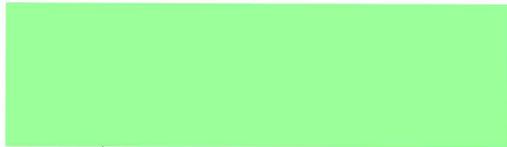




U.S. Citizenship
and Immigration
Services

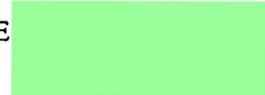
(b)(6)



DATE:

OFFICE: TEXAS SERVICE CENTER

FILE

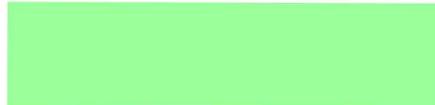


JAN 24 2013

IN RE:

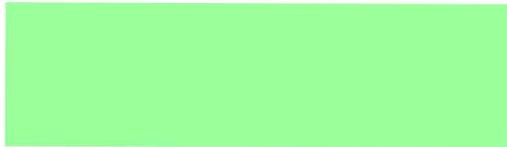
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a 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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a passenger and cargo airline company. It seeks to employ the beneficiary permanently in the United States as a corporate account manager. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

The record shows that the appeal is properly filed and timely 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.

As set forth in the director's February 16, 2011 denial, the director determined that the petitioner had not established that the beneficiary possessed at least two years of experience as a corporate account manager on or before the priority date. The director denied the petition accordingly.

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.¹

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that "the term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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 *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).

¹ 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).

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 requires a Bachelor’s in Business Administration and 24 months experience in the job offered as a corporate account manager. Part H.10. of the ETA Form 9089 indicates that experience in an alternate occupation is not acceptable.

The regulation at 8 C.F.R. § 204.5(1)(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 a copy of a Bachelor of Business Administration diploma issued to the beneficiary by [REDACTED] in 2004. The record also contains two experience letters from [REDACTED] Human Resource Coordinator, at [REDACTED]. In the first letter, dated May 13, 2010, Mr. [REDACTED] stated that the beneficiary interned with the company from May 18, 2004 until August 14, 2004, and worked full-time as a marketing analyst for the corporate segment from October 1, 2005 until January 17, 2007. In the second letter, dated November 1, 2010, Mr. [REDACTED] stated that the beneficiary was employed with the company from August 15, 2004 until August 14, 2005, and from October 1, 2005 until January 17, 2007 as a market research analyst for corporate sales.

The experience letters are inconsistent regarding the beneficiary’s employment dates and initial position in the company. In the first letter, Mr. [REDACTED] states that the beneficiary interned for three months from May to August 2004; whereas, in the second letter, he fails to mention any internship and states the beneficiary was initially employed in August 2004 for a year and one month. Both of these letters are inconsistent with the ETA Form 9089 in which the beneficiary stated that she worked at [REDACTED] continuously from August 14, 2004 through March 13, 2007.

The record fails to contain any explanation for the above inconsistencies regarding the beneficiary's work experience. 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). Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The record fails to contain any other experience letters. Given the above inconsistencies, the petitioner has failed to establish that the beneficiary has the requisite 24 months of experience in the job offered as a corporate account manager.

In the February 16, 2011 denial, the director determined that the job duties listed on the labor certification for a corporate account manager did not match the beneficiary's experience. On the ETA Form 9089, Part F.2, the SOC/O*Net (OES) code (as assigned by the State Workforce Agency in the prevailing wage determination) listed is 11-3011.00. The job title for this code is Administrative Services Managers.² The job duties are listed as follows:

1. Direct or coordinate the supportive services department of a business, agency, or organization.
2. Prepare and review operational reports and schedules to ensure accuracy and efficiency.
3. Set goals and deadlines for the department.
4. Acquire, distribute and store supplies.
5. Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records.
6. Plan, administer and control budgets for contracts, equipment and supplies.
7. Monitor the facility to ensure that it remains safe, secure, and well-maintained.
8. Hire and terminate clerical and administrative personnel.
9. Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems.
10. Oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.

The job duties listed by the petitioner on the ETA Form 9089, Part H.11, do not match the job duties of Administrative Services Managers, as indicated by O*Net. The job duties listed on the ETA Form 9089, Part H.11, are as follows:

1. Assist in the creation and development of corporate offering.

² See <http://www.onetonline.org/link/summary/11-3011.00> (accessed on January 3, 2013).

2. Assist Sales Manager with creation of new initiatives and enhancements for national and corporate account offerings.
3. Increase sales and market share through corporate accounts.
4. Coordinate with corporate headquarters for homologation of company standards for national accounts and corporate offerings.
5. Ensure new policies in the Corporate Accounts Department are in compliance with Avianca general policy.
6. Develop sales strategies to increase the revenue in individual accounts.
7. Maintain and develop relationships with major, multi-market companies.
8. Monitor existing national and corporate account contracts to ensure compliance with company policy.
9. Direct and coordinate the supportive services department of the corporate Accounts Department.
10. Set goals and deadlines for the department.
11. Prepare and review operational reports and schedules to ensure accuracy and efficiency.
12. Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records.
13. Plan, administer and control budgets for contracts, equipment and supplies.
14. Hire and terminate clerical, administrative and supportive personnel.

The beneficiary's experience letter from [REDACTED], dated November 1, 2010, lists the beneficiary's job duties. However, the beneficiary's job duties do not match the job duties of Administrative Services Managers. In her denial, the director stated that the job duties listed in the experience letter appeared to be the same as the job duties found under Market Research Analyst on the O*Net. (See <http://online.onetcenter.org/link/summary/19-3021.00> accessed on January 3, 2013).³ On ETA Form 9089, Part H.10, the petitioner indicated that experience in an alternate occupation was not acceptable; therefore, the beneficiary's experience must have been obtained in an Administrative Services Manager position.

Counsel submitted two expert opinion evaluations in support of its claim that the beneficiary's experience meets that job duties of the proffered position. The record contains an evaluation prepared by [REDACTED] on November 8, 2010. [REDACTED] compares the positions of corporate account manager in the field of business administration and market research analyst for corporate sales. The evaluation concludes that "the similarities in the actual job duties performed in the two positions are so strong that they can be considered essentially the same position."

³ It is noted that the website notes that the occupation code 19-3021.00 (Market Research Analysts) is no longer in use and to use 13-1161.00 (Market Research Analysts and Marketing Specialists) instead.

The record also contains an expert opinion evaluation prepared by [REDACTED] on March 14, 2011. The evaluation concludes that “the positions of Market Research Analyst, Corporate Sales and Corporate Account Manager can be considered essentially the same position, and that a person qualified to perform one position is inherently qualified to perform the other based on the close similarities in their required job duties.

The evaluations do not compare the job duties of an Administrative Services Manager and the beneficiary’s experience, and therefore, fail to establish the beneficiary has the requisite experience for the proffered job. Had the petitioner intended to accept experience gained in an alternate occupation, this could have been noted in Part H.10. of ETA Form 9089.

The beneficiary’s job duties as a Market Research Analyst for [REDACTED] did not include any direction or coordination of supportive services. Nor did it include any work with store supplies, budgets, contracts, personnel responsibility, or project management. These are all key job duties of the proffered position of Corporate Account Manager. Given the above, the AAO finds 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 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.