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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

DATE: **MAY 06 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[REDACTED]

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 Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a knitting manufacturer. It seeks to permanently employ the beneficiary in the United States as a textile engineer. 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). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision revoking the petition concludes that the petitioner failed to establish the beneficiary's compliance with the educational requirements of the labor certification.

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

On February 28, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss and Derogatory Information (NOID) and Request for Evidence (RFE) with a copy to counsel.

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

A 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. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (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

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).

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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).

The minimum education, training, experience and other special requirements required to perform the duties of the offered position are set forth at Part A, Items 14 and 15 of the labor certification. The labor certification states that the offered position has the following minimum requirements:

EDUCATION

Grade School: [blank]

High School: [blank]

College: 4 years

College Degree Required: Bachelor's Degree

Major Field of Study: Computer Science or Engineering

TRAINING: [blank]

EXPERIENCE: 2 years in the job offered

OTHER SPECIAL REQUIREMENTS: [blank]

Part B, Item 11 of the labor certification fails to state that the beneficiary has any education related to the offered position.

The record contains a copy of a document purported to be the beneficiary's Bachelor of Science diploma from the [redacted]

The record also contains an evaluation of the beneficiary's credentials prepared by [redacted] on December 10, 2003. The evaluation concludes that the beneficiary's Bachelor of Science in Electrical Engineering degree from the [redacted] is equivalent to a Bachelor of Science in Electrical Engineering from a regionally accredited educational institution in the United States.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to

its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.² If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³

According to EDGE, a diploma (or Teudat) from Israel is comparable to “two years of university study in the United States,” and a Bachelor’s degree from Israel is comparable to a “bachelor’s degree in the United States.”

Based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree in computer science or engineering as required by the terms of the labor certification. The AAO informed the petitioner of EDGE’s conclusions in the February 28, 2013 Notice of Intent to Deny and Request for Evidence (NOID/RFE) and a copy of the EDGE reports were attached. The AAO allowed the petitioner 45 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

² See *An Author’s Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

³ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

In response to the NOID/RFE, the petitioner provided no additional evidence to address the conclusions of EDGE. Since the petitioner failed to submit evidence that precludes a material line of inquiry, the petition will be denied pursuant to 8 C.F.R. ^ 103.2(b)(14).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university. The petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

Further, as the labor certification does not indicate that any alternative to a four-year U.S. bachelor s degree in Computer Science or Engineering or a foreign equivalent degree is acceptable, and the beneficiary does not possess such a degree, the petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act.

Beyond the decision of the director,⁴ it appears that the petition is not supported by a *bona fide* job offer. According to the New York Department of State, Division of Corporations, the petitioner was dissolved on June 28, 2004. A copy of the status report for the petitioner was attached to the NOID/RFE. The petitioner was requested to submit evidence to establish its status, as well as its ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. See 8 C.F.R. ^ 204.5(g)(2).

In response to the NOID/RFE, the petitioner s counsel stated:

Please be advised that although the original petitioner corporation closed and the subsequent corporation took over the same business in the same location, the new company does not meet the successor in interest requirements outlined in AAO cases and Matter of Dial Auto.

As the petitioner is no longer in existence, the instant appeal is therefore moot.

The AAO also noted in the NOID/RFE that the evidence in the record does not establish that the beneficiary possessès the required experience for the offered position. As is discussed above, the petitioner must demonstrate that the beneficiary possessed all of the requirements stated on the labor

⁴ 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).

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certification as of the April 30, 2001 priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The labor certification states that the offered position requires two years of experience in the offered position as a textile engineer.

Part B, Item 15 of the labor certification states that the beneficiary qualifies for the offered position based on experience as a software design programmer with [REDACTED] in New York from January 1999 to December 2000, and as a freelance textile engineer from January 2001 to present (April 25, 2001). No other experience is listed.

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation—*

(A) *General.* 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 dated December 27, 2000 from [REDACTED] President on [REDACTED] letterhead, stating that the company employed the beneficiary as a "computer software design" from January 2, 1999 until the end of December 2000. The record contains a second letter dated February 27, 2001 from [REDACTED] stating that the beneficiary stopped working on February 15, 2001. The record also contains a Form G-325A signed by the beneficiary on June 7, 2004. In his Form G-325A, the beneficiary stated that he worked at [REDACTED] from January 1999 until December 2000. As noted in the director's October 25, 2010 Notice of Intent to Revoke (NOIR), the first letter from [REDACTED] is inconsistent with his second letter and the Form G-325A. In response to the NOIR, counsel asserts that the petitioner has no record of the second letter. 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). Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

It is also noted that the duties described in the experience letter fail to match the duties of the offered position. [REDACTED] states the beneficiary analyzed and modified the program involved in the knitting design production. The duties of the offered position require the design of a software system to control operation of machinery used to produce knitwear. The position also requires training of users. The beneficiary's experience does not match the duties required by the offered position. Further, the record fails to contain an experience letter regarding the beneficiary's experience as a freelance textile engineer from January 2001 to April 2001. Thus, the beneficiary's

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experience does not total the required amount of two years in the offered position.

It is further noted that the record contains a letter dated November 30, 2001 from [REDACTED] on [REDACTED] letterhead, stating that the beneficiary worked for the company from November 30, 1991 until October 5, 1993. The beneficiary failed to list this employer on his Form ETA 750. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

Given the above, the evidence in the record is not sufficient to establish that the beneficiary possessed the two years of experience in the offered position as a textile engineer by the priority date as required by the terms of the labor certification. The AAO requested that the petitioner submit experience letters that satisfy the regulatory requirements set forth above to establish that the beneficiary possessed the required experience to perform the offered position. No additional evidence was submitted.

Finally, the AAO noted in the NOID/RFE that the evidence in the record does not establish that the petitioner had the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). The record is insufficient to demonstrate that the petitioner had the ability to pay the proffered wage from the priority date and continuing to the present.

The petition will be 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.