



U.S. Citizenship  
and Immigration  
Services

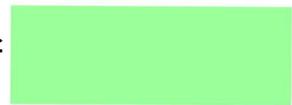
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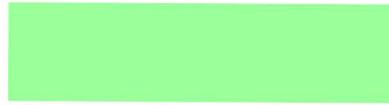
DATE: SEP 26 2013

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:

SELF-REPRESENTED

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), denied the employment-based immigrant visa petition. The petitioner appealed to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision, but remanded the petition to the director because it was unapprovable on other grounds. The director again denied the petition and certified the case to the AAO for review pursuant to 8 C.F.R. § 103.4(a)(1). The director's denial will be affirmed.

The petitioner is an individual seeking to employ the beneficiary permanently in the United States in his home as a nanny pursuant to section 203(b)(3)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(ii). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition after the AAO's remand, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of work experience stated on the labor certification. The director also determined that the petitioner had failed to demonstrate that a *bona fide* full-time job offer existed. Finally, the director cited inconsistencies in the documentation submitted to establish the petitioner's ability to pay the proffered wage.

The AAO issued a Request for Evidence (RFE) on June 28, 2013, requesting evidence to establish that a *bona fide* full-time job offer existed. The petitioner was requested to provide additional detailed information regarding the job offer and was specifically requested to explain why his November 9, 2012, letter states that he has four children, while his tax returns claim only two dependent children. The petitioner was further requested to verify whether there was any familial relationship between the beneficiary and any member of the petitioner's household.<sup>1</sup>

The AAO specifically alerted the petitioner that failure to respond to the request would result in dismissal since the AAO could not substantively adjudicate the petition 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). The petitioner did not respond to the RFE; therefore, it must be concluded that the petitioner has failed to establish that a *bona fide* full-time job offer exists.

The RFE also requested additional evidence establishing the petitioner's continuing ability to pay the proffered wage. *See* 8 C.F.R. § 204.5(g)(2). Specifically, the AAO requested that the petitioner provide copies of his federal income tax returns for 2008 and 2012. The AAO also identified inconsistencies in the financial summaries provided by the petitioner; namely, a \$1,216/month discrepancy between the 2008 household expenses claimed by the petitioner on appeal and the 2008 household expenses claimed by the petitioner in response to the director's request for evidence. The petitioner was provided the opportunity to explain these discrepancies; however, no response has been received.

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<sup>1</sup> 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).

It is incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner has not provided the requested tax documentation from 2008 and 2012, nor has the petitioner resolved the discrepancies identified in his previous statements to USCIS. Therefore, it must be concluded that the petitioner has failed to establish the continuing ability to pay the proffered wage as of the December 4, 2007, priority date.

The RFE further noted that the evidence in the record was not sufficient to establish 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 (1<sup>st</sup> Cir. 1981).

The RFE advised the petitioner that the translation of the employment letter from the beneficiary's former employer contained significant notable mistranslations. The petitioner was provided the opportunity to explain these discrepancies and to provide independent documentary evidence of the beneficiary's claimed employment; however, no response has been received. It is incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner has not resolved the mistranslations in the beneficiary's employment documentation and has not provided independent documentary evidence of the beneficiary's claimed employment. 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. Here, that burden has not been met.

**ORDER:** The director's decision of denial is affirmed.