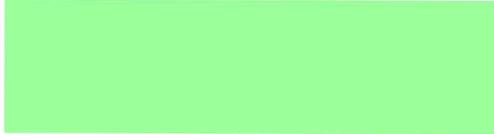


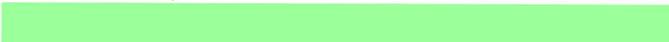


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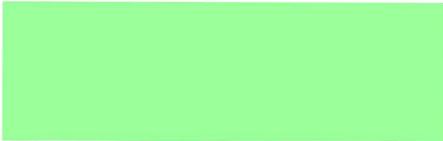


Date: Office: NEBRASKA SERVICE CENTER FILE: 

MAR 28 2013
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 April 4, 2011 the Administrative Appeals Office (AAO) dismissed the appeal and affirmed the decision of the Director, Nebraska Service Center (the director). The petitioner has now filed a motion to reopen the AAO's decision. The motion will be granted, and the appeal will be reopened. Upon review, the appeal will be dismissed, and the AAO's previous decision will remain undisturbed.

The petitioner is a lending institution that provides loans to individuals and businesses to purchase cars, boats, and recreational vehicles. It seeks to employ the beneficiary permanently in the United States as a financial manager, pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, and the AAO subsequently dismissed the appeal, because the petitioner failed to establish that (a) the beneficiary possessed the requisite work experience in the job offered before the priority date, and (b) the petitioning business has the continuing ability to pay the proffered wage from the priority date until the beneficiary receives lawful permanent residence.

On motion to reopen, counsel for the petitioner maintains that the beneficiary possessed the requisite work experience in the job offered prior to the priority date, and that it has the continuing ability to pay the proffered wage from the priority date. New evidence and facts are submitted to demonstrate that the petitioner is eligible to receive benefits under section.203(b) of the Act.

The record shows that the motions are properly filed, timely and supported by new evidence. The AAO conducts this 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 in this proceeding.²

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

¹ Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides 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.

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).

Here, the motion to reopen is accompanied by new facts and supported by supporting documentary evidence. Therefore, the motion is granted, the matter is reopened, and the appeal will be reviewed on a *de novo* basis.

In the previous AAO decision, this office identified several key inconsistencies in the record regarding the beneficiary's qualifications as follows:

- 1) The beneficiary claimed on the Form ETA part B signed on January 27, 2001 that he worked as an assistant superintendent for [REDACTED] in Saudi Arabia from August 1984 to February 2000; and
- 2) The claim above is inconsistent with the beneficiary's claim with respect to his employment abroad as listed on the Form G-325 (Biographic Information) signed on July 28, 2004 and filed in connection with the Application to Register Permanent Residence or Adjust Status, in which the beneficiary stated that he worked as an economist/business administration for [REDACTED] In Saudi Arabia from January 1969 to August 2002.

On motion to reopen, counsel for the petitioner states that she erroneously typed the starting date of the beneficiary's employment and the name of his employer in Saudi Arabia on the Form G-325. Counsel states that the starting date of the beneficiary's employment on the Form G-325 should have been July 1, 1969 (07/01/1969), not January 7, 1969 (01/07/1969). Counsel explains that she made this error because in Saudi Arabia, the date format is shown as day, month, and year; whereas in the United States it is month, day, and year.

Counsel also indicates that the name of the beneficiary's employer on the Form G-325 should have been [REDACTED] instead of [REDACTED]. Counsel states that the beneficiary started working with [REDACTED] but the company later changed its ownership and name to [REDACTED] in 2000, when the beneficiary ended his work as an assistant superintendent for the company.

To resolve the inconsistencies in the record relating to the starting date of the beneficiary's employment with [REDACTED] and the names of his past employer in Saudi Arabia, counsel submits the following evidence:

- A certificate of work record dated March 19, 2010 from [REDACTED], General Manager Human Resources Department of [REDACTED], stating that the beneficiary was a full-time employee of Arabian [REDACTED] from July 1, 1969 to February 27, 2000; and
- A website article [REDACTED] explaining the history of [REDACTED]

Upon *de novo* review, we accept counsel's explanation and the evidence submitted above as credible. We find, based on the evidence submitted, that the beneficiary's original employer in Saudi Arabia, [REDACTED] later became [REDACTED] (which

later also became [REDACTED] and the [REDACTED]). We further find no inconsistencies in the record regarding the names of the business when and where the beneficiary worked between 1969 and 2002.

To demonstrate that the beneficiary possessed the requisite work experience in the job offered, counsel offers an affidavit dated May 3, 2011 from the beneficiary. In his affidavit, the beneficiary states that he worked as Material Clerk from July 1969 to January 1975, Material Officer from August 1979 to August 1984, Assistant Superintendent from August 1984 to February 2000, and Specialist in the Environment Protection section from February 2000 to September 8, 2002. The beneficiary indicates that the company sent him to study in the United States from 1975 to 1979 receiving degrees in economics and business administration.

The job descriptions for each position in the beneficiary's affidavit are consistent with the evidence that the beneficiary has submitted earlier, i.e. letter of employment verification and certificates of employment. The record also contains copies of his diploma, transcript, and graduation certificate from [REDACTED] evidencing that he graduated with a Bachelor's degree in economics and business administration. The AAO is, therefore, persuaded that the beneficiary possessed the minimum educational requirements.

However, the AAO is not persuaded that the petitioner has established that the beneficiary possessed the two years of work experience in the job offered, as none of the evidence submitted contains a description of the training received or duties performed by the beneficiary related to the job offered in this case. See 8 C.F.R. §§ 204.5(g)(1) and (l)(3)(ii)(A).

As noted earlier, the petitioner is a lending institution which provides individual and commercial loans for the purchase of cars, boats, and recreational vehicles. The position offered in this case is financial manager. The duties for the proffered position are: "analyze financial data for proposals, budgets, and operations reports for business ventures located throughout the United States." See section 13 (job description) of the Form ETA 750, part A; also see letter dated July 19, 2004 from Robert T. Ferry to California Service Center. The petitioner, according to the Form ETA 750 part A, is looking to hire someone who has five years of work experience in the job offered.

Earlier in our decision, we held that that the duties that the beneficiary performed for [REDACTED] from 1969 to 2000) as an assistant superintendent did not include the analysis of financial data, but simply the preparation and maintenance of the books of the company.³ As the beneficiary's experience did not involve the analysis of financial

³ In all of the letters of employment verification submitted, the beneficiary's job duties as an Assistant Superintendent were described as follows: "Mr. [REDACTED] [the beneficiary's] duties were the preparation and maintenance of financial information, yearly budgets and reports required for the successful operations of the marine, marine maintenance, and aviation sections of our company."

data, we concluded that his past work experience is not the same or similar with the job offer in this case, and therefore, the beneficiary is not qualified to perform the duties of the position.

We acknowledge the affidavit that the beneficiary submitted on motion, wherein he describes his past work experience/duties in great details. Nevertheless, the beneficiary's affidavit alone does not establish his qualifications for the job offered, nor does it establish the reliability of the assertions that he has the work experience in the job offered. We find that the beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his prior work experience. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (stating 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)).

In addition, the appeal will be dismissed and the petition denied because the petitioner has not established that it has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary receives permanent residence.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Here, to demonstrate that the petitioner has the continuing ability to pay the proffered wage from the priority date, counsel submits a letter from the petitioner's certified public accountant and tax specialist, who states that the petitioner's federal tax returns for the years 2004 through 2008 reported net current assets far in excess of \$40,000 (the proffered wage). The petitioner has not submitted copies of its federal tax returns, annual reports, or audited financial statements for the relevant period, from the priority date in 2001 onwards.

The petition is dismissed for the reason stated above. 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. For the reasons stated above, the appeal must be dismissed.

ORDER: The motion to reopen is granted; the matter is reopened; upon review, the appeal is dismissed.