The record of proceeding also contains a Form G-325A, Biographic Information sheet (dated November 16, 2007) 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 during the last five years, the beneficiary stated under a warning for knowingly and willfully falsifying or concealing a material fact, that he had been employed by the petitioner from August 1999 to the date of signature. In a letter dated February 29, 2008, the petitioner stated that the beneficiary had been employed by it since "sometime in August 1998." No explanation is offered for

⁴The petitioner submitted, on appeal and in response to the director's Notice of Intent to Deny (NOID), an experience letter from Grave Manufacturing, a stone-masonry company, which states that the beneficiary worked as a stone setter from April 1, 1986 to February 28, 1987. That letter, however, will not be considered as it was not listed by the petitioner on the substitute Form ETA 750B submitted on behalf of the beneficiary. 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. Although the present Form ETA 750B was not submitted to DOL for certification since this case involves the substitutions of beneficiaries, the employment was, nonetheless, not listed on the Form ETA 750B containing the beneficiary's experience. This lessens the credibility of the letter submitted on appeal and in response to the NOID. 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).

this one year discrepancy in employment dates. 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). Additionally, this stated start date conflicts with the September 2003 start date listed on Form ETA 750.

The regulation at 8 C.F.R. § 204.5(i)(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.

As previously noted, the duplicate Form ETA 750 supplied by the DOL did not contain the duties of the offered position. The director referred to the website of BSI and determined that the duties of the position contained those set forth in the BSI's definition of "Tracery." The AAO finds, however, that the occupation of the offered position is determined by the DOL and its classification code is notated on the labor certification. The DOL previously used the Dictionary of Occupational Titles (DOT) to classify occupations. O*NET is the current occupational classification system in use by the DOL.⁵ O*NET incorporates the Standard Occupational Classification (SOC) system,⁶ which is designed to cover all occupations in the United States.⁷ The SOC classifies workers at four levels of aggregation: major group; minor group; broad occupation; and detailed occupation. All SOC occupations are assigned a six-digit code. The first and second digits represent the major group; the third digit represents the minor group; the fourth and fifth digits represent the broad occupation; and the sixth digit represents the detailed occupation.⁸ In cases where the O*NET-SOC occupation is

⁵O*NET, located at <http://online.onetcenter.org>, is described as "the nation's primary source of occupational information... containing information on hundreds of standardized and occupation-specific descriptors." <http://www.onetcenter.org/overview.html> (accessed September 26, 2012).

⁶<http://www.onetcenter.org/taxonomy.html> (accessed September 26, 2012).

⁷<http://www.bls.gov/soc/socguide.htm> (accessed September 26, 2012)(relating to the 2000 SOC); <http://www.bls.gov/soc/home.htm> (accessed September 26, 2012)(relating to the 2010 SOC).

⁸http://www.onetcenter.org/dl_files/UpdatingTaxonomy2009_Summary.pdf (accessed September

more detailed than the original SOC detailed occupation, it is assigned the six-digit SOC code from which it originated, along with a two-digit extension starting with .01, depending on the number of detailed O*NET-SOC occupations linked to the particular SOC detailed occupation.⁹ For older labor certifications that were assigned a DOT code instead of an O*NET-SOC code, O*NET contains a crosswalk that translates DOT codes into the current O*NET-SOC codes.¹⁰

In the instant case, the occupational code provided by the DOL indicates that the duties of the position are set forth in the DOL's summary report for "Stone Cutters and Carvers, Manufacturing." (<http://www.onetonline.org/link/summary/51-9195.03>). The duties of the position are set forth as follows:

- Carve designs and figures in full and bas relief on stone, employing knowledge of stone carving techniques and sense of artistry to produce carvings consistent with designers' plans.
- Verify depths and dimensions of cuts or carvings to ensure adherence to specifications, blueprints, or models, using measuring instruments.
- Lay out designs or dimensions from sketches or blueprints on stone surfaces, by freehand or by transferring them from tracing paper, using scribes or chalk and measuring instruments.¹¹
- Study artistic objects or graphic materials such as models, sketches, or blueprints, in order to plan carving or cutting techniques.
- Drill holes and cut or carve moldings and grooves in stone, according to diagrams and patterns.
- Shape, trim, or touch up roughed-out designs with appropriate tools in order to finish carvings.
- Select chisels, pneumatic or surfacing tools, or sandblasting nozzles, and determine sequence of use.
- Move fingers over surfaces of carvings to ensure smoothness of finish.
- Carve rough designs freehand or by chipping along marks on stone, using mallets and chisels or pneumatic tools.

26, 2012).

⁹ *Id.*

¹⁰ <http://online.onetcenter.org/crosswalk/DOT> (accessed March 29, 2011).

¹¹ On appeal, counsel submitted the DOT definition of tracer: "Lays out or traces lettering and designs on surface of marble and granite to prepare stone for cutting, using any of the following methods: Positions stone on bench, stool, or floor with aid of other workers, hoist, or crane. (1) Lays paper bearing lettering and design on stone, centers paper and traces outline with stylus. (2) Lays out lettering with drafting instruments and sketches designs freehand; working to specifications. (3) Centers and pastes paper bearing lettering and design on face of stone."

- Guide nozzles over stone following stencil outlines, or chip along marks to create designs or to work surfaces down to specified finishes.

The petitioner set forth the nontechnical description of the offered job in Part 6 section 3 of the Form I-140 as follows:

Template and install granite counter tops[;] measure, cut and attach them using hand tools and power equipment[;] [and] work from blueprints.

The duties of the position set forth by the petitioner on the Form I-140 fall within the more detailed duties set forth in O*NET for a stonecutter and carver. It must now be determined whether the experience letters provided by the petitioner establish that the beneficiary has four years of qualifying experience in the proffered position as required by the certified labor certification.

Experience letters must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. See 8 C.F.R. § 204.5(g)(1) and (1)(3)(ii)(A).

- By correspondence dated May 18, 2005, [REDACTED] state that the beneficiary was employed by Budokam S.C. in Poland from March 1, 1988 to June 31, 1991. During that time frame the beneficiary performed duties which consisted of “taking measurements, cutting and installing kitchen counter tops and bathroom fittings with the use of power equipment and hand tolls. [The beneficiary also] worked from blueprint[s]. The letterhead of Budokam S.C. indicates that it is a stone-masonry company. This letter would not document four years of experience in the position offered.¹²
- By correspondence dated February 29, 2008, the petitioner’s president [REDACTED] stated that the beneficiary began working for his company “sometime in 1998,” and performed the following duties: worked with various stone (granite, marble, limestone), made templates, drawings and traced them to stone, took measurements, and cut stone using hand tools and power equipment. While it cannot be determined from the record that the beneficiary worked continuously for the petitioner from “sometime in 1998” to the April 27, 2001 priority date, the petitioner

¹² This letter does not include a proper translation completed in accordance with the regulation at 8 C.F.R. § 103.2(b)(3) which provides as follows:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

submitted W-2 Forms show that the beneficiary was employed by the petitioner from 1999 through 2006.¹³

Regarding the claimed experience with the petitioner, 20 C.F.R. § 656.21(b)(5) [2004] states:

The employer shall document that its requirements for the job opportunity, as described, represent the employer's *actual minimum requirements* for the job opportunity, and the **employer has not hired workers with less training or experience** for jobs similar to that involved in the job opportunity or that it is not feasible to hire workers with less training or experience than that required by the employer's job offer.

[Emphasis added.]

When determining whether a beneficiary has the required minimum experience for a position, experience gained by the beneficiary with the petitioner in the offered position cannot be considered. This position is supported by the Board of Alien Labor Certification Appeals (BALCA). *See Delitizer Corp. of Newton*, 88-INA-482, May 9, 1990 (BALCA):

[W]here the required experience was gained by the alien while working for the employer in jobs other than the job offered, the employer must demonstrate that the job in which the alien gained experience was not similar to the job offered for certification. Some relevant considerations on the issue of similarity include the relative job duties and supervisory responsibilities, job requirements, the positions of the jobs in the employer's job hierarchy, whether and by whom the position has been filled previously, whether the position is newly created, the prior employment practices of the Employer regarding the relative positions, the amount or percentage of time spent performing each job duty in each job, and the job salaries.¹⁴

¹³ As noted above, it is unclear why the beneficiary stated on the Form ETA 750B that he began working for the petitioner in 2003. The submitted W-2 Statements would reflect earlier employment. 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). Counsel submits the beneficiary's Forms W-2 for his work with the petitioner from 1999 to 2008 and suggests that this shows he "had been hired . . . because he knew the trade." The W-2 Forms submitted add to the discrepancies in claimed experience.

¹⁴ In a subsequent decision, the BALCA determined that the list of factors for determining whether jobs are sufficiently dissimilar as stated in *Delitizer* is not an exhaustive list. *See E & C Precision Fabricating, Inc.*, 1989-INA-249 (Feb. 15, 1991) (en banc).

In *Delitizer*, BALCA considered whether an employer violated the regulatory requirements of 20 C.F.R. § 656.21(b)(6)¹⁵ in requiring one year of experience where the beneficiary gained all of his experience while working for the petitioning employer. After analysis of other BALCA and pre-BALCA decisions,¹⁶ the Board in *Delitizer* determined that 20 C.F.R. § 656.21(b)(6) does require that employers establish “the ‘dissimilarity’ of the position offered for certification from the position in which the alien gained the required experience.” *Delitizer Corp. of Newton*, at 4. In its decision, BALCA stated that Certifying Officers should consider various factors to establish that the requirement of dissimilarity under 20 C.F.R. § 656.21(b)(6) has been met, and that, while Certifying Officers must state the factors considered as a basis for their decisions, the employer bears the burden of proof in establishing that the positions are dissimilar. *Delitizer Corp. of Newton*, at 5. Nothing shows that the beneficiary’s unlisted experience with the petitioner before the priority date was “dissimilar” and can be used to establish any of the required four years of work experience.

On July 7, 2011 the AAO issued a Notice of Derogatory Information (NDI) noting inconsistencies in the record pertaining to the beneficiary’s claimed experience as a stone cutter/tracer. The NDI stated, in part, that the beneficiary signed a Form G-325A in a separate immigration proceeding on August 22, 1994 which stated, under penalty of law for knowingly and willfully falsifying or concealing a material fact, that the beneficiary worked as a farmer in Poland from 1985 to March 1992. This information is inconsistent with the information provided by the beneficiary and attested to on the Form ETA 750B which states that the beneficiary was employed as a stone cutter by Budokam S.C. Masonry in Poland from March 1988 to June 1991. Form G-325A makes no mention of the beneficiary’s employment as a stone cutter in Poland during any time frame and directly conflicts with the beneficiary’s claimed employment on Form ETA 750B. The beneficiary’s stated employment as a farmer also conflicts with the experience letter submitted from Grave Manufacturing, which the beneficiary failed to list on Form ETA 750B, thus additionally calling into question this experience. 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 response to the NDI, and in an effort to explain the detailed inconsistency set forth in the NDI, the petitioner states that the beneficiary was gifted 20 acres of agricultural land by his father and that he worked the farm while employed in other employment since the land was insufficient to support the beneficiary financially. The petitioner contends that the record is not inconsistent with regard to the beneficiary’s work experience. The AAO does not agree. The Form G-325A signed by the beneficiary on August 22, 1994 asked the beneficiary to list all employment in the past five years. The beneficiary did not list his claimed employment with Budokam S.C. Masonry though

¹⁵ 20 C.F.R. § 656.21(b)(5) [2004].

¹⁶ See *Frank H. Spanfelner, Jr.*, 79-INA-188, May 16, 1979; *Mecta Corp.*, 82-INA-48, January 13, 1982; *Inakaya Restaurant d/b/a Robata*, 81-INA-86, December 21, 1981; *Visual Aids Electronics Corp.*, 81-INA-98, February 19, 1981; *Yale University School of Medicine*, 80-INA 155, August 13, 1980; *The Langelier Co., Inc.*, 80-INA-198, October 29, 1980; *Creative Plantings*, 87-INA-633, November 20, 1987; *Brent-Wood Products, Inc.*, 88-INA-259, February 28, 1989.

specifically required to do so under penalty of law by the Form G-325A. The petitioner has presented no evidence of wages paid by Budokam S.C. Masonry or other documentary evidence in support of that claimed employment which would support the experience letter signed by [REDACTED] Budokam S.C. Masonry or the experience with Grave Manufacturing.¹⁷

¹⁷ Counsel asserts that, “the beneficiary have [sic] been trying to obtain some records from Poland, however, because the long passage of time (more than twenty years pasted [sic] he was unable to obtain any pay stubs or financial documents from his employment in Poland.” In any further filings, the petitioner must submit a translated work book from Poland or other independent evidence to establish the beneficiary’s trade or occupation, and dates of employment. Additionally, the petitioner must submit evidence related to the gift and property ownership. In the absence of confirmatory independent objective evidence related to these aspects, as noted in the AAO’s NDI, the AAO will make a finding of misrepresentation against the beneficiary.

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record. It is important to note that while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a). Nevertheless, the AAO has the authority to enter a fraud finding, if during the course of adjudication, it discovers fraud or a material misrepresentation.

The term “willfully” in the statute has been interpreted to mean “knowingly and intentionally,” as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) (“knowledge of the falsity of the representation” is sufficient); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (interpreting “willfully” to mean “deliberate and voluntary”). Materiality is determined based on the substantive law under which the purported misrepresentation is made. *See Matter of Belmares-Carrillo*, 13 I&N Dec. 195 (BIA 1969); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A material issue in this case is whether the beneficiary has the required experience for the position offered, since the substantive law governing the approval of immigrant visa petitions requires an employer and alien beneficiary to demonstrate that the alien meets the minimum qualifications for the job offered. *See* 8 C.F.R. §§ 204.5(g)(1), 204.5(l)(3)(ii)(B)-(C). Moreover, as a necessary precondition for obtaining a labor certification, employers must document that their job requirements are the actual minimum requirements for the position, *see* 20 C.F.R. § 656.21(b)(5) (1998), and that

The petitioner presented no evidence to establish that he actually owned a farm in Poland. 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)). The petitioner has failed to present independent objective evidence which resolves the substantial discrepant and inconsistent information noted above. 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). As such, the petitioner has failed to establish that the beneficiary had four years of qualifying experience in the proffered position as of the April 27, 2001 priority date and the petition must accordingly be dismissed.

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 alien beneficiary meets those actual, minimum requirements at the time of filing the labor certification application, see *Matter of Saritejdiam*, 1989-INA-87 (BALCA Dec. 21, 1989). A misrepresentation is material where the application involving the misrepresentation should be denied on the true facts, or where the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that the application be denied. See *Matter of S-- and B--C--*, 9 I&N Dec. 436, 447 (AG 1961).