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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

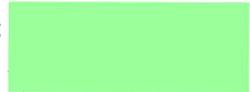


U.S. Citizenship  
and Immigration  
Services

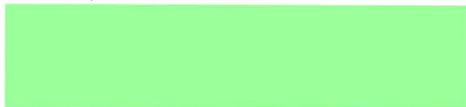


DATE: **FEB 19 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE:

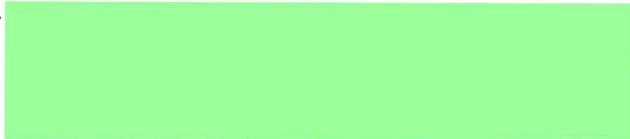


IN RE: Petitioner:  
Beneficiary:



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,

*Rachel Mitono*  
for

Ron Rosenberg  
Acting 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 dismissed.

The petitioner describes itself as a software design and development business. It seeks to permanently employ the beneficiary in the United States as a systems analyst. 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).<sup>1</sup>

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 July 21, 2004. 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 and other special requirements 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.<sup>2</sup>

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).

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<sup>1</sup> 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.

<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 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).

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: None

High School: None

College: 4 years

College Degree Required: Bachelor of Science or equivalent

Major Field of Study: Computer Science or related field

**TRAINING:** None Required

**EXPERIENCE:** Four (4) years in the job offered or in the related occupations of software engineer or software programmer

**OTHER SPECIAL REQUIREMENTS:** "Frequent Travel Required. Must have 4 years of experience in Oracle 8x/9x, C, C++, VC++, C#, COM/DCOM, PL/SQL, Pro\*C, ASP, ASP.net and TCP/IP Sockets."

The labor certification states that the beneficiary qualifies for the offered position based on experience as: 1) a systems analyst with [REDACTED] from March 2004 to the present; 2) a software design engineer with [REDACTED] from June 2003 until March 2004; 3) a project leader with [REDACTED] from January 2002 until June 2003; 4) a computer programmer for [REDACTED] statements product with [REDACTED] from March 2001 until January 2002; 5) a software engineer with [REDACTED] in Pune, India from July 2000 until March 2001; 6) a senior software engineer with [REDACTED] LTD., India from March 2000 until July 2000; and 7) a software programmer with S [REDACTED] Ltd. in Pune, India from December 1998 until February 2000. 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 [REDACTED] Ltd. letterhead stating that the company employed the beneficiary as a software engineer from December 1, 1997 until December 13, 1998. However, the letter does not state whether the employment was full-time, and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements" including Oracle 8x/9x, C, C++, VC++, C#, COM/DCOM, PL/SQL, Pro\*C, ASP, ASP.net and TCP/IP Sockets. The beneficiary set forth his credentials on the labor certification and signed his name on July 14, 2004, under a declaration that the contents of the form are true and correct under the penalty of perjury. At Part B, question 15 where the beneficiary is required to list "all jobs held during the last three (3) years" and to "list any other jobs related to the occupation for which [he] is seeking certification," the beneficiary did not list the claimed work experience with [REDACTED] (P) Ltd. 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 record contains an experience letter from [REDACTED] authorized signatory on [REDACTED] letterhead stating that the company employed the beneficiary as a software programmer from December 14, 1998 until March 9, 2000. However, the letter does not state whether the employment was full-time or part-time, it does not give the title of [REDACTED] as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements."

The record contains a second experience letter from [REDACTED] letterhead, stating that the company employed the beneficiary as a software programmer full-time from December 1998 until March 2000. The letter states that the beneficiary worked as a senior engineer R & D. Although the letter states that the beneficiary gained experience in Oracle technologies, C, C++, VC++, COM/DCOM, and TCP/IP, the letter does not state whether the beneficiary gained experience with C#, PL/SQL, Pro\*C, ASP, ASP.net, and TCP/IP Sockets as required on the labor certification.

The record contains two experience letters from [REDACTED] [signature illegible], "Authority Signatory" on [REDACTED] letterhead, stating that the company employed the

beneficiary as a senior software engineer from February 25, 2000 until July 16, 2000. However, the letters do not state whether the employment was full-time or part-time, they do not give the title of the trainer or employer as required by the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(A), and they fail to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements."

The record contains an experience letter from [REDACTED] - human resources on [REDACTED] letterhead stating that the company employed the beneficiary as a software design engineer from June 9, 2003, until April 23, 2004. However, the letter does not state whether the employment was full-time or part-time and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements."

The record contains an experience letter from [REDACTED] HR on [REDACTED] letterhead, stating that the company employed the beneficiary as a project lead from January 25, 2002 until June 5, 2003. The letter states that the beneficiary has experience with the computer programs listed on the labor certification under "Other Special Requirements." However, the letter does not state whether the employment was full-time or part-time.

The record contains an experience letter from [REDACTED] resources on [REDACTED] letterhead, stating that the company employed the beneficiary as a project lead from January 25, 2002 until June 5, 2003. However, the letter does not state whether the employment was full-time or part-time, it does not give the title of [REDACTED] as required by the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(A), and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements."

The record contains an experience letter from [REDACTED] EVP and owner on [REDACTED] letterhead stating that the company employed the beneficiary as a system analyst from March 23, 2001 until January 16, 2002. The letter states that the beneficiary has experience with the computer programs listed on the labor certification under "Other Special Requirements." However, the letter does not state whether the employment was full-time or part-time.

The record contains a letter from [REDACTED] chief executive officer on [REDACTED] LTD. letterhead to the beneficiary dated February 6, 2001, confirming the beneficiary's appointment to an unnamed position with the company. However, the letter does not state whether the employment was full-time or part-time, it does not give the job title or dates of employment, and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor certification at Part A.15 under "Other Special Requirements."

The record contains a letter from [REDACTED] signed on behalf of the chief executive officer on [REDACTED] letterhead to the beneficiary dated July 6, 2000, making an offer to the beneficiary for a position as software engineer with the company. However, the letter does not state whether the employment was full-time or part-time, it does not give the dates of employment, and it fails to specify that the beneficiary gained experience in any of the skills listed on the labor

certification at Part A.15 under "Other Special Requirements." Further, the letter states that the latest date on which employment may begin is July 20, 2000, which appears to conflict with the prior letter from [REDACTED] which confirms a position with the same company as of February 2001. 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).

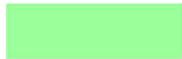
Therefore, the above letters fail to demonstrate that the beneficiary possesses the required four years of experience in the job offered or in the related occupations of software engineer or software programmer. In addition, the above letters fail to demonstrate that the beneficiary possesses the computer skills listed on the labor certification at Part A.15 under "Other Special Requirements."

On appeal, the petitioner submits an experience letter from [REDACTED] director, on [REDACTED] letterhead, stating that the company employed the beneficiary as a software engineer from December 1, 1997 until December 13, 1998. The letter states that the beneficiary has experience with the computer programs listed on the labor certification under "Other Special Requirements." However, the letter does not state whether the employment was full-time or part-time. Further, as previously noted, the beneficiary set forth his credentials on the labor certification and signed his name on July 14, 2004, under a declaration that the contents of the form are true and correct under the penalty of perjury. At Part B, question 15 where the beneficiary is required to list "all jobs held during the last three (3) years" and to "list any other jobs related to the occupation for which [he] is seeking certification," the beneficiary did not list the claimed work experience with [REDACTED]. As noted above, in *Matter of Leung*, 16 I&N Dec. at 2530, 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.

On appeal, the petitioner asserts that many of the beneficiary's former employers cannot now be located. The petitioner submits an affidavit from the beneficiary attesting to his prior employment and a written statement which asserts that at the time of hiring, the petitioner carefully checked the beneficiary's background.

The beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his prior work experience. See *Matter of Ho*, 19 I&N Dec. at 591-592 (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). 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 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



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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.