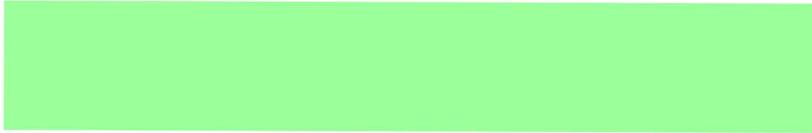




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OFFICE: NEBRASKA SERVICE CENTER

FILE:

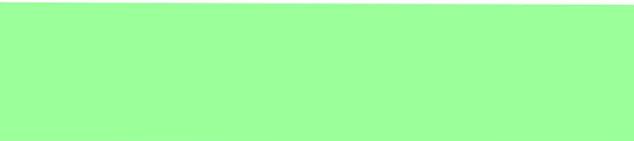
MAR 29 2013

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 August 22, 2001, United States Citizenship and Immigration Services (USCIS), California Service Center (WAC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the WAC director on May 1, 2002. The director of the Nebraska Service Center (the director), however, revoked the approval of the immigrant petition on January 21, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is affirmed. The appeal will be dismissed.

Section 205 of the Immigration and Nationality Act (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 [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] 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 care facility. It seeks to permanently employ the beneficiary in the United States as an accountant pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹ As required by statute, 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). As stated earlier, this petition was approved on May 1, 2002 by the WAC, but that approval was revoked in January 2010. The director determined that the petitioner failed to demonstrate that the beneficiary had the required experience as of the priority date. Accordingly, the director revoked the approval of the petition.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. 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

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)(1), (12). *See Matter of Wing's*

¹ 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.

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).

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*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *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 has the following minimum requirements:

EDUCATION

Grade School: 6 years

High School: 4 years

College: N/A

College Degree Required: N/A

Major Field of Study: N/A

TRAINING: None Required.

EXPERIENCE: Three (3) years in the job offered

OTHER SPECIAL REQUIREMENTS: None.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as an accountant with [REDACTED] in Davao, Philippines from February 1997 until April 2000 and as an accounting clerk for [REDACTED] in Davao City, Philippines from March 1987 to August 1994. 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 petitioner initially submitted an October 27, 2000 letter from [REDACTED] proprietress of [REDACTED] stating that the company employed the beneficiary as an acting accountant from February 1997 until April 2000 and a November 4, 2000 letter from [REDACTED] Manager of [REDACTED] stating that the beneficiary worked for [REDACTED] from March 1987 to August 1994 as an accounting clerk. Neither one of the letters includes a specific description of the duties performed by the beneficiary. See 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A). As a result, they are insufficient to demonstrate that the beneficiary had the required three years of experience as of the priority date.

On July 25, 2009, the director issued a Notice of Intent to Deny (NOID) in conjunction with the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, based on an overseas investigation conducted by USCIS that revealed the following:

- The [REDACTED] Philippines Office of the City Mayor Business Bureau stated that [REDACTED] did not have a business permit or any record of having had a business permit as of June 26, 2009. The Office of the Department of Trade & Industry issued a Negative Certification as a result.
- The address listed for [REDACTED] is the residence of [REDACTED] the beneficiary's sister, and neighbors were unaware of any business activities from the premises.
- The Office of the Department of Trade & Industry, Davao City, Philippines stated that [REDACTED] had a registered business permit for [REDACTED] a company engaged in the sale of general merchandise including hospital & medical supplies, home appliances, second hand sewing machines, parts and accessories. The Office issued a Negative Certification as a result.
- The address listed for [REDACTED] was for a building that sources verified as operational, but the business ceased operations in 2004.

The NOID also cited certain inconsistencies in two interviews of the beneficiary conducted by USCIS:

- Although the beneficiary has work authorization, she is only working part time for the petitioner so as to allow her to care for her children and she is working for a company other than the petitioner part-time as well;
- The beneficiary stated during her interview that a friend's father who worked at [REDACTED] hired her and she did not know anything about accounting when she was hired so did "on the job training;" and
- The beneficiary stated that she did not work from 1997 to 2000 whereas the letter from her mother stated that she worked for [REDACTED] during this same period.

To address the above inconsistencies, the petitioner submitted a letter from the beneficiary dated August 13, 2009 stating that she began working at [REDACTED] part-time in March 1987 after her junior year of high school and continued to work part-time until August 1994. She stated that while she was working for the company, the owner, [REDACTED] met her sister, [REDACTED] and got married in December 1992. She stated that the couple moved to Taiwan in 1998 and abandoned their business in 2002, but that [REDACTED] still owns the house listed as the Sunmesco address, although the house is currently occupied by [REDACTED] sister. The beneficiary contends that the neighbors could not have known about the business because they had not lived in the neighborhood long enough to have witnessed business activities during the pendency of the business. The beneficiary stated that she mis-stated her dates of unemployment to the interviewing officer and that she was unemployed from 1994 to 1996. She stated that she returned to work with [REDACTED] a company owned by her parents, in 1997 and worked there until April 2000. She added that she worked with the petitioner, but that she took a second job with [REDACTED] a position that does not interfere with her duties with the petitioner. She also stated that the petitioner promised to pay the prevailing wage and benefits when the beneficiary became a permanent resident. The beneficiary states that she enclosed all evidence available to her concerning her past employment:

- A letter from [REDACTED] stating that the beneficiary worked for [REDACTED] from March 1987 to August 1994 as a part-time accounting clerk. He further states that [REDACTED] was registered with the Davao City Department of Trade and Industry in 1987, but stopped renewing the license in 1993 due to trouble concerning his Taiwanese citizenship. He stated that the business operated until 2002 under the direction of [REDACTED] while he and his wife lived in Taiwan beginning in 1998;
- An August 10, 2009 letter from [REDACTED] stating that her daughter, the beneficiary, worked for [REDACTED] from February 1997 to April 2000 as an acting accountant. She states that the business began in September 1983 and closed in early 2005. She stated that she asked her Philippines secretary to write the letter in 2001 to verify the beneficiary's employment because she was no longer residing in the Philippines;
- Two checks dated January 24, 1994 from the account of [REDACTED] made out to the beneficiary;
- A receipt issued by a Collecting Officer in the Philippines dated March 31, 2002 stating payment made by [REDACTED];
- Business cards of [REDACTED] for [REDACTED];
- A letter from the petitioner verifying the intent to employ the beneficiary when she is a permanent resident; and
- Financial documentation of wages received by the beneficiary and her husband in 2007 and 2008.

On December 8, 2009, the director issued a Notice of Intent to Revoke (NOIR) the previously approved Form I-140 petition. The NOIR specifically states that the experience letters submitted from [REDACTED] and [REDACTED] were insufficient to establish the required experience as of the priority date. Specifically, the NOIR cited the beneficiary's part-time employment with [REDACTED] and noted that the letter submitted from [REDACTED] bore a fraudulent

signature, so could not be considered in determining whether the beneficiary had the required experience. On appeal, the petitioner stated that it never received a copy of the NOIR, but that documents submitted in response to the NOID should be considered.

The documentation submitted by the petitioner on appeal establishes the existence of [REDACTED]. The evidence submitted, however, does not establish that the beneficiary was employed by the business owned by her brother-in-law and for which, as demonstrated by the business cards, her sister was employed. Because the business is owned by the beneficiary's family members, the petitioner must submit independent, objective evidence of the beneficiary's employment with the company. 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)).

The evidence submitted on appeal does not establish either the existence of [REDACTED] or that the beneficiary was employed by that company. The checks submitted were written by the beneficiary's father and drawn on his personal account; no evidence was submitted to demonstrate that these checks were issued in exchange for work done for any business as opposed to personal matters. Similarly, the receipt issued by an official in March 2002 does not state the nature of the collection so that we are unable to determine that it was made to register a business. Despite the beneficiary's explanation that she mis-spoke at her interview, no independent, objective evidence in the record establishes that she worked for [REDACTED]. The petitioner must resolve any inconsistencies in the record by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 591-592. No such evidence was submitted and, thus, the petitioner has failed to establish that the beneficiary worked for [REDACTED].

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.

The petition 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 director's decision is affirmed. The appeal is dismissed and the approval of the petition remains revoked.