



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 18 2013**

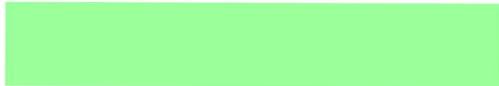
OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE:

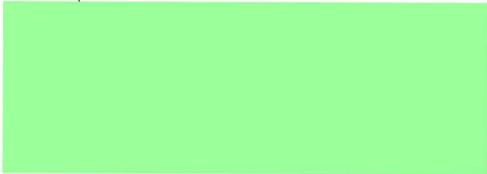
Petitioner:

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 (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, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a business engaged in the online sale of computer parts. It seeks to permanently employ the beneficiary in the United States as a technical salesperson. 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 petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is February 19, 2008. See 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the minimum education 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.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 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

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

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).

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:

H.4. Education: Other.

H.4-A. If other is indicated in question 4, specify the education required: “High school plus two years of post secondary education in computer science.”

H.5. Training: None required.

H.6. Experience in the job offered: 36 months.

H.7. Alternate field of study: None accepted.

H.8. Alternate combination of education and experience: None accepted.

H.10. Experience in an alternate occupation: None accepted.

H.14. Specific skills or other requirements: Left blank.

The labor certification also states that the beneficiary qualifies for the offered position based on having a high school diploma and two years of post-secondary education in Computer Science from the [REDACTED] completed in 1999.

The AAO issued a Request for Evidence (RFE) to the petitioner on June 13, 2013, regarding several discrepancies in the record related to the beneficiary’s education credentials. The AAO noted that it was unclear from the record why the beneficiary has a bachelor’s degree with a 2001 completion date and an Associate’s degree diploma with a 2003 completion date. The AAO also noted that the record contains an evaluation, dated February 26, 2009, by [REDACTED] for [REDACTED] in which she concludes that the beneficiary’s two-year Associate’s degree was awarded in February 2003 in the field of “Computer Operation,” two years after the beneficiary was allegedly awarded a bachelor’s degree in Computer Engineering.

In response to the AAO's RFE, the petitioner provided translated copies of the beneficiary's transcripts from the [REDACTED] to support the assertion that the beneficiary completed his associate's degree in 1999 and his bachelor's degree in 2001, but that the associate's degree was not registered until 2003. However, the translation of these transcripts did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The translations of the beneficiary's transcripts only state "Certified True Translation" with the seal and signature of the translator, but these translations are not accompanied by a certification stating that the translator is competent to translate from the foreign language into English. The petitioner must resolve this discrepancy in any further filings.

Counsel alleges that the beneficiary's courses were completed in 1999 and that the degree was awarded in 2003. Counsel further alleges that this is customary in Iran because the beneficiary would have had to apply for the issuance of the associate's degree. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

Further, the record also contains a certificate of the beneficiary's second associate's degree in "Computer Software," which states he completed this degree on November 3, 2007. The AAO informed the petitioner that this degree, following a purported Bachelor's degree in Computer Engineering, casts doubt on the beneficiary's claimed education. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is unclear why the beneficiary would be awarded an associate's degree in 2003 in "Computer Operation" and another associate's degree in "Computer Software" in 2007, after allegedly receiving a Bachelor's degree in Computer Engineering. Counsel did not respond to this issue in response to the AAO's RFE. 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). Again, the petitioner did not respond to this line of inquiry in the AAO's RFE and did not provide any evidence responsive to this issue.

The AAO's RFE also noted that several of the documents relating to the beneficiary's educational credentials state different titles for the beneficiary's degrees. These discrepancies call into question the validity of each of the beneficiary's degrees. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is

incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

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.

Beyond the decision of the director, it is also concluded that the petition is not supported by a *bona fide* job offer. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm'r 1986). The AAO's RFE informed the petitioner that from the evidence in the record, including a record of a telephone call with the petitioner's owner, that the beneficiary is related to the petitioner's owner. Under 20 C.F.R. § 626.20(c)(8) and § 656.3, the petitioner must demonstrate that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See also C.F.R. § 656.17(l); *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000); see also *Keyjoy Trading Co.*, 1987-INA-592 (BALCA Dec. 15, 1987) (en banc).

The AAO requested evidence of the beneficiary's apparent familial relationship to the petitioner's owner and also requested copies of the petitioner's articles of incorporation; copies of the corporation's stock ownership at the time of incorporation to the present time; and copies of the recruitment conducted for the job opportunity. The only response to this issue is a statement from counsel stating that the petitioner's owner and the beneficiary are not cousins and that counsel spoke with the petitioner's owner who denied any familial relation to the beneficiary, except that one of his wife's cousins married a cousin of the beneficiary. As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As stated in the AAO's RFE, USCIS contacted the petitioner's owner who stated that he had filed a Form I-140 for his cousin, the beneficiary. Therefore, the conversation of the petitioner's owner to counsel conflicts with his communication to the USCIS officer on October 6, 2012. The petitioner did not respond to the AAO's RFE regarding this issue with the evidence 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).

Based on the relationship described above, and considering the evidence in the record relating to the employer and the job opportunity and that the petitioner did not resolve this issue in response to the AAO's RFE, the petitioner has failed to establish that the instant petition is based a *bona fide* job opportunity available to U.S. workers. Accordingly, the petition must also be denied for this reason.

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).

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The 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'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, 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 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).

In the instant case, the labor certification states that the offered position requires 36 months of experience in the job offered, technical salesperson. The job duties of the instant position include the following:

Modify product configurations to meet customer needs. Confer with customers and engineers to assess equipment needs, and to determine system requirements. Understand customer requirements, to promote the sale of company products, and to provide sales support. Secure and renew orders and arrange delivery. Sell products requiring extensive technical expertise and support for installation [and] handling equipment, numerical-control machinery, and computer systems.

On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a technical salesperson for [REDACTED] in Tehran, Iran, beginning on October 25, 2003.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter from [REDACTED], dated February 14, 2008, which states that the beneficiary has been working there "as a salesperson of electronic parts such as equipments [sic] and devices for Network, Server, Presence Checking Systems, Monitoring and Closed Circuit Cameras, since 2003." However, this letter does not state the beneficiary has experience performing the specific job duties of the instant position, namely in modifying product configurations and conferring with customers and engineers to assess equipment needs. This experience letter also does not state firm dates of the beneficiary's employment or whether the beneficiary was employed part-time or full-time.

The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.