



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

APR 16 2013

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)

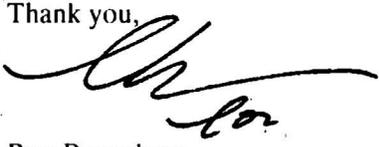
ON BEHALF OF PETITIONER:

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 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the immigrant petition on May 15, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal was erroneously summarily dismissed. The AAO reopened this matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of correcting its error and entering a new decision. The appeal will be dismissed.

The petitioner describes itself as a household. It seeks to permanently employ the beneficiary in the United States as a live-in child monitor. 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 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, which is the date the DOL accepted the labor certification for processing, is April 17, 2001. See 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the other special requirements as stated on the ETA 750 by the priority date. The petitioner appealed the decision to the AAO, submitting evidence that the beneficiary did possess the other special requirements as of the priority date; however, the appeal was summarily dismissed in error. Upon reopening the matter, the AAO notified the petitioner that the evidence in the record did not establish that the beneficiary possessed the minimum experience required to perform the proffered position. The AAO afforded the petitioner 30 days in which to submit additional supporting documentation to establish eligibility for the benefit sought. As of the date of this letter, more than 60 days later, the petitioner has not responded.

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).

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).

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 may it impose additional requirements. See *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).

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:

EDUCATION

Grade School: [blank]

High School: [blank]

College: [blank]

College Degree Required: [blank]

Major Field of Study: [blank]

TRAINING: [blank]

EXPERIENCE: Three (3) months in the job offered

OTHER SPECIAL REQUIREMENTS: [blank]

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a child monitor for [redacted] of [redacted] from August 1996 to July 1998. The beneficiary signed the labor certification on April 1, 2001 under a declaration that the contents are true and correct under penalty of perjury.

The beneficiary’s claimed qualifying experience must be supported by letters from previous employers giving the name, address, and title of the employer, and a description of the beneficiary’s experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains does not contain an employment verification letter from the [redacted]. Instead, the record contains an employment verification letter from [redacted] of [redacted] stating that the beneficiary worked for her as a nanny 27 hours per week from April 1992 to July 1994 in [redacted]. This experience works out to be approximately 17

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months of fulltime experience. However, per *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 AAO notified the petitioner that the record did not establish that the beneficiary possessed the required minimum experience and requested that the petitioner submit an experience verification letter from the [REDACTED] secondary evidence of the beneficiary's employment with Ms. [REDACTED] or other evidence to establish the beneficiary's qualifications. However, the petitioner has failed to submit the requested evidence or any additional documentation that would establish that the beneficiary met the minimum experience requirements of the position. Therefore, the AAO affirms 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. The beneficiary does not qualify for classification as an other worker under section 203(b)(3)(A) of the Act.

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.