



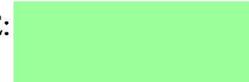
U.S. Citizenship
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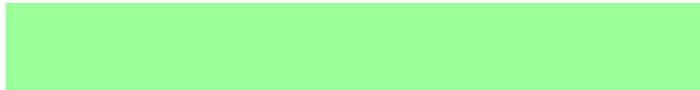


DATE: JUN 03 2013 OFFICE: TEXAS SERVICE CENTER

FILE:

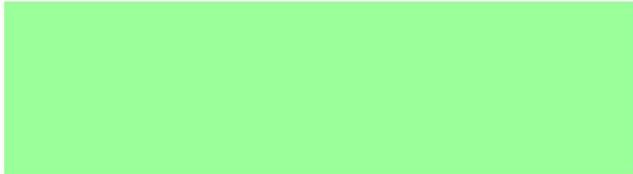


IN RE: Petitioner:
Beneficiary:



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,

Rachel DiToro
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, (director) denied the employment-based immigrant visa petition. The petitioner has appealed the director's decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. It seeks to permanently employ the beneficiary in the United States as clergy. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date DOL accepted the labor certification for processing, is November 30, 2005. *See* 8 C.F.R. § 204.5(d).

In his decision, the director found that the record failed to establish that the beneficiary possessed a four-year bachelor's degree as required by the labor certification. On appeal, counsel asserts that the beneficiary's degree does satisfy the requirements of the ETA Form 9089 and submits additional evidence in support of this claim.

The record shows that the appeal is properly and timely 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.¹

The petitioner requests the classification of the beneficiary as a professional or a skilled worker pursuant to section 203(b)(3)(A) of the Act. 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.

In evaluating a beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. It may not ignore a term of the labor certification, nor may it impose additional requirements. *See Mandany v. Smith*, 696 F.2d

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).

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 (1st Cir. 1981). To be eligible for approval, a beneficiary must have 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 (Act. Reg. Com. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, Part H of the ETA Form 9089 reflects the following minimum requirements:

- H.4. Education: Bachelor's
- H-4B. Major field of study: Theology
- H.5. Training: None required
- H.6. Experience in the job offered: 24 months
- H.7. Alternate field of study: None accepted
- H.8. Alternate combination of education and experience: None accepted
- H.9. Foreign educational equivalent: Accepted
- H.10. Experience in an alternate occupation: None accepted
- H.14. Specific skills or other requirements: 2 years of experience and a bachelor's degree in Theology

To establish the beneficiary's academic qualifications for the offered position, the petitioner has submitted copies of his Bachelor of Theology diploma issued by the [REDACTED]; his academic transcripts from this institution; informational materials on the [REDACTED]; its requirements for a bachelor's degree in theology; photographs taken at the time of the beneficiary's graduation; and two evaluations of the beneficiary's educational credentials. The petitioner has also submitted evidence to establish that the beneficiary possesses the two years of experience required by the labor certification, providing an April 1, 2005 statement from [REDACTED] Presidente [REDACTED].

In its initial review of this evidence, the AAO identified inconsistencies in the documentary evidence submitted to establish the beneficiary's academic history and, on October 18, 2012, issued a Notice of Intent to Dismiss and Request for Evidence to the petitioner. In that notice, the AAO indicated that the copies of the beneficiary's diploma and academic transcript submitted in support of the Form I-140 and those submitted on appeal reflected conflicting dates for the beneficiary's graduation and contradictory accounts of his academic coursework. Accordingly, the AAO asked the petitioner to submit independent objective evidence explaining why the diploma submitted with the Form I-140 indicated that the beneficiary had completed his degree requirements as of December 18, 2000 when that provided on appeal indicated that they were not completed until December 17, 2002. The AAO also asked the petitioner to reconcile the transcripts of the beneficiary's coursework, the initial version of which indicated that he took classes from 1999 to 2001 while that submitted on appeal indicates that those classes spanned the years 1999 to 2002, and to explain the inconsistent reporting

of the courses taken by the beneficiary.²

In response to the Notice of Intent to Dismiss and Request for Evidence, the petitioner asserts that the discrepancies identified by the AAO in the beneficiary's academic records are the result of regulatory change and that the diploma and transcripts initially submitted by the petitioner are void. In support of this claim, it submits a November 7, 2012 statement from [REDACTED] Director, [REDACTED] who indicates that the beneficiary graduated on December 17, 2002 with a bachelor's degree in Theology. [REDACTED] also states that the beneficiary's academic records were adapted to "its curriculum grade, approved by [REDACTED]" in order to comply with the "decree Portaria 1.019 of 3/30/2005." The statement is accompanied with a notice published on April 1, 2005 in the [REDACTED], Federative Republic of Brazil, which is entitled "[REDACTED] March 30, 2005" and states that the Ministry of Education is accrediting the theology program of the [REDACTED]

While the AAO acknowledges the petitioner's submission of this evidence, we find it insufficient to resolve the inconsistencies in the beneficiary's academic records. The submitted statement from [REDACTED] indicates only that his school's records were "adapted to curriculum grade, approved by [REDACTED]" as a result of a 2005 accreditation by the Brazilian Ministry of Education. It does not indicate that the adaptation resulting from accreditation necessitated the amendment of diplomas or transcripts issued prior to 2005. Moreover, [REDACTED] November 7, 2012 statement, which reflects that the beneficiary did not complete his coursework for his bachelor's degree in theology until December 2002, conflicts with information provided by the beneficiary in filing for adjustment of status. On the Form I-485, Application to Register Permanent Resident or Adjust Status, he signed on July 12, 2007, the beneficiary indicated that he had last entered the United States on March 17, 2002. On July 12, 2007, the beneficiary also signed a Form G-325A, Biographic Information, in which he claimed to have been living in Florida as of June 2002.

As indicated in the Notice of Intent to Dismiss and Request for Evidence, inconsistencies must be

² The inconsistencies between the academic records submitted with the Form I-140 and those submitted on appeal are reflected in the educational evaluations found in the record. An August 3, 2007 evaluation prepared by [REDACTED] [REDACTED], is based on the academic transcript submitted with the Form I-140 and finds the beneficiary to have completed a three-year university curriculum, which, when combined with his work experience, is the equivalent of a Bachelor of Theology degree from an accredited institution of higher education in the United States. In a November 24, 2009 assessment of the beneficiary's educational background, [REDACTED] and [REDACTED] of [REDACTED] indicate that the beneficiary's eight semesters of coursework at the [REDACTED] from 1999 to 2002 are the equivalent of a U.S. Bachelor of Theology degree earned at an institution of higher education that is not regionally accredited in the United States.

resolved by the submission of “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, 591-92 (BIA 1988). Further, doubt cast on any aspect of a petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Here the submitted evidence does not resolve the inconsistencies found in the beneficiary’s academic records. The AAO will, therefore, accept none of the evidence submitted by the petitioner to establish the beneficiary’s degree in theology.

The AAO also finds the record to provide inconsistent evidence regarding the beneficiary’s claim of having worked as a pastor at the [REDACTED] from December 21, 1997 until March 15, 2002. Although the petitioner has submitted an April 1, 2005 statement from [REDACTED] in support of this claim, the Form G-325A filed by the beneficiary reflects that he listed his last occupation outside the United States as that of a store manager for [REDACTED] (from September 2000 until January 2002), not as a pastor for the [REDACTED]. Accordingly, the AAO, pursuant to *Matter of Ho*, also finds that the record does not demonstrate that the beneficiary has the two years of pastoral experience required by the ETA Form 9089. *Id.*

The record does not establish that the beneficiary holds a U.S. bachelor’s degree in Theology or its foreign equivalent, or that he has the two years of experience required for the offered position. Therefore, the AAO will affirm the director’s decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position as of the November 30, 2005 priority date. Based on the record, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.