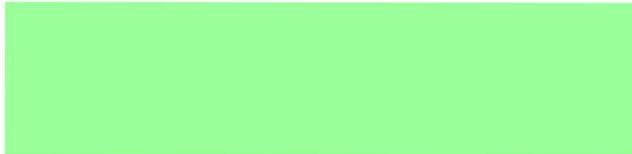


(b)(6)

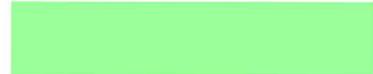


U.S. Citizenship  
and Immigration  
Services

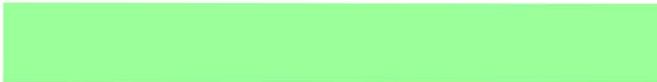


DATE: **AUG 28 2013**

OFFICE: TEXAS SERVICE CENTER

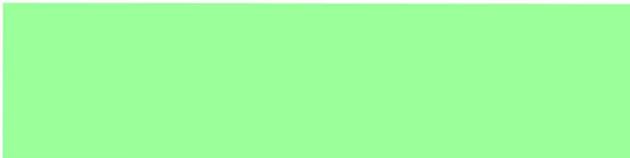


IN RE: Petitioner:  
Beneficiary:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based Immigrant Petition for Alien Worker (Form I-140) was initially approved by the Director, Vermont Service Center. Upon determining that the petition had been approved in error, the Director, Texas Service Center served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition. In the Notice of Revocation (NOR), the director revoked the approval of the preference petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director in accordance with the following.

The petitioner is an Indian restaurant. It sought to employ the beneficiary permanently in the United States as an Indian specialty cook. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Labor Certification (labor certification) approved by the Department of Labor (DOL).

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).<sup>1</sup>

The AAO conducts appellate review on a *de novo* basis. The AAO’s *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The procedural history in this case is documented by the record and incorporated. Further elaboration of the procedural history will be made only as necessary.<sup>2</sup>

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<sup>1</sup> 20 C.F.R. § 656.30(d) states:

(d) *Invalidation of labor certifications.* After issuance, a labor certification may be revoked by ETA using the procedures described in § 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.

8 C.F.R. § 204.5(1)(3)(i) states, in pertinent part, “Every petition under this classification must be accompanied by an individual labor certification form the Department of Labor...”

<sup>2</sup> 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

Sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii), provide 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 and qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F), provides that “[a]ny employer desiring and intending to employ within the United States an alien entitled to classification under section . . . 203(b)(1)(B) . . . of this title may file a petition with the Attorney General [now Secretary of Homeland Security] for such classification.” (Emphasis added.)

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 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:

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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).

EDUCATION

Grade School: Lite

High School: rate ("literate")

College: None Required

College Degree Required: None Required

Major Field of Study: None Required

TRAINING: None Required.

EXPERIENCE: Two (2) years in the job offered.

OTHER SPECIAL REQUIREMENTS: Verifiable references. Must be able to work on weekends/holidays.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a cook with [REDACTED] from February 1996 until April 1998. No other cook experience is listed. The labor certification also states that the beneficiary was employed as a manager with [REDACTED] from January 2001 until present, and as a manager with [REDACTED] from November 1998 until December 2000. 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.

In the October 22, 2012 NOIR, the director states that the petitioner has not established that the beneficiary has the required experience, and the required training, as an Indian specialty cook; and evidence was presented to the U.S. Consulate in [REDACTED] indicating that the beneficiary's only training and/or experience has been as an electrician. The director requested the petitioner to submit experience letters establishing that the beneficiary has two years of experience as an Indian specialty cook prior to filing of the I-140 petition and evidence that the beneficiary has been trained as an Indian specialty cook prior to filing of the I-140.

In response to the NOIR, the petitioner submitted a copies of the NOIR and Form ETA 750, an experience letter from [REDACTED] dated January 20, 2000, a letter requesting documents from the U.S. Embassy in New Delhi regarding the beneficiary's case, a letter from the owner of [REDACTED] dated January 5, 2012 and the beneficiary's resume.

In the April 3, 2013 NOR, the director found that the NOIR sufficiently detailed the evidence in the record and was properly issued for good and sufficient cause; and the bases of revocation were that the petitioner has not established that the beneficiary has the required two years of experience

experience, and the required training, as an Indian specialty cook. The director addressed the experience letters dated January 19, 2001 and January 5, 2012, but not the one dated January 20, 2000. The director referenced an investigation by the New Delhi consulate claiming that the beneficiary does not have the experience or training as an Indian specialty cook; and the beneficiary received a trade certificate from the [REDACTED] as an electrician. The director asserted that the experience letters submitted by Sheetal Restaurant have been confirmed as false by USCIS investigation and found that the petitioner has not established that the beneficiary has the required two years of experience experience, and the required training, as an Indian specialty cook.

Counsel asserts on appeal that the Service failed to perform the required investigation pursuant to section 204 of the Act; the required investigation should have been conducted prior to the October 15, 2003 I-140 approval date; the petitioner included an experience letter with its I-140 petition which satisfied the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A); if the Service had conducted its investigation at that time, the witnesses' memories would have been fresh and evidence would have been immediately available; and the former owner of [REDACTED] confirmed the beneficiary's employment.

The AAO notes that the NOIR did not include sufficient detail to allow the petitioner to respond properly to the claims and findings made by the director. As such, the AAO will remand the case to the director to reissue the NOIR and more fully set forth the deficiencies in the evidence submitted in light of the investigation conducted. Additionally, the AAO notes that both the NOIR and the NOR state as a basis of revocation that the beneficiary does not have training as an Indian specialty cook. The labor certification does not require any separate training, instead it only requires two years of experience in the position offered. Following reissuance of the NOIR and consideration of the petitioner's response, the director shall issue a new decision or Notice of Revocation.

**ORDER:** The decision of the director is withdrawn and the case remanded to the director for further action and consideration as indicated above.