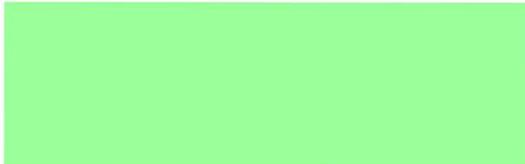


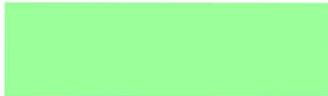


U.S. Citizenship
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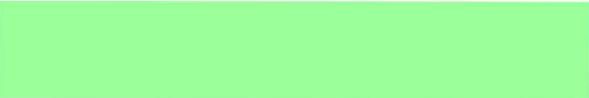
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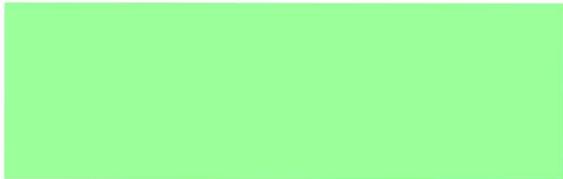


IN RE: Petitioner:
Beneficiary:



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 Petition for Alien Worker (Form I-140) was initially approved by the Director, Texas Service Center. Upon determining that the petition had been approved in error, the director 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 director's decision to revoke the petition's approval will be affirmed.

The petitioner is a software consulting company. It sought to employ the beneficiary permanently in the United States as a systems analyst. 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).

For the reasons explained below, the AAO concurs with the director's decision to revoke approval of the petition. The AAO concludes that the petitioner submitted fraudulent educational credentials to a credentials evaluation service; the fraudulent credentials were submitted as part of the Form I-140 petition to which he is a beneficiary in order to establish that he, the beneficiary had the required education to meet the terms of the certified labor certification; the beneficiary committed a willful misrepresentation in order to receive benefits under the Immigration and Nationality Act; and the director's invalidation of the labor certification is correct.

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).

20 C.F.R. § 656.30(d)¹ 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

¹ See also 20 C.F.R. § 656.30(d) (2004) in effect at the time of filing the instant labor certification:

(d) After issuance labor certifications are subject to invalidation by the INS 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 a RA or to the Director, the RA or Director, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

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 from the Department of Labor..."

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.²

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.)

Section 212(a)(5)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(5)(i) provides that any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

- (I) there are not sufficient workers who are able, willing qualified (or equally qualified in the case of an alien described in clause (ii) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

² 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 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).

- (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The petitioner must establish that its job offer to the beneficiary is a realistic one and that the opportunity is a *bona fide* job offer. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on October 4, 2004, which establishes the priority date.³

The record indicates that the I-140 was initially filed on May 9, 2007. It was approved on May 18, 2007.

On January 19, 2012, the director concluded that the I-140 was approved in error and issued a NOIR.

The director stated in the NOIR that information was received that the educational credentials submitted to Educational Credential Evaluators (ECE) were not authentic; there were concerns that the beneficiary submitted fraudulent educational credentials to USCIS from [REDACTED] University and he entered the United States or obtained a benefit from USCIS through fraud; and had the adjudicating officer been aware that the beneficiary was not qualified to perform the job duties the petition would not have been approved. The director requested in his NOIR that the petitioner provide additional evidence as follows:

- 1) Education credentials and a new evaluation.
- 2) Copies of Form W-2s from 2007 through 2011.

The petitioner was afforded thirty days to respond to the director's concerns raised in the NOIR.

On September 6, 2012, the director revoked the I-140's approval pursuant to section 205 of the Act, 8 U.S.C. § 1155. The director invalidated the labor certification under 20 C.F.R. § 656.312(d) and also revoked the petition due to lack of support by a valid labor certification under 8 C.F.R. § 204.5(1)(3)(i). The director concluded that the petitioner's response had not overcome the grounds for revocation.

³ The *bona fides* of the job offer, including such elements as the petitioner's ability to pay the proffered wage and the beneficiary's qualifications for the position are essential elements in evaluating whether a job offer is realistic. In reviewing a petitioner's ability to pay the proffered wage, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although in some cases, the overall circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2).

Specifically, the director determined that the beneficiary clearly submitted false evidence in the form of educational credentials, thereby misrepresenting a material fact that the beneficiary had the required education to meet the terms of the certified labor certification; he answered “no” to the question on Form I-485 related to whether he committed fraud or willful misrepresentation of a material fact in seeking to procure an immigration benefit; and the beneficiary is not eligible for classification under section 203(b)(3)(A)(11) of the Act as a professional.

The petitioner appealed the director’s decision. Petitioner’s counsel asserts that two different evaluations and the beneficiary’s sworn statement weigh more in finding that the beneficiary’s degree is authentic than statements from ECE, who is not associated with the university that the beneficiary attended; [REDACTED] University provided a February 1, 2012 letter verifying that the beneficiary attended the university, passed all of the examinations and completed his bachelor’s degree; it is unfair for USCIS to revoke the Form I-140 with a finding of fraud without providing a copy of the ECE document relied upon; the revocation cannot be based on unsupported statements or presumptions or where the petitioner is not advised of and provided the derogatory material used as a basis for revocation; and it is clear that the beneficiary has the equivalent of a bachelor’s degree in management information systems.

The petitioner has included a sworn statement from the beneficiary. The record also includes, but is not limited to, a February 1, 2012 letter from [REDACTED] University, a credential evaluation from Park Evaluations and Translations, a copy of the beneficiary’s bachelor’s degree from [REDACTED] University and the beneficiary’s transcripts from NIIT. The decision will be rendered on the record as it stands.

As a preliminary matter, the AAO notes that once USCIS has produced some evidence to show cause for revoking the visa petition, the petitioner still bears the ultimate burden of proving eligibility in a revocation proceeding.⁴ We do not find that the director erred in initiating this

⁴ It is further noted that the traditional position is that courts have generally opposed claims based on a theory of equitable estoppel against the federal government particularly where a public right or interest is implicated. *See Utah Power & Light Co. v. United States*, 243 U.S. 389, (1917) (The Court disregarded the government’s acquiescence because “laches or neglect of duty ...is no defense to a suit [the government] to enforce a public right or protect a public interest.”); *also Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, (1947) (The Court upheld the Federal Crop Insurance Corporation (FCIC) decision to refuse to pay for a crop loss even though it had erroneously approved an application under a regulation that prohibited insuring reseeded crops. The Court rejected the farmer’s theory of recovery based on an analogy to a private insurance company reneging on a contract, concluding that the government was not akin to a private litigant and that the farmer had the obligation not to submit an application for benefits for which he did not qualify); *INS v. Miranda*, 459 U.S. 14, 19, (1982), [Eighteen month delay involving spousal immigrant visa; court did not apply estoppel]. Gross negligence and incompetence are not sufficient to support a finding of affirmative misconduct as required for estoppel against the government. Such affirmative misconduct requires that the government either intentionally or recklessly misled the claimant. *U.S.*

revocation based on the eligibility of the beneficiary for a professional or skilled worker visa. The court in *Tongatapu Woodcraft Hawaii, Ltd. v. INS*, 736 F.2d 1305, 1308 (9th Cir. 1984), additionally stated that “[I]t is important to note that a *visa petition* is not the same thing as a *visa*. An approved visa petition is merely a preliminary step in the visa application process. It does not guarantee that a visa will be issued, nor does it grant the alien any right to remain the United States.” (Citations omitted) (Original emphasis).

Counsel states that it is unfair for USCIS to revoke the Form I-140 with a finding of fraud without providing a copy of the ECE document relied upon; and the revocation cannot be based on unsupported statements or presumptions or where the petitioner is not advised of and provided the derogatory material used as a basis for revocation. However, the March 9, 2011 letter from ECE was sent to the beneficiary. He claims that he did not receive it. In addition, the January 19, 2012 NOIR states, “Information has been received that indicates the educational credentials you submitted to Educational Credential Evaluators are not authentic....there are concerns that you have submitted educational credentials to the service from [REDACTED] University that are fraudulent...” The basis of the revocation was presented to the petitioner in the NOIR and the actual letter from ECE was sent to the beneficiary. Therefore, counsel’s claims are not supported by the record.

As mentioned, counsel asserts that two different evaluations and the beneficiary’s sworn statement weigh more in finding that the beneficiary’s degree is authentic than statements from ECE. The record includes a March 9, 2011 letter addressed to the beneficiary from [REDACTED] President of ECE, which states, “We have been informed by [REDACTED] University that educational credentials you submitted to us are not authentic.”

The AAO notes the two credentials evaluations in the record. The first is from [REDACTED] Professor of Computer Information Systems, [REDACTED] of the City University of New York, dated September 5, 2003. [REDACTED]

v. Wang, 2005 WL 2671383 (N.D. Cal., 2005), [revocation of naturalization]. The issue as to what circumstances would justify the application of an estoppel claim against the government has been left open. In *Heckler v. Community Health Services of Crawford*, 467 U.S. 51, 104 S.Ct. 2218, 2224, 81 L.Ed.2d 42 (1984), Justice Stevens noted that:

[I]t is well-settled that the Government may not be estopped on the same terms as any other litigant. . . . We have left the issue open in the past, and do so again today. Though the arguments that the Government advances for the rule are substantial, we are hesitant, when it is unnecessary to decide this case, to say that there are *no* cases in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor and reliability in their dealings with their Government. (Original emphasis).

This evaluation is based on copies of the original documents provided by Mr. [REDACTED] and represented to be authentic and true copies of the original documents. I have no reason to doubt the authenticity and accuracy of these documents.

The AAO notes that the beneficiary represented his credentials to be authentic to [REDACTED]. The beneficiary's statement is self-serving and does not provide independent, objective evidence of his education credentials. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(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)). USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). Furthermore, [REDACTED] does not state that he contacted [REDACTED] University to verify the authenticity of the beneficiary's credentials.

The second credentials evaluation is from Park Evaluations and Translation, dated February 2, 2012. [REDACTED], the credentials evaluator, states:

This evaluation relies upon the copies of the original documents of the diplomas and transcripts provided by [REDACTED] and represented by [REDACTED] to be authentic and true copies of those documents. There are no apparent grounds for us to disbelieve the authenticity of the documentation presented to Park Evaluations on behalf of [REDACTED].

Similarly, here, the AAO notes that the beneficiary represented his credentials to be authentic to Mr. [REDACTED]. The beneficiary's statement is self-serving and does not provide independent, objective evidence of his education credentials. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(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)). USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). Furthermore, [REDACTED] does not state that he contacted [REDACTED] University to verify the authenticity of the beneficiary's credentials.

Counsel also asserts that the beneficiary's sworn statement should be given weight. The beneficiary's statement is self-serving and does not provide independent, objective evidence of his

education credentials. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence).

The AAO notes the letter purportedly from [REDACTED] University, dated February 1, 2012, which states that [REDACTED] was issued a Bachelor of Commerce degree on November 18, 1992. The AAO notes that the applicant's first name is spelled incorrectly; the letter also lists his name as [REDACTED] the letter does not have an address for [REDACTED] University on it; and the author's title of "correspondent" does not clearly establish the author's position within the university. Based on these issues, the AAO accords this letter nominal weight.

In weighing the aforementioned evidence, the AAO finds that the beneficiary submitted fraudulent credentials with the Form I-140, and, therefore, misrepresented that he was qualified for the position offered.

Due to submission of fraudulent credentials in the Form I-140 petition, answering "no" to the Form I-485 related to willful misrepresentation and his statement on Form ETA 750B that he has a Bachelor of Commerce degree from [REDACTED] University, the AAO finds that the beneficiary willfully misrepresented material facts in seeking to procure immigration benefits.

Willful misrepresentation of a material fact in these proceedings renders the beneficiary inadmissible to the United States. An alien is inadmissible to the United States where he or she "by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission to the United States or other benefit provided under this Act." *See* section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182(a)(6)(c).

The term "willfully" in the statute has been interpreted to mean "knowingly and intentionally," as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) ("knowledge of the falsity of a representation" is sufficient); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (interpreting "willfully" to mean "deliberate and voluntary").

The AAO finds that beneficiary knew that these documents did not reflect his actual education.

Materiality is determined based on the substantive law under which the purported misrepresentation is made. *See Matter of Belmares-Carrillo*, 13 I&N Dec. 195 (BIA 1969); *see also Matter of Healy and Goodchild*. As is set forth above, a material issue in this case is whether or not the beneficiary has the required education for the requested classification and the offered position.

A misrepresentation is material where the application involving the misrepresentation should be denied on the true facts, or where the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that the application be denied. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (AG 1961).

In the instant case, the beneficiary made a material misrepresentation in submitting false educational documents in an attempt to establish that he had the required education to meet the terms of the certified labor certification. The beneficiary would not qualify for the offered position and the requested classification without the falsely claimed education.

Based on the record, the AAO finds that the director had good and sufficient case to revoke the petition under section 205 of the Act. The AAO also finds that the director's finding of willful misrepresentation was correct.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582 at 590 (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In this case, the evidence contained in the record, which raised serious issues related to the evidence as set forth above at the time the decision was rendered, warranted such denial.

The AAO also finds that the invalidation of the labor certification was correct under 20 C.F.R. § 656.31(d) due to the beneficiary's willful misrepresentation on his Form ETA 750B. The director also properly revoked the petition under 8 C.F.R. § 204.5(1)(3)(i) due to the petition not being supported by a labor certification.

Beyond the decision of the director, the petitioner has also failed to establish its continuing ability to pay the proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2).

According to USCIS records the petitioner has filed 29 I-140 petitions on behalf of other beneficiaries. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The evidence in the record does not document the priority date, proffered wage or wages paid to each beneficiary, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions.

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. 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'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 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. 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).

In the instant case, the labor certification states that the offered position requires a Bachelor's degree or equivalent in Computer Science or Engineering or MIS or Economics or Maths[sic] and two years of experience in the job offered or a related occupation. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a DBA with [REDACTED] from November 2000 until March 2004 and as a software engineer/systems executive with [REDACTED] from December 1996 until October 2000. The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The experience letters from [REDACTED] do not state whether the employment was full-time, as claimed on the Form ETA 750. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states, "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."

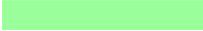
As discussed previously, the credentials evaluations have serious issues. They do not establish that the beneficiary has a foreign equivalent to a Bachelor's degree in one of the fields listed on the Form ETA 750.

The evidence in the record does not establish that the beneficiary possessed the required education and experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition remains revoked and additionally should have been denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.

(b)(6)



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FURTHER ORDER: The labor certification remains invalidated pursuant to 20 C.F.R. § 656.30(d) based on misrepresentation of the beneficiary's educational documents.