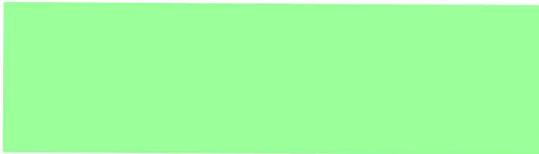


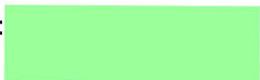
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

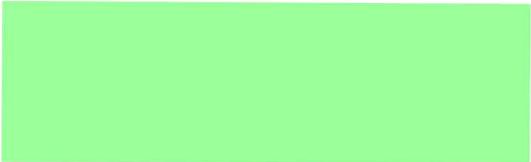
(b)(6)



DATE: SEP 06 2012 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 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 Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner describes itself as a dental laboratory. It seeks to employ the beneficiary permanently in the United States as a dental laboratory technician. The petitioner requests classification of the beneficiary as a professional or 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 an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is January 18, 2007. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date.

The record shows that the appeal is properly filed 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 beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor

¹ 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 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. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 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).

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may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. 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)(emphasis added). 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 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: None required.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Not Accepted.
- H.10. Experience in an alternate occupation: 24 months as a Dental Technician/President.
- H.14. Specific skills or other requirements: None.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a Dental Technician/President with [REDACTED] in Seoul, South Korea from July 15, 2000 until August 10, 2002. No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

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 record contains an experience letter from the beneficiary as the President and owner of [REDACTED] in Seoul, South Korea stating that the company employed the beneficiary as its President and as a Dental Technician from July 15, 2000 until August 10, 2002. According to the letter, the beneficiary operated his own dental laboratory, employing other workers. According to the letter, the beneficiary managed the facility, trained and supervised other technicians and manufactured dental devices for client dental clinics. The beneficiary's experience is further corroborated by several letters from dentists in Korea who ordered dentures from the beneficiary's laboratory and attested to their business relationship with the beneficiary during the two years in question. Additionally, the record contains a Certificate of Close of Business, certified by the Head of [REDACTED], indicating that the beneficiary operated his laboratory from July 15, 2000 until August 17, 2004 upon which date the business was closed. The petitioner also provided Certificates of Income of a VAT (Value Added Tax)-Exempt Business Entity, showing the income generated by the petitioner's laboratory in each year from 2000 through 2004.

On appeal, the petitioner also submitted the beneficiary's Certificate of Graduation from the [REDACTED] which is an accredited institution of higher learning in Korea. According to the certificate and associated academic transcripts, the beneficiary completed a two-year tertiary program in dental technology. According to the Electronic Database for Global Education (EDGE),³ this program equates to two years of tertiary education in the United States. The petitioner also provided the beneficiary's dental technician license and copies of membership certificates, indicating that the beneficiary is a member of a professional dental association in Korea. Although not required by the terms of ETA Form 9089, the academic certificate, licensure and membership in a professional association demonstrate that the beneficiary was recognized by his industry in Korea as a fully qualified dental technician. His professional standing further corroborated by the ownership of his own business and attestation by clients and business associates demonstrates, by a preponderance of the evidence, that the beneficiary meets the 24-month experiential requirements which are stipulated on ETA Form 9089.

The AAO withdraws the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

Additionally, in his denial, the director noted three items which the director determined to represent inconsistencies in the record which detract from the bona fides of the job offer.

³ The Electronic Database for Global Education (EDGE) was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." <http://www.aacrao.org/About-AACRAO.aspx> (accessed July 30, 2012).

First, the director states:

According to Form [sic] 941, exceeded those of the owner named on the 2008 tax return, bringing into question the true nature of the beneficiary's employment and his true relationship to the employing entity.

On appeal, counsel for the petitioner notes that this statement is unintelligible because words appear to be omitted prior to the phrase, "exceeded those of the owner..." Counsel also speculates regarding the nature of the words which might have been omitted, suggesting "the beneficiary's wages" were omitted.

The AAO concurs with counsel's assessment with regard to the intelligibility of the director's statement. However, we would note that any suggestion regarding the nature of the words which the director omitted and his intention would be speculative and, therefore, cannot be addressed in any meaningful manner. The AAO withdraws this portion of the director's decision.

Secondly, the director states:

The owner named on the 2008 tax return is different from the owner named on the business licenses.

In Part 8 of Form I-140, the petitioner identifies [REDACTED] as the President of the petitioning entity. [REDACTED] also signed ETA Form 9089 as the President of the petitioning entity in Section N. The petitioner also provided a Statement of Information for the Secretary of State for the State of California, identifying [REDACTED] as the Chief Executive Officer of the petitioner as of June 12, 2006. On appeal, the petitioner provided copies of its Business Tax Certification from July 29, 2004 and August 24, 2005, both of which documents show [REDACTED] as the owner of the petitioning business. However, the petitioner also provided a copy of a Stock Certificate and Stock Ledger which show that [REDACTED] transferred his shares in the petitioning entity to [REDACTED] on June 12, 2006, that date corresponding with the Statement of Information filed with the California Secretary of State. Therefore, the petitioner has overcome this objection by the director and this portion of the director's decision is hereby withdrawn.

Thirdly, the director states:

The submitted pay stubs for 2007 indicate of pay period of one day (i.e. 01/25/2007 to 01/25/2007).

The petitioner provided copies of pay statements which appear to have been generated by the petitioner on a computer. The director is correct in indicating that one statement identifies the pay period from January 25, 2007 until January 25, 2007. However, the petitioner provided copies of the cancelled checks which were issued to the beneficiary. The sum paid to the beneficiary on January 25, 2007 corresponds with the sum paid on February 24, 2007. Further, the sums of these pay

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checks, in addition to the check issued in March 2007, correspond with the sums reported on the petitioner's Employer's Quarterly Federal Tax Returns (Form 941) for the period and the total of the wages paid to the beneficiary as reflected on all four of the petitioner's Form 941 for 2007 correspond with the sum reflected on IRS Form W-2 for 2007. Thus, those documents which would constitute objective evidence of wages paid to the beneficiary appear consistent. It is, therefore, believable that the computer-generated pay statement bears a typographical error which the petitioner has overcome through the provision of other objective documentation. Thus, this portion of the director's decision is also withdrawn.

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 and the petition is approved.