

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

(b)(6)

DATE: **JAN 03 2014**

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 APPELLANT:

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, Nebraska Service Center, (director) revoked the approval of the employment-based immigrant visa petition. The case is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for further action.

The petitioner described itself as a “Nursing Registry” business. It sought to permanently employ the beneficiary in the United States as a registered staff nurse. The petitioner requested 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 petitioner has applied for the beneficiary under a blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. *See also* 20 C.F.R. § 656.15. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.5 with respect to which the United States Department of Labor (DOL) has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

Based on 8 C.F.R. §§ 204.5(a)(2) and (1)(3)(i) an applicant for a Schedule A position would file Form I-140, “accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien’s occupation qualifies as a shortage occupation within the Department of Labor’s Labor Market Information Pilot Program.”²

Pursuant to the regulations set forth in Title 20 of the Code of Federal Regulations, the filing must include evidence of prearranged employment for the alien beneficiary. The employment is evidenced by the employer’s completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification to the bargaining representative or to the employer’s employees as set forth in 20 C.F.R. § 656.10(d).

Counsel for the appellant stated in response to the Notice of Intent to Revoke (NOIR) that subsequent to the approval of the petition the beneficiary stopped working for the petitioner and

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 On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA-9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new ETA Form 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004, with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

“ported employers” to the appellant. In *Herrera v. USCIS*, 571 F.3d 881 (9th Cir. 2009), the Ninth Circuit Court of Appeals determined that the government’s authority to revoke a Form I-140 petition under section 205 of the Act survived portability under section 204(j) of the Act. Citing a 2005 AAO decision, the Ninth Circuit reasoned that in order to remain valid under section 204(j) of the Act, the I-140 petition must have been valid from the start. The Ninth Circuit stated that if the plaintiff’s argument prevailed, an alien who exercised portability would be shielded from revocation, but an alien who remained with the petitioning employer would not share the same immunity. The Ninth Circuit noted that it was not the intent of Congress to grant extra benefits to those who changed jobs. Under the plaintiff’s interpretation, an applicant would have a very large incentive to change jobs in order to guarantee that the approval of an I-140 petition could not be revoked. *Id.* Therefore, counsel’s assertion that “it is unrealistic for the Service to request documentation from [the original petitioner] who is no longer participating in the immigration process” is without merit.

The director’s NOIR cited numerous deficiencies in the record of proceedings. First, the director noted that the petitioner did not document its recruitment efforts. The director also found that the petitioner was a recruitment/staffing company and had failed to establish that the petitioner would be the beneficiary’s actual employer and was, therefore, authorized to file the instant petition. The director further determined that the petitioner had failed to establish its ability to pay the proffered wage as of the priority date. Finally, the director noted that an inconsistency existed in the beneficiary’s claimed employment and residence for 2004 to 2006, based on the beneficiary’s Form G-325A Biographic Information submitted with her Form I-485 Application for Adjustment of Status. The director ultimately revoked the approval of the petition and found that the petitioner submitted none of the evidence requested in the NOIR and had failed to establish that the beneficiary possessed the minimum education and experience required by 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. 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

³ 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).

The record of proceedings reveals several significant disparities between the Notice of Revocation (NOR) and the facts of this case. First, although the NOR states that it is “[b]ased on a thorough review of the record,” it is noted that both the job title and education/experience requirements detailed in the NOR are different than the job title and education/experience requirements detailed in the labor certification. In the NOR, the director refers to the offered position as Assistant Nursing Director, requiring a bachelor’s degree plus five years of experience, or alternatively a master’s degree and two years of experience. The offered position in the instant petition is registered staff nurse, requiring a three year diploma and four years of experience. In addition, while the NOR found that the petitioner had failed to submit requested documentation revealing the recruitment process for the offered position, petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089 from the Department of Labor (DOL) prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified ETA Form 9089. *See* 8 C.F.R. §§ 204.5(a)(2) and (1)(3)(i); *see also* 20 C.F.R. § 656.15.

Therefore, the director’s decision is withdrawn. However, the petition is currently unapprovable for several additional reasons and the AAO may not approve the petition at this time.

Schedule A Requirements

The petition is for a Schedule A occupation. A Schedule A occupation is an occupation codified at 20 § C.F.R. 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses and physical therapists. *Id.*

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089 from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified ETA Form 9089. *See* 8 C.F.R. §§ 204.5(a)(2) and (1)(3)(i); *see also* 20 C.F.R. § 656.15.

If the Schedule A occupation is a professional nurse, the petitioner must establish that the beneficiary has a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN). *See* 20 C.F.R. § 656.5(a)(2).

Petitions for Schedule A occupations must also contain evidence establishing that the employer provided its U.S. workers with notice of the filing of an ETA Form 9089 (Notice) as prescribed by 20 C.F.R. § 656.10(d), and a valid prevailing wage determination (PWD) obtained in accordance with 20 C.F.R. § 656.40 and 20 C.F.R. § 656.41. *See* 20 C.F.R. § 656.15(b)(2).

For the Notice requirement, the employer must provide notice of the filing of an ETA Form 9089 to any bargaining representative for the occupation, or, if there is no bargaining representative, by posted notice to its employees at the location of the intended employment. See 20 C.F.R. § 656.10(d)(1).

The regulation at 20 C.F.R. § 656.10(d)(3) states that the Notice shall:

- (i) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
- (ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
- (iii) Provide the address of the appropriate Certifying Officer; and,
- (iv) Be provided between 30 and 180 days before filing the application.

Notices for Schedule A occupations must also contain a description of the job offered and the rate of pay. See 20 C.F.R. § 656.10(d)(6).

In cases where there is no bargaining representative, the Notice must be posted for at least 10 consecutive business days, and it must be clearly visible and unobstructed while posted. 20 C.F.R. § 656.10(d)(1)(ii). The Notice must be posted in a conspicuous place where the employer's U.S. workers can readily read it on their way to or from their place of employment. *Id.* In addition, the Notice must be published "in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization." *Id.* The satisfaction of the Notice requirement may be documented by "providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media" used to distribute the Notice. *Id.*

In the instant case, the petitioner provided a copy of a Notice of Job Availability that was posted from December 16, 2005, through January 15, 2006. Additionally, the petitioner submitted a copy of a PWD obtained from the New Jersey Department of Labor and Workforce Development that meets the requirements of 20 C.F.R. § 656.40.

Although it was not discussed in the NOR the statute clearly requires that notice of filing a Schedule A application be posted at least 30 days prior to filing the Form I-140 and labor certification with USCIS. 20 C.F.R. § 656.10(d)(3)(iv). The record reveals that the Notice of Job Availability was posted from December 16, 2005, through January 15, 2006 and that the petition was filed with USCIS on February 3, 2006, which is less than 30 days from the last date of posting. Therefore, the petitioner's Notice of Job Availability fails to meet the filing requirements for a Schedule A position.⁴

⁴ In response to the director's Request for Evidence, the petitioner submitted a new posting notice, which was posted from September 1, 2006, through September 15, 2006. Since this notice was posted after the Form I-140 petition had been filed it also fails to meet the requirements of 20 C.F.R.

Petitioner's Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date. The priority date of any petition filed for classification under section 203(b) of the Act "shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [United States Citizenship and Immigration Services (USCIS)]." 8 C.F.R. § 204.5(d). In this case, the priority date is January 30, 2006. The proffered wage as stated on the ETA Form 9089 is \$30.00 per hour (\$62,400 per year based on 40 hours per week).

On the petition, the petitioner claimed to have been established on January 1, 2001, and to currently employ 47 workers.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the appellant submitted a copy of an Internal Revenue Service (IRS) Form W-2 indicating that it paid the beneficiary \$39,247.50 in 2006, which is less than the proffered wage. The petitioner submitted copies of pay-stubs indicating

that it paid the beneficiary \$4,650.00 in 2006, which is less than the proffered wage. Thus, the petitioner must demonstrate that it can pay the difference between the proffered wage and the wages actually paid to the beneficiary in 2006.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts, 558 F.3d at 118. “[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner’s ability to pay. Plaintiffs’ argument that these figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang*, 719 F. Supp. at 537 (emphasis added).

As an alternate means of determining the petitioner’s ability to pay the proffered wage, USCIS may review the petitioner’s net current assets. Net current assets are the difference between the petitioner’s current assets and current liabilities.⁵

In response to the director’s request for evidence, the petitioner submitted copies of corporate bank statements from 2005 and 2006. However, reliance on balances in the petitioner’s bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner’s ability to pay a proffered wage. While this regulation allows additional material “in appropriate cases,” the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage.

The petitioner failed to submit any regulatorily-prescribed evidence of its ability to pay the proffered wage from the priority date onward. The petitioner has not established that it had the continuing ability to pay the beneficiary the difference between the proffered wage and the wages actually paid to the beneficiary as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

USCIS may consider the overall magnitude of the petitioner’s business activities in its determination of the petitioner’s ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg’l Comm’r 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner’s prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner’s clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner’s determination in *Sonogawa* was based in part on the

⁵According to *Barron’s Dictionary of Accounting Terms* 117 (3rd ed. 2000), “current assets” consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. “Current liabilities” are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the record does not contain any evidence of the petitioner's net current income or net current assets, of the petitioner's historical growth or reputation in its industry, or of any uncharacteristic businesses losses or expenditures. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that as of the priority date it had the continuing ability to pay the difference between the proffered wage and the wages actually paid to the beneficiary.

The Minimum Requirements of the Offered Position

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, 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).

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: "HOLDER OF AT LEAST A 3-YR DIPLOMA W/ MINIMUM 4 YEARS EXPERIENCE. BSN PREFERRED."
- H.4-B. Major field of study: Nursing.
- H.5. Training: At least 12 months.
- H.5-B. Field of Training: Registered Professional Nursing Internship.
- H.6. Experience in the job offered: Two years.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: Accepted.
- H.8-A: Alternate level of education required: Bachelor's
- H.8-C: Number of years experience acceptable in question 8: "4 years experience is equivalent to 1 year's college education."
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: "Perform tracheotomy suction and feeding, CPR, operate IKG machines. Have communication skills needed to be able to relate to other disciplines as well as coordinate with colleagues to plan and execute healthcare to patients. Also to be able to communicate effectively with doctors and other members of various health care disciplines to be [sic] ensure maximum healthcare delivery to patients."

The labor certification also states that the beneficiary qualifies for the offered position based on her bachelor's degree in nursing issued by [REDACTED] Philippines. The beneficiary claimed the following work experience on the labor certification:

- Work as a Registered Nurse for [REDACTED] from October 2004 through December 2005.
- Work as a Registered Nurse for [REDACTED] from October 2003 through September 2004.
- Work as a Registered Nurse for [REDACTED] from December 1999 through December 2001.

The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(A) states:

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 no experience letters to corroborate the beneficiary's claim to have worked as a Registered Nurse in [REDACTED] from December 1999 through September 2004 and in [REDACTED] from October 2004 through December 2005. Therefore, the petitioner did not establish that beneficiary satisfied the requirements of the labor certification as of the priority date or that the beneficiary qualifies for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

Bona Fide Job Offer

Beyond the decision of the director, it is also not established that the petition was supported by a *bona fide* job offer. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. In the instant petition, the work location listed on the ETA Form 9089 is [REDACTED]. However, the record does not contain any evidence that the petitioner had any staffing contracts with [REDACTED] to provide a registered staff nurse. Considering the evidence in the record relating to the employer and the job opportunity, the petitioner has failed to establish that the instant petition is based a *bona fide* job opportunity available to U.S. workers.

Conclusion

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is

⁶ It is noted that the record contains a May 23, 2013, statement from the beneficiary in which she declared that she lived in New Jersey from October 2004 until January 2007 and that she "did not ever live in [REDACTED]. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petitioner. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). As noted by the director, the beneficiary claimed on Form G-325A to have lived and worked in [REDACTED] from 2004 to 2005. The beneficiary stated that she "did not personally complete the forms and I did not review them closely enough to notice the error." However, it is noted that the claim to have worked in [REDACTED] from 2004 through 2005 was repeated on the ETA Form 9089, signed by the beneficiary on January 25, 2006. Neither the beneficiary, the petitioner, nor the appellant has provided any objective evidence to explain or justify her apparently untrue statement to have lived and worked in [REDACTED]. Further, the beneficiary entered the U.S. on October 28, 2004, pursuant to an H-1B nonimmigrant visa. The employer listed on the visa is [REDACTED] a business in [REDACTED]. Therefore, the reliability of the remaining evidence offered by the appellant and beneficiary must be considered suspect.

remanded to the director for consideration of the issues stated above. The director may request any additional evidence considered pertinent. Similarly, the appellant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reason discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision.