



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 28 2014** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as 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.

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 (the director) revoked the approval of the employment-based immigrant visa petition and the AAO dismissed a subsequent appeal. Thereafter, the AAO withdrew its decision and *sua sponte* reopened the matter for further consideration. The appeal will be dismissed.

The petitioner is an engineering firm. It seeks to employ the beneficiary permanently in the United States as an Assistant Delivery Supervisor pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition is February 11, 2004, which is the date the labor certification was accepted for processing by DOL. See 8 C.F.R. § 204.5(d).

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 on appeal.¹ The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact.

The issue before the AAO is whether the beneficiary has the experience required by the labor certification. The AAO *sua sponte* reopened the matter, allowing the petitioner the opportunity to submit independent, objective evidence to address the inconsistencies in the beneficiary's employment history. As the petitioner has not submitted such evidence, the appeal, as discussed below, will be dismissed and the petition's approval will remain revoked.

Procedural History

On March 14, 2007, the director approved the instant Form I-140, Immigrant Petition for Alien Worker. However, following a United States Citizenship and Immigration Services (USCIS) review of visa petitions filed by the petitioner's former counsel, the director, on September 22, 2010, issued a Notice of Intent to Revoke (NOIR) to the petitioner. On October 25, 2010, the petitioner responded to the NOIR, submitting statements from its owner, its Chief Financial Officer and the beneficiary, as well as documentation relating to its recruitment for the offered position and the beneficiary's individual tax returns for the years 2005 through 2009. The director found the petitioner's response to the NOIR established its ability to pay the proffered wage. He found that the beneficiary had not met the minimum experience requirements of the labor certification as of the February 11, 2004 priority date. Accordingly, on November 15, 2010, the director revoked the petition's approval.

The petitioner appealed the director's revocation to the AAO on December 3, 2010. On June 28, 2013, the AAO dismissed the appeal, also finding that the record did not establish that the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

beneficiary had the experience required by the labor certification and, therefore, that the director had revoked the approval of the visa petition for good and sufficient cause. On November 12, 2013, the AAO withdrew its decision and reopened the matter on its own motion. The AAO issued a Request for Evidence (RFE) to the petitioner seeking additional information relating to the beneficiary's employment, allowing the petitioner an additional opportunity to address the outlined inconsistencies in the record and to submit independent objective evidence to overcome such deficiencies.

The petitioner has responded to the RFE and the AAO will consider the newly submitted evidence, as well as that previously provided by the petitioner, to reach a new decision on the appeal.

Sufficiency of Notice

As noted previously by the AAO in its decision dated June 28, 2013, the threshold issue on appeal is whether the director adequately advised the petitioner of the basis for his revocation of the approval of the petition. For the reasons indicated below, the AAO finds the director properly issued, for good and sufficient cause, and the petitioner received adequate notice of the director's intent to revoke the approval of the petition.

The regulation at 8 C.F.R. § 205.2, which reads:

(a) *General.* Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition **upon notice to the petitioner** on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS]. (emphasis added).

The regulation at 8 C.F.R. § 103.2(b)(16) further requires:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However, where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa

petition cannot be sustained.

In a NOIR issued on September 22, 2010 the director informed the petitioner that the description and dates of the qualifying employment claimed by the beneficiary on the instant labor certification were inconsistent with those he had provided in another labor certification submitted with the petitioner's previously filed Form I-140 petition. Inconsistencies must be resolved by the submission of "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." See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director notified the petitioner that the petitioner's president had stated in a May 18, 2010 telephonic interview with a USCIS officer that the beneficiary had limited experience when he first came to work for his company and that he had worked his way up to a manager position. The director also stated that the beneficiary had been unable to remember the names of his prior employers during a May 21, 2010 interview, and that the evidence of his employment experience was inconsistent and unreliable. Finally, the director informed the petitioner that the record did not establish its ability to pay the beneficiary the proffered wage. The director gave the petitioner 30 days to provide evidence rebutting these findings, as well as proof of its efforts to recruit U.S. workers for the offered position.²

The director's NOIR specifically advised the petitioner of issues that, if "unexplained and un rebutted," would warrant the denial of the instant petition, i.e., the inconsistencies in the record concerning the employment experience claimed by the beneficiary and the record's failure at that time to establish the petitioner's ability to pay the proffered wage. Accordingly, the NOIR was properly issued for good and sufficient cause, and the petitioner received adequate notice of the director's intent to revoke the approval of the petition.

The AAO now turns to a consideration of the record and the basis for the director's revocation of the petition's approval.

² In the NOIR issued on September 22, 2010, the director also requested documentation of the petitioner's compliance with DOL recruitment requirements. The AAO notes that the submitted posting notice and one of the job advertisements reflect dates that the recruitment took place in 2001 and, therefore, do not support the instant labor certification, which was filed with DOL on February 11, 2004. Pursuant to the regulation at 20 C.F.R. § 656.21(i)(1)(i), in effect at the time the labor certification was filed in 2004, an employer filing a labor certification with DOL under the Reduction-in Recruitment process then available was required to document that a good faith effort to recruit U.S. workers had taken place during the preceding six months. As a result, the submitted recruitment documentation from 2001 would not establish the petitioner's compliance with DOL recruitment requirements for the offered position. Doubt cast on any aspect of a petitioner's proof 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, 591-92 (BIA 1988).

Beneficiary Qualifications

In his November 15, 2010 decision, the director found the petitioner to have submitted sufficient evidence of its ability to pay the beneficiary the proffered wage. Therefore, the only substantive issue before the AAO on appeal is whether the record demonstrates the beneficiary's qualifications for the offered position.

The petitioner is seeking classification of the beneficiary as a skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). 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.

To establish that a beneficiary is qualified to perform the duties of an offered position, a petitioner must demonstrate that the beneficiary has met all of the requirements set forth in the labor certification by the priority date of the petition, which, as previously noted, is February 11, 2004. 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 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).

Part A.13. of the instant labor certification states the duties of the offered position of Assistant Delivery Supervisor as follows: "Assist in supervision of workers preparing & packaging parts for delivery. Confer with owner on compliance. Assign parts for special processing. Review time sheets and schedules." To perform these duties, Part A.14. requires the beneficiary to have two years of experience in the offered position or the related occupation of "Manager/Supervisor."³

Part B.15. of the labor certification, signed by the beneficiary on November 20, 2003, indicates that from November 1992 until March 1996, he was employed as a manager at [REDACTED] and was responsible for "managing workers in the shipping of auto parts to dealership[s] and assigning parts for repair or refurbishing." The labor certification also states that the beneficiary "trained workers and scheduled weekly hours." No other employment experience is listed by the beneficiary, either in the United States or abroad. It should additionally be noted that the beneficiary failed to list his experience with the petitioner, which is reflected on the Form G-325 from October 2000 onward. The reason for this omission is unclear.⁴

³ Part A.14. does not require any training and no other special requirements are listed in Part A.15. of the labor certification.

⁴ Part B.15. of the Form ETA 750 asks the beneficiary to "[l]ist all jobs held during the last three

The beneficiary's description of his employment with [REDACTED] is, however, inconsistent with that he provided in Part K. of the ETA Form 9089, Application for Permanent Employment Certification, which supported a Form I-140 petition filed by the petitioner on behalf of the beneficiary on November 14, 2005.⁵ In the ETA Form 9089, the beneficiary indicates that, while at [REDACTED] he was responsible for "overseeing the staff, hiring & firing, training new workers, overseeing inventory, payroll, purchasing," duties which differ significantly from those described in the instant labor certification and which raise questions regarding the reliability of the experience claimed by the beneficiary in this proceeding. Inconsistencies must be resolved by the submission of "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." See *Matter of Ho*, at 591-92. The beneficiary does not list any other employment in the United States or abroad on the ETA Form 9089. Here again, it should be noted that the beneficiary failed to list his experience with the petitioner despite the form's clear instructions.⁶

Additionally, as set forth by the director, the petitioner has failed to resolve the statements made to a USCIS officer by the petitioner's president in a May 18, 2010 telephone interview, which indicated that the beneficiary did not have much experience at the time he was hired, and that he was brought in at an entry-level position, working his way up to supervisor.

The AAO also finds inconsistencies in other aspects of the beneficiary's employment history. In the beneficiary's previously referenced May 21, 2010 telephone interview with a USCIS officer concerning his employment history in Brazil, he stated that from March 1996 until leaving for the United States, he had worked as a delivery driver, bus driver and trailer truck driver, but could not identify his employer(s). However, at the time of his February 10, 1999 arrival in the United States, the beneficiary informed immigration inspectors that he was employed as a drywaller, employment he did not claim at the time of his May 21, 2010 interview. The beneficiary's employment as a drywaller is also not reflected on the Form G-325A, Biographic Information, filed by the beneficiary in support of the Form I-485, Application to Register Permanent Residence or Adjust Status, which specifically requests information on an applicant's "last occupation abroad."

These inconsistencies are not resolved by independent, objective evidence, and diminish the reliability of the evidence in support of the beneficiary's qualifying work experience. Doubt cast on

(3) years. Also list any other jobs related to the occupation for which the alien is seeking certification" DOL instructions for completing Item 15 of Part B. STATEMENT OF QUALIFICATIONS OF ALIEN of the Form ETA 750 state: Job descriptions should include specific details of the work performed, with emphasis on skills and knowledge required, services rendered, managerial or supervisory functions performed, materials or products handled, and machines, tools, and equipment used or operated.

⁵ The record reflects that this petition was withdrawn by the petitioner on March 7, 2007.

⁶ Part K. of the ETA Form 9089 states "[l]ist all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification."

any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, at 591-92.

On appeal, counsel asserts that the beneficiary's claims regarding his employment experience are not contradictory or inconsistent, and that the record demonstrates that he has the work experience required by the labor certification as of the priority date. Specifically, counsel maintains that the previously filed ETA Form 9089 filed on behalf of the beneficiary is unrelated to the present case as the petitioner withdrew the subsequent Form I-140 petition and the beneficiary did not rely on the Form I-140 and ETA Form 9089 when applying for adjustment of status. Counsel further asserts that the inconsistencies in the beneficiary's descriptions of his employment experience are the result of numerous errors made by the petitioner's prior counsel in completing the ETA Form 9089.

Counsel contends that the beneficiary's claim to have been working as a drywaller when he entered the United States in 1999 has no bearing on whether he has the experience required by the labor certification. She also asserts that the beneficiary's inability to remember the names of his employers from 15 years in the past at the time of his May 21, 2010 interview does not constitute proof that he does not have the experience necessary to qualify him for the offered position. Counsel further states that Mr. [REDACTED] initial employment of the beneficiary in an entry-level position, as well as his reasons for doing so, are not relevant to the issue of whether the beneficiary had the experience required by the offered position as of the priority date.

Counsel maintains that the director's revocation is not supported by the substantial evidence required for the revocation of a visa petition's approval. Referencing the decision of the Board of Immigration Appeals (BIA) in *Matter of Arias*, 18 I&N Dec. 568 (BIA 1988), and the opinions in *Full Gospel Portland Church v. Thornburgh*, 730 F.Supp. 441, 445 (D.C. 1988); *Mukamusni v. Ashcroft*, 390 F.3d 110, 119 (1st Cir. 2004)(citing *Cordero-Trejo v. INS*, 40 F.3d 482, 487 (1st Cir. 1994)), counsel contends that USCIS has not demonstrated that the approval of the instant petition was revoked for "good and sufficient cause," as required by section 205 of the Act, 8 U.S.C. 1155.⁷ The petitioner submits additional evidence, including a November 21, 2011 sworn statement from [REDACTED] the petitioner's owner, explaining his May 18, 2010 comments regarding the beneficiary's qualifications for the offered position; a December 19, 2013 statement from the former managing partner of [REDACTED] regarding the beneficiary's employment at [REDACTED] and published materials on the informal Brazilian labor market.

The BIA held in *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), that the realization that a petition was approved in error may "in and of itself" be good and sufficient cause for revoking the approval of that petition, "provided the . . . revised opinion is supported by the record." *Id.* Therefore, where the evidence of record does not establish eligibility for the immigration benefit sought, the approval of that petition was in error and is revoked for good and sufficient cause. In visa proceedings, it is the

⁷ Section 205 of the Act 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."

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).

Basis for Revocation

In the present case, as discussed below, the AAO does not find the record to demonstrate that the beneficiary was qualified for the offered position as of the visa petition's February 11, 2004 priority date.

The beneficiary's description of his employment with [REDACTED] in the instant labor certification differs from that he provided in the ETA Form 9089, where he claimed to have had significantly more responsibility, including the hiring and firing of [REDACTED] employees, as well as oversight of [REDACTED] inventory, payroll and purchasing. Although counsel claims that the inconsistent description of the beneficiary's experience in the ETA Form 9089 is the fault of the petitioner's prior counsel, these assertions do not relieve the beneficiary of responsibility for the information provided. The beneficiary signed both labor certifications stating that the information provided was true and correct under penalty of perjury. Therefore, the beneficiary is responsible for the accuracy of the employment experience described in both labor certification applications. The AAO also notes that the regulation at 8 C.F.R. § 102.2(a)(2) holds the petitioner responsible for any information provided in connection with an immigrant visa petition: "[by signing the application or petition, the applicant or petitioner . . . certifies under penalty of perjury that the application or petition, and all evidence submitted with, either at the time of filing or thereafter, is true and correct.]"⁸ The inconsistencies in the beneficiary's employment claims are not resolved by attributing them to the petitioner's prior counsel. Additionally, the omissions in his employment history remain similarly unexplained.

Counsel also maintains that the ETA Form 9089 and, therefore, the inconsistent information it provides, are irrelevant for the purposes of this proceeding as the relating visa petition was withdrawn by the petitioner and the beneficiary did not rely on the ETA Form 9089 in applying for adjustment of status. However, the inconsistent claims made by the beneficiary on the Form ETA 9089 are relevant to the determination of the reliability and credibility of the evidence submitted in support of the current petition. As the evidence in this case was inconsistent with statements made by the petitioner and the beneficiary to USCIS in a different proceeding, as well as in telephone interviews and at entry, the AAO found it to be unreliable and, therefore, insufficient to establish the beneficiary's qualifications. For this reason, the AAO reopened the present matter to seek independent, objective evidence of the beneficiary's qualifications for the offered position. Inconsistencies must be resolved by the submission of "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." *See Matter of Ho*, at 591-592.

⁸ Counsel has not made a claim of ineffective assistance of counsel and the record does not contain the evidence required to support such a claim. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

However, the additional evidence submitted by the petitioner in response to the RFE, when considered with that previously provided, fails to overcome the outlined discrepancies and inconsistencies in the record or to demonstrate that the beneficiary was qualified to perform the duties of the offered employment at the time the visa petition was approved.

December 19, 2013 Letter of Experience

To establish the training or experience required by a labor certification, the regulation at 8 C.F.R. § 204.5(l)(3) requires:

(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.

In the present case, the petitioner initially submitted a February 23, 2001 declaration from [REDACTED] a former co-manager of [REDACTED]. In his statement, Mr. Santos reported that the beneficiary had worked for [REDACTED] as a manager in auto parts from November 11, 1992 until March 18, 1996. Although Mr. [REDACTED] indicated that the beneficiary had performed his duties for [REDACTED] with “great dedication, devotion, honesty, and a great experience in that section,” he did not identify those duties in his statement, which is required by regulation to include “a description of the training received or the experience of the alien.” 8 C.F.R. § 204.5(l)(3).

In response to the AAO’s November 12, 2013 RFE, which informed the petitioner of the deficiencies in the evidence and allowed the petitioner the opportunity to submit additional evidence, the petitioner submitted a second declaration from [REDACTED] which appears to have been notarized on December 19, 2013 in Brazil. In his second statement, Mr. [REDACTED] indicates that he was the managing partner of [REDACTED] from its creation in June 1980 until it closed in July 2002 and that [REDACTED] was in the business of “repairing cars, trucks, trailers and buses and also the [sale] and repair of auto parts.” He states that [REDACTED] employed the beneficiary from November 11, 1992 to March 18, 1996 and that during this time, the beneficiary worked as a full-time manager in auto parts sales where his duties involved:

- **Managing sales and shipping of parts.** This included: inventory, purchasing, assignment of parts for repair or refurbishing, and scheduling deliveries of parts and assisting with those deliveries when necessary.
- **Managing workers.** This included: hiring, firing, training and monitoring of workers; scheduling hours for workers; and managing payroll.

Mr. [REDACTED] also indicates that by the time that [REDACTED] closed in 2002, all of the paperwork covering the time period of the beneficiary’s employment had been destroyed.

The AAO does not find this new statement from Mr. [REDACTED] to resolve the inconsistencies that USCIS identified in the experience claims made by the beneficiary in the instant labor certification and the previous ETA Form 9089. Mr. [REDACTED] statement combines the sets of duties that the AAO has previously found to be inconsistent. Mr. [REDACTED] new statement does not shed light on the similarity, if any, of the duties reflected in the experience claimed by the beneficiary in the two labor certifications or explain why these duties were not listed in his February 23, 2001 letter. Further, Mr. [REDACTED] letter offers a new description of the beneficiary's responsibilities at [REDACTED] that were not contemplated in the February 23, 2001 letter. A petitioner may not make material changes to the duties of an offered position on appeal. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). Finally, Mr. [REDACTED] statement does not constitute the independent, objective evidence necessary to resolve the inconsistencies that USCIS has identified in the job experience claimed by the beneficiary in the two labor certifications. *See Matter of Ho*, at 591-592. Accordingly, Mr. [REDACTED] statement does not resolve the inconsistencies found in the beneficiary's claimed employment experience.

The AAO further finds the record to include a business card for Mr. [REDACTED] that indicates he is or was employed in Newark, New Jersey as a mechanic specialist. In that no evidence in the record establishes the dates of Mr. [REDACTED] employment in the United States, the AAO finds this evidence of Mr. [REDACTED] U.S. employment to cast doubt on whether he is the author of the December 18, 2013 statement submitted in response to the November 12, 2013 RFE, which, as previously noted, was signed in Brazil and listed a Brazilian address for Mr. [REDACTED]. This same evidence also raises concerns regarding the accuracy and reliability of the information provided in the December 18, 2013 statement. Doubt cast on any aspect of the proof submitted by a petitioner may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. *See Matter of Ho, cf.*

Documentation of the Beneficiary's Employment

Other than the letters of experience written by Mr. [REDACTED] which do not fully address the inconsistencies in the beneficiary's experience, the record contains no evidence establishing the beneficiary's [REDACTED] employment. Therefore, in its November 12, 2013 RFE, the AAO requested documentation of the beneficiary's employment with [REDACTED] specifically copies of the beneficiary's [REDACTED] the official work record in Brazil, and his [REDACTED] Brazil's social security record. It also informed the petitioner that if this evidence was unavailable, the petitioner must submit proof of its unavailability from the relevant Brazilian authorities, as well as secondary evidence of the beneficiary's employment, e.g., tax records or earning statements.

On appeal, counsel asserts that the beneficiary worked informally for [REDACTED] and, therefore, cannot provide USCIS with a signed [REDACTED] card or a [REDACTED] record to document his employment. She contends that informal employment is prevalent in the petitioner's industry, i.e., the retail and distribution sector of the Brazilian economy, where from 1992 to 1996 no less than 72 percent of

workers had no signed labor card and less than 50 percent contributed to social security. In support of these assertions, the petitioner submitted copies of [REDACTED] [REDACTED] March 2006, which looks at informal labor markets, including that in Brazil; a Brazil Jobs Report from November 1, 2002 published by [REDACTED] [REDACTED] and a printout of a June 13, 2013 online report by [REDACTED] "54% of workers do not pay the [REDACTED]"

The petitioner submitted a January 8, 2014 declaration from the beneficiary stating that from November 1992 until March 1996, he worked informally for [REDACTED] and, therefore does not have any [REDACTED] or [REDACTED] records to prove his employment. He states that [REDACTED] was not willing to sign his [REDACTED] or to contribute to [REDACTED] on his behalf and that had he demanded a signed work card, [REDACTED] would not have hired him. He also states that he did not voluntarily contribute to [REDACTED] on his own as he did not earn sufficient income to do so. This statement is not entirely consistent with the statement of Mr. [REDACTED] that all of the paperwork covering the time period of the beneficiary's employment had been destroyed. Mr. [REDACTED] statement implies that [REDACTED] did have formal paperwork relating to its employees, but that it had been destroyed, which contrasts with the beneficiary's claim of informal employment. Inconsistencies must be resolved by the submission of "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." *See Matter of Ho*, at 591-92.

The AAO does not find this evidence to be responsive to the evidentiary request made in the RFE for independent, objective evidence to resolve the inconsistencies in the record. The petitioner has failed to submit any contemporaneous documentary evidence of the beneficiary's employment at [REDACTED] or to establish that such documentation is not available from the Brazilian government. The beneficiary's uncorroborated statement in which he claims that [REDACTED] was unwilling to sign his labor card or contribute to his social security account is insufficient evidence of his status as an informal worker. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also notes that the statement provided by Mr. [REDACTED] who presumably would be able to corroborate the beneficiary's claims regarding the terms of his employment does not address the legal parameters of the beneficiary's employment. Although counsel claims, as indicated above, that such evidence cannot be provided because the beneficiary's employment with [REDACTED] was informal, the record does not support this statement. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The copies of the articles relating to informal employment in Brazil do not establish that the beneficiary in this case was employed informally by [REDACTED]

The petitioner has also failed to submit any secondary evidence that would support the beneficiary's employment, e.g., copies of the beneficiary's Brazilian tax records for the years 1992 through 1996, or any other records that might reflect his employment, including applications for housing or benefits. The petitioner has not indicated that such evidence is unavailable.

November 21, 2011 Statement from the Petitioner's President
as it relates to the beneficiary's qualifications for the position offered

In his decision revoking the approval of the petition, the director found that the petitioner's president, indicated during his May 18, 2010 interview with a USCIS investigator that the beneficiary did not have much experience at the time he was hired, and worked his way up to the position of supervisor. In rebuttal to the director's points in the revocation, Mr. submitted a statement dated November 21, 2011.

Counsel asserts that Mr. May 18, 2010 comments regarding the beneficiary's lack of experience and his initial employment in an entry-level position are unrelated to his qualifications for the offered position. The AAO disagrees.

Although Mr. asserts that his May 18, 2010 comments were misunderstood and that the beneficiary had the qualifying experience for the offered position prior to his hiring, he also states that the beneficiary required training on how the petitioner's company, which manufactures precision parts for the medical, defense and aerospace industries, packages, handles and transports specific raw materials and parts. Mr. asserts that "[t]here is not one person working for us that did not require some degree of training, as our procedures are specific to what we as a company do."

Mr. assertion regarding the need to train all new employees does not establish that the beneficiary, therefore, had the experience necessary to perform the duties of the offered position. The labor certification process administered by DOL exists to protect U.S. workers and the U.S. labor market by ensuring that foreign workers seeking immigrant visa classifications are not displacing equally qualified U.S. workers. Therefore, where an offered position is of a type "for which employers normally provide training," as in the present case, a petitioner must include an offer of training in its advertisement for the position, as required by the regulation at 20 C.F.R. § 656.20(g)(7) (2004). The recruitment documentation submitted by the petitioner does not indicate that in advertising for the offered position, it advised potential applicants of the need for or availability of the on-the-job training that Mr. indicates was required of the beneficiary. Similarly, the labor certification fails to state that any special requirements or training is required for the position offered.

A petitioner that seeks to establish that a beneficiary is qualified to perform the duties of an offered position must demonstrate that the beneficiary is qualified for that position as of the visa petition's priority date. 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).

Here, although Mr. [REDACTED] asserts that the beneficiary had the required qualifying experience prior to beginning his employment in 2000, the AAO finds his November 21, 2011 statement to demonstrate that the beneficiary's employment prior to being hired by Mr. [REDACTED] company did not provide him with the experience necessary to perform the duties of the offered position. In that Mr. [REDACTED] letter indicates that the beneficiary required both training and additional experience prior to being employed in the position of a delivery supervisor, the director correctly interprets Mr. [REDACTED] May 18, 2010 comments regarding the beneficiary's limited experience. The letter further serves to support the director's finding that the petitioner has failed to demonstrate the beneficiary's qualifications for the offered position.⁹

For the reasons discussed, the record does not establish that the beneficiary has the two years of qualifying work experience required by the labor certification. Given the totality of the record, the identified inconsistencies in the beneficiary's claimed experience, the omissions in that experience, the conflicting information in telephone calls and statements provided, and the petitioner's failure to submit independent, objective evidence to resolve these inconsistencies, the AAO may not conclude that the beneficiary is qualified for the position offered. Accordingly, the beneficiary did not have the employment experience required by the labor certification as of the February 11, 2004 priority date.

As the record does not demonstrate that the beneficiary was qualified to perform the duties of the offered position as of the priority date, USCIS erred in approving the visa petition on March 14, 2007. The AAO therefore finds the director to have revoked the petition's approval for good and sufficient cause. *See Matter of Ho*, at 582, 590. Accordingly, the appeal will be dismissed.

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 appeal is dismissed.

⁹ Mr. [REDACTED] statement regarding the beneficiary's need for additional training and experience prior to becoming a delivery supervisor at his company also raises questions as to whether the petitioner accurately reflected the minimum requirements for the offered position in the Form ETA 750 labor certification application. *See* 20 C.F.R. § 656.17(h)(1). Where an alien beneficiary is already employed by the employer, DOL reviews the training and experience possessed by the alien beneficiary in evaluating the actual minimum requirements for a particular job opportunity. *See* 20 C.F.R. § 656.17(i)(3).