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: MAR 0 5 2013 OFFICE: NEBRASKA 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 denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or professional. The director determined that the petitioner failed to demonstrate that the beneficiary had the required twenty-four months of experience in the job offered or SQL development.

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification. The priority date of the petition, which is the date the Department of Labor (DOL) accepted the labor certification for processing, is May 6, 2009. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the minimum twenty four months of experience required to perform the offered position by the priority date.

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.[1]

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, 1012-1013 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (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.

---

[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).

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 has the following minimum requirements:

H.4. Education: Bachelor's degree.
H.5. Training: None required.
H.6. Experience in the job offered: 24 Months.
H.7. Alternate field of study: Yes, Management Information Systems.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: Yes, 24 Months of experience as an SQL Server Developer.
H.14. Specific skills or other requirements: Will accept any suitable combinations of education, work experience and/or training.

The labor certification states that the beneficiary qualifies for the offered position based on experience as a database developer with in Phoenix, AZ from September 2, 2005 until May 6, 2009; as a SQL Server Developer with in Stanford, CT from January 2, 2004 until July 20, 2005; and as a SQL Server Developer with in West Trenton, NJ from January 2, 2003 to November 10, 2003. 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 Manager HR on letterhead stating that the company employed the beneficiary on various projects from January 1, 2003 until September 25, 2006. However, the letter is inconsistent with the experience claimed on the ETA Form 9089. The experience letter does not appear to have been written and signed by the employer, but by a coworker. Further, counsel claims the beneficiary was a consultant and not an

employee of but the experience letter claims the beneficiary was an employee. No other independent objective evidence exists in the record establishing that the beneficiary was an employee of working fulltime on projects for Additionally, the record is silent if the experience was gained working as a fulltime employee of

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

> [i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

In *Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), the Board noted in dicta that the beneficiary's experience, without such fact certified by the DOL on the labor certification, lessens the credibility of the evidence and facts asserted.

On appeal, counsel stated that the beneficiary's work experience attested to and signed by the petitioner and beneficiary on the ETA Form 9089 describes the necessary experience required by the petitioner. Counsel also argues that the experience letter from establishes that the beneficiary was a consultant for and the beneficiary merely listed his physical work locations on the ETA Form 9089. However, the claims stated in the experience letter and the ETA From 9089 create inconsistencies in the beneficiary's experience. Also, as noted above, the letter appears to have been signed by a coworker, not by the HR manager whose name is typed on the letter. The signature does not match the printed name. Further, counsel indicated that additional evidence would be submitted in support of the appeal. However, the AAO has received no additional evidence. Thus based on a review of the record at hand, inconsistencies exist between the claimed experience on the ETA Form 9089 and the submitted experience letter, which cast a shadow of doubt over the work experience claimed by the beneficiary in support of the instant petition. The authenticity of the letter is also called into question.

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.