



U.S. Citizenship  
and Immigration  
Services

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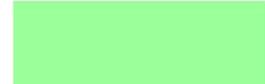


DATE:

**JUL 08 2013**

OFFICE: TEXAS SERVICE CENTER

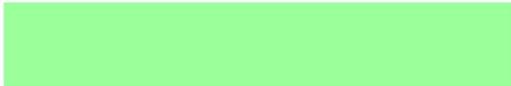
FILE:



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 employment-based immigrant visa petition was initially approved. The Director, Texas Service Center, (director) subsequently revoked the approval of the petition, reopened the case, and revoked the approval a second time. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a construction business. It seeks to permanently employ the beneficiary in the United States as a carpenter. 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 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 is October 25, 2006, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director's revocation concludes that the petitioner failed to establish that the beneficiary possessed the minimum experience requirements of the offered position as set forth in the labor certification.

The record shows that the appeal is properly filed, 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.

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 petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. United States 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 v.*

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<sup>1</sup> Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), grants preference classification to other qualified immigrants who are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, 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).

*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. Coorney*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981).

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). 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.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at \*7.

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

- H.4. Education: High School.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months required.
- H.10. Experience in an alternate occupation: None accepted.
- H.11. Job duties: Responsible for constructing, installing, and repairing structures made of wood including framing walls and partitions; experience in hanging doors, windows, and stairs, as well as changing locks, and repairing broken furniture. Also responsible for installing cabinets, siding, drywall and batt and roll insulation using carpenter's hand tools and power tools including chisels, planes, saws, drills, and sanders.
- H.14. Specific skills or other requirements: None listed.

The labor certification, signed by the beneficiary under penalty of perjury, states that the beneficiary's work experience consisted of work for [REDACTED] in Seoul, South Korea, as a carpenter from November 1, 1999, through August 20, 2003. The record contains an employment letter, with English translation, from [REDACTED] president of [REDACTED], attesting to the beneficiary's employment there "as a carpenter" from November 10, 1999, through August 20, 2003.

The regulation at 8 C.F.R. § 204.5(i)(3) provides:

(ii) *Other documentation*—

- (A) *General*. 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.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The regulation at 8 C.F.R. § 204.5(g) also states that evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered. *Id.*

The statement from [REDACTED] does not provide a detailed description of the duties allegedly performed by the beneficiary.

In addition, while the letter lists the beneficiary's job title as "Carpenter," the letter also lists the "Position" as "Office man." It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Therefore, the director found that the submitted letter does not meet the regulatory requirements for experience letters outlined above and revoked the approval of the petition. On motion to reopen, the petitioner submitted a new employment letter, with English translation, from [REDACTED] dated February 6, 2013. This new employment letter provides a description of the beneficiary's duties for [REDACTED]; however, it is noted that this description is a nearly word-for-word copy of the job description provided on the labor certification. Moreover, the letter does not provide any explanation of the previous employment letter's notation that the beneficiary's position was that of "Office man."

Counsel asserts on appeal that USCIS "cannot impose job requirements beyond those contemplated in the labor certification...job duties above and beyond those listed on the labor certification application cannot be required and are not relevant in determining the beneficiary's qualifications." However, the issue in this case is not that the director imposed additional requirements beyond those described in the labor certification. Rather, the issue is the credibility of the documents submitted to corroborate the beneficiary's claimed work experience.

On the Form I-290B, counsel indicates that a brief would be submitted within 30 days. As of this

date, more than two months after the appeal was filed, no brief or additional evidence has been received by the AAO. The petitioner has failed to submit credible evidence of the beneficiary's job duties for his former employer. Additionally, the petitioner has failed to provide affirmative evidence to explain his employer's description of his position as "Office man."

The AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired 24 months of experience from the evidence submitted into this record of proceeding. Thus, the petitioner has not established that the beneficiary possesses the experience required to perform the proffered position. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.