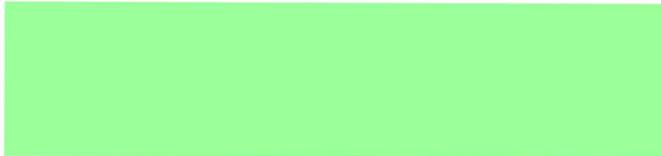


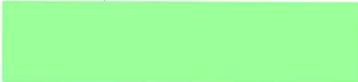


U.S. Citizenship
and Immigration
Services

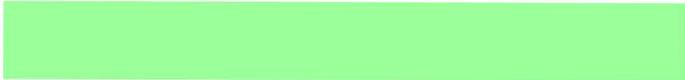
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DATE: **AUG 01 2013** OFFICE: TEXAS SERVICE CENTER

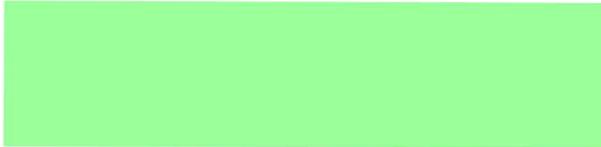


IN RE: Petitioner:
Beneficiary:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, revoked the approval of the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a retail store. It seeks to permanently employ the beneficiary in the United States as a store manager. 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 February 6, 2006. See 8 C.F.R. § 204.5(d).

The director's decision revoking 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).

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:

- H.4. Education: None required.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

The labor certification also states that the beneficiary qualifies for the offered position based on the following experience:

- Store manager for [REDACTED] from January 1, 1996, through April 30, 1999;
- Store manager for [REDACTED] from June 1, 2003, through July 31, 2005; and,
- Store manager for [REDACTED] since August 1, 2005.

No other experience is listed. On November 13, 2006, the beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury. In support of the petition, the petitioner submitted the following documentation:

- A November 28, 2006, employment letter from [REDACTED], who identified himself as the president of [REDACTED]. The letter states that the beneficiary worked there as store manager from June 1, 2003, through July 31, 2005.
- A March 31, 2011, affidavit from [REDACTED] reaffirming the information contained in

- the November 28, 2006, employment letter.
- A 2003 Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement issued to the beneficiary by [REDACTED], that indicates the beneficiary was paid \$5,000 that year.
 - A 2004 IRS Form W-2 Wage and Tax Statement issued to the beneficiary by [REDACTED], [REDACTED], [REDACTED] that indicates the beneficiary was paid \$10,500 that year.
 - A 2005 IRS Form W-2 Wage and Tax Statement issued to the beneficiary by [REDACTED] [REDACTED] that indicates the beneficiary was paid \$9,000 that year.
 - A 2005 IRS Form W-2 Wage and Tax Statement issued to the beneficiary by [REDACTED] Business, Inc., in Houston, Texas, that indicates the beneficiary was paid \$5,400 that year.
 - A 2006 IRS Form W-2 Wage and Tax Statement issued to the beneficiary by [REDACTED] [REDACTED] in Houston, Texas, that indicates the beneficiary was paid \$24,000 that year.

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 director noted that the beneficiary has filed multiple Forms G-325, Biographic Information, in conjunction with her Applications to Register Permanent Residence or Adjust Status. On September 1, 2002, the beneficiary signed a Form G-325A and attested that she had been a housewife for the past five years and had no employment to claim. On February 28, 2005, the beneficiary signed a Form G-325A and attested that she had no employment to claim. On July 6, 2007, the beneficiary signed a Form G-325A and attested that she worked as manager of [REDACTED] from June 2003 through July 2005 and as manager of [REDACTED] Texas, since August 2005.

The director concluded that the beneficiary's statements on her Forms G-325A contradicted her claims on the labor certification and in the letters and tax documentation. Therefore, the director revoked the approval of the petition. On appeal, counsel reasserts the claims on the labor certification and explains that the statements on the Forms G-325A were simply mistakes.

The petitioner did not provide any documentation to corroborate the beneficiary's claimed work for [REDACTED] Pakistan. 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)). The AAO also notes that the beneficiary's passport, issued on May 23, 1996, lists the beneficiary's profession as housewife. This cannot be reconciled with the information listed on the Form 9089, which states that the beneficiary was employed as store manager with [REDACTED] from January 1, 1996, to April 30, 1999.

The petitioner submitted copies of IRS Forms W-2 issued to the beneficiary by [REDACTED] in Houston, Texas. However, the beneficiary did not claim this employer on the labor certification. 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 submitted Form W-2 bears a handwritten note suggesting that [REDACTED]. However, the record reveals that the beneficiary indicated on the labor certification that [REDACTED] was a business in [REDACTED] while this W-2 indicates that the employer is located in Houston, Texas.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to provide any independent and objective evidence to establish that [REDACTED] are the same business entity. Therefore, these documents do not support the beneficiary's claim of qualifying work experience.³

The experience letter and affidavit from [REDACTED] state that the beneficiary worked as a manager at [REDACTED] from June 1, 2003, through July 31, 2005. However, the company president did not indicate that the beneficiary was employed there full-time. The petitioner provided IRS Forms W-2 that reveal [REDACTED] paid the beneficiary \$5,000 in 2003, \$10,500 in 2004, and \$9,000 in 2005. Since it appears that the beneficiary worked for [REDACTED] on a part-time basis, this experience will not serve to establish that the beneficiary possessed 24 months of experience as a store manager as of the priority date.

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. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

Furthermore, the regulation at 20 C.F.R. § 656.30(d) provides:

³ Furthermore, a W-2 does not provide a specific description of the duties performed by the beneficiary as is required of corroborating documentation. See 8 C.F.R. § 204.5(g)(1) and (1)(3)(ii)(A). Therefore, even if the petitioner could establish that [REDACTED] was one and the same with [REDACTED] the Forms W-2 alone can not establish that the beneficiary possessed the required employment experience.

Finally, the W-2s show that the beneficiary was paid \$5,400 in 2005 and \$24,000 in 2006. Therefore, even if the petitioner could establish that [REDACTED] was one and the same with [REDACTED] the Forms W-2 would not establish that the beneficiary possessed 24 months of full-time employment experience prior to the February 6, 2006, priority date.

(d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

The petitioner's submission of the beneficiary's false statements on the labor certification constitute the willful misrepresentation of a material fact. Therefore, the labor certification will be invalidated.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed with a finding of fraud and willful misrepresentation of a material fact against the beneficiary.

FURTHER ORDER: The AAO finds that the beneficiary knowingly misrepresented a material fact and misled DOL and USCIS on elements material to eligibility for a benefit sought under the immigration laws of the United States. The labor certification application [REDACTED] is invalidated pursuant to 20 C.F.R. § 656.30(d) based on the beneficiary's fraudulent misrepresentation.