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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 0 2 2013 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), revoked the approval of the employment-based immigrant visa petition on November 10, 2010. On December 10, 2010, the petitioner filed a motion to reopen the decision. The director dismissed the motion on March 15, 2011 and affirmed her previous revocation of the approval of the employment-based visa petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition remains denied.

The petitioner describes itself as a taxi service. It seeks to permanently employ the beneficiary in the United States as a mechanic. 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).[1]

The director's decision to revoke the approval of the employment-based immigrant visa petition concluded that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date because the record contained a fraudulent experience letter. The director also determined that the beneficiary made material misrepresentations in connection with the petition in misrepresenting his work experience on the Form ETA 750 and in submitting a fabricated employment letter with a forged signature.

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).

On motion, counsel submits a brief. 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] 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 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.

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy.

The record of proceeding contains an experience letter from that was determined to be fraudulent. The AAO's September 24, 2012 decision states the following:

> The record contains an experience letter dated January 6, 2004 from proprietor, on letterhead stating that the company employed the beneficiary as an auto mechanic from September 1995 until November 1997. As stated in the director's revocation, the authenticity of the letter was investigated by the Fraud Prevention Unit, American Embassy, Mumbai, India and determined to be fraudulent. When contacted for verification, Mr. stated that the beneficiary was employed as full time driver and not as a mechanic. The record also contains a statement signed by Mr. stating that he did not sign the letter dated January 6, 2004.

In his brief on appeal, counsel states that s letter was the only evidence considered by the director. Counsel asserts that the investigator could not confirm the identity of the person responding to the phone call. Counsel also asserts that "the AAO failed to make specific findings as to the truthfulness of the conflicting evidence presented" and that the AAO did not consider the affidavits submitted by the petitioner.

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). The AAO reviewed the evidence in the record and discussed the affidivits in the September 24, 2012 decision. In the decision, the AAO noted that

> The affidavits submitted by counsel are inconsistent with 's statements. The record also contains a hand written statement signed by asserting that the January 6, 2004 letter was not issued by him. Although counsel submits a new affidavit from stating that the beneficiary worked for him as an assistant mechanic, the affidavit provides no explanation regarding Mr. s statements to the investigator indicating that the beneficiary only worked for him as a driver. Further, the new affidavits submitted state that the beneficiary worked as an assistant mechanic and not as auto mechanic as required by the terms in the Form ETA 750 and the letters do not state if the job was full-time.

See Matter of Soriano, 19 I&N Dec. 764 (BIA 1988).

Again, on motion, the petitioner provides no explanation from Mr. [redacted] regarding his statements to the investigator, why the affidavits state that the beneficiary worked as an assistant mechanic instead of an auto mechanic, or provide information as to whether the beneficiary worked full time.

Counsel asserts that the AAO pointed out grammatical and spelling errors in the affidavits submitted and overlooked the content of the affidavits. The AAO's decision stated:

> Finally, the record contains affidavits from [redacted] stating that their taxi cab companies were competitors of [redacted] in India and that they knew that the beneficiary was employed by [redacted] as an auto mechanic from 1995 to 1997. The AAO notes that the affidavits from [redacted] are very similar, include the same misspelling, punctuation, and grammatical errors and all state that the beneficiary "wanted to join our company, but for personal reason[s] he did not do [so]." The affidavits fail to provide concrete information, specific to the beneficiary and generated by the asserted associations with the beneficiary, which would reflect and corroborate the extent of those associations, and demonstrate that the affiants have a sufficient basis for reliable knowledge about the beneficiary's employment for [redacted] Given this, the affidavits provide little probative value and shall be afforded minimal weight as evidence in support of the petitioner's claim. The AAO finds that the affidavits lack credibility and are probably not true.

The similarity of the affidavits and the inclusion of the same spelling and grammatical errors call their credibility into question because it appears that the affidavits were written by the same individual. It is unlikely that eight different people would make identical spelling or grammatical errors. Although counsel attempts to shift the burden to the AAO, as noted above, it is the petitioner's responsibility to resolve inconsistencies through independent, objective evidence.

Also, in his brief, counsel quotes from [redacted]'s January 6, 2011 affidavit stating that [redacted] should be asked to submit his handwriting to a handwriting expert or in the alternative to take a polygraph test. Counsel provides no precedent or legal support for this request. Counsel again attempts to shift the burden of proving eligibility to the AAO. 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.

On motion, counsel states that the matter should be remanded in order to resolve the conflicts in the record. The matter will not be remanded. As noted above, the AAO has *de novo* review and counsel had the opportunity to submit independent, objective evidence on appeal and on motion.

Counsel suggests that the AAO's adjudication of the petition was unfair. The petitioner has not demonstrated any error by the AAO in conducting its review of the petition. Nor has the petitioner

demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

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 and that the beneficiary materially misrepresented his work experience. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is dismissed and the decision of the AAO dated September 24, 2012 is affirmed. The approval of the employment-based immigrant visa petition remains revoked.