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

(b)(6)

DATE: JUN 2 4 2013 OFFICE: NEBRASKA SERVICE CENTER

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: On June 20, 2003, United States Citizenship and Immigration Service (USCIS), Nebraska Service Center received an Immigrant Petition for Alien Worker, Form I-140 from the petitioner. The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center (director) on November 1, 2006. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR).[1] In a notice of revocation (NOR), the director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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).

The petitioner describes itself as a . It seeks to permanently employ the beneficiary in the United States as a manager. 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 April 30, 2001. *See* 8 C.F.R. § 204.5(d). 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). As stated earlier, this petition was approved on November 1 2006, by the Nebraska Service Center, but that approval was revoked on February 24, 2010. The director determined that the petitioner had not demonstrated that the beneficiary possessed the minimum experience required to perform the offered position by the priority date. The director revoked the approval of the petition accordingly.

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.[2]

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[1] Counsel states in From I-290B that the petitioner did not receive a copy of the director's NOIR. The AAO notes that the entity's address provided on the labor certification and the Form I-140 both indicate a street number of 10662, which appears to be incorrect, and the petitioner's true address begins with a street number of 10340. However, all of the filings by the petitioner in this matter list the incorrect street address and the petitioner did not provide the "10340"street number until the instant appeal.

[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 8 C.F.R. § 103.2(a)(1). The record in the instant case

The threshold issue on appeal is whether the director adequately advised the petitioner of the basis for revocation of approval of the petition. As noted above, the Secretary of Homeland Security has the authority to revoke the approval of any petition approved by her under section 204 for good and sufficient cause. See section 205 of the Ac; 8 U.S.C. § 1155. This means that notice must be provided to the petitioner before a previously approved petition can be revoked. More specifically, the regulation at 8 C.F.R. § 205.2 reads:

> a) General. Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS]. (emphasis added).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

> (i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

> A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However, where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

Here, in the NOIR, dated December 23, 2009, the director stated that the record contains a letter from [redacted] which states that the beneficiary was employed as a manager from September 1993 until March 1996. The director notified the petitioner that a report prepared by [redacted] on March 4, 2009 indicated the following:

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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).

> The subject company is not found listed with the Pakistan Chamber of Commerce and with the Local Commercial Directory. The telephone number is not provided for inquiry. A site visit was conducted in the [redacted]. However, we were unable to trace the location [redacted]. Several real estate agents/dealers of the same vicinity were contacted however none of them was aware of the location or sure about the existence of the subject company at the inquired address. [We were] unable to find any other related website for the Subject company for additional information.

A second letter in the record to document the beneficiary's work experience was submitted from [redacted] This letter states that the beneficiary was employed as an assistant manager with the company from January 1990 to August 1993. The director notified the petitioner that a report prepared by [redacted] on March 20, 2009 stated the following:

> Repeated attempts to locate the subject company on 11-Mar-2009 were made in vain. A site visit was conducted on 11-Mar-2009 and the neighbors had no knowledge of the subject company. The subject is unknown to local sources and directories. There is no listing of the subject on the buildings directory list. The address provided is incomplete. The address is a residential address. The local telephone company in Pakistan reported no listing for the subject. [They were] not aware of the existence of [redacted]

The report casts considerable doubt upon the authenticity of the letters submitted to document the beneficiary's previous work experience.

The director specifically asked the petitioner to submit additional evidence to support the petition and in opposition to the revocation. Specifically, the director requested corroborating evidence of the beneficiary's work experience as a manager such as, copies of paystubs, tax forms, or similar foreign documents.

The AAO finds that the director appropriately reopened the approval of the petition by issuing the NOIR, and gave the petitioner notice of the derogatory information specific to the current proceeding. In the NOIR, the director advised the petitioner that in light of the above it was hereby requested to submit verifiable documentary evidence that a bona fide job opportunity existed, and was open to qualified U.S. workers.

The AAO finds that the director appropriately reopened the approval of the petition by issuing the NOIR, and gave the petitioner notice of the derogatory information specific to the current proceeding. In the NOIR, the director advised the petitioner that the record in this case raises a question as to whether the beneficiary possessed the minimum required experience for the job offered within the labor certification. Thus, the AAO finds that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450

(BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet its burden of proof.

In the February 24, 2010, Notice of Revocation (NOR), the director found that the petitioner had not established that the beneficiary met the minimum requirements for the job offered at the time the request for certification was filed. The AAO agrees and finds that the record does not support the petitioner's contention that the beneficiary possessed the minimum experience required for the job opportunity at the time of the labor certification priority date.

As set forth in the director's February 24, 2010 revocation of the petition's approval, the issue in this case is whether or not the beneficiary possesses the requisite minimum requirements for the job offered as stated in part 14 and 15 of the labor certification as of the date the request for certification was processed by the DOL.

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)(l), (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 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 requires two years of experience.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a manager with from September 1993 until March 1996. The labor certification also states that the beneficiary gained experience as a manager with from January 1990 to August 1993. 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 letterhead stating that the company employed the beneficiary as a manager from September 1993 until March 1996. However, the letter does not does not indicate whether this was full-time or part-time employment, preventing the AAO from determining the length of her purported experience with this business.

In addition, as the director indicated no record could be located of the entity's existence[3] during an attempted site verification check by creating questions of the letters' credibility in the determination of the beneficiary's qualifications for the job opportunity indicated in the labor certification.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988), states:

> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The director requested objective evidence to verify this past employment, such as tax, or payroll records. However, the petitioner offered no further objective, independent evidence to support the assertion of this businesses' existence, or the beneficiary's employment with that business upon appeal. 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).

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[3] Counsel questioned upon appeal whether the correct location was queried because of a typographical error in the director's NOR the name of the entity was listed as instead of However, the was in fact the name researched by Inc. during their verification checks.

The record also contains letters from asserting the beneficiary's experience. The first letter, from Sr. Manager, dated August 31st 1993 indicated the beneficiary was employed as an assistant manager, from January 1990 until August 1993. However, the letter does not indicate whether this employment was full-time or part-time, preventing the AAO from determining the extent of the beneficiary's experience with this employer.

Moreover, as indicated by the director, the . verification report also indicated that no information could be located which would indicate the existence of this business at the location indicated on the letter. The address listed was determined to be a residence, with no indicators that a bakery ever existed at that site. In addition, no commercial records of its business existence could be found for any period of time.

Upon appeal, the petitioner submits a dated February 21, 1985, a Deed of Dissolution, dated April 5, 1994, and another letter dated March 30, 2010, indicating the beneficiary was employed by who is listed as a partner in the two aforementioned documents. However, this experience letter does not list the dates of the beneficiary's employment, his duties, or again whether this employment was full-time, or part-time, continuing to prevent the AAO from utilizing it in any way to determine the beneficiary's experience.

Counsel indicates in its brief that . would not be an appropriate source for verifying this employment because it was a small business and . provides services to "Banks, Financial Institutions, Government Departments, Multinationals, Corporate entities, Small and Medium sized enterprises, Exporters and Importers." does serve the entities named in the brief. was utilized by USCIS to offer services of verification which they performed and indicated their conclusions in a report. The petitioner offers two unverified business deeds, but did not sufficiently explain why no local listing of the businesses existence could be located when attempts by an objective source were made. The petitioner's only explanation is that because of the passage of time it would not be reasonable to believe any records would be found based on Pakistan being a low-income country, with poor infrastructure for business regulation and record-keeping as well as large underground economies in cities such as However, the fact that the petitioner submitted business deeds from which were purportedly registered under a normal business practice, for the purpose of demonstrating that the business was in existence during the period in question somewhat discounts this assertion. The petitioner also did not explain why the address listed for the bakery was in fact a residential address.

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.

Further, the AAO notes that the labor certification states that the beneficiary attended high school from 1989 to 1991. The petitioner has not explained how the beneficiary obtained the full-time employment experience claimed in the labor certification while a full-time high school and college student. This casts additional doubt on the beneficiaries claimed experience.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988), states:

> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

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 worker under section 203(b)(3)(A) of the Act.

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).

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).

According to USCIS records, the petitioner has filed 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.

The petition's approval will remain revoked 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. The director's decision to revoke the petition is affirmed.