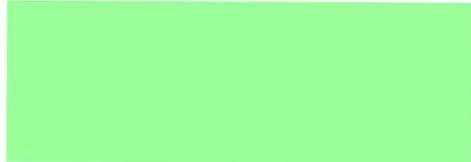




**U.S. Citizenship
and Immigration
Services**

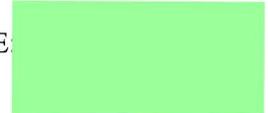
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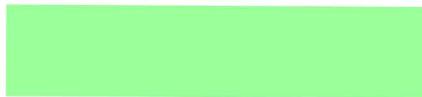
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IN RE:

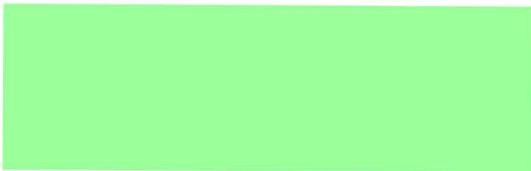
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

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 provider of global business news and information. It seeks to permanently employ the beneficiary in the United States as an application architect. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box “F” at Part 2, indicating that it seeks to classify the beneficiary as a skilled worker¹ 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).

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

¹ Section 203(b)(3)(A)(i) of the Act provides for the granting of 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. *See also*, 8 C.F.R. § 204.5(l)(2).

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

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The regulation at 8 C.F.R. § 204.5(l)(3) provides in pertinent part:

(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.

(B) *Skilled Workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

date of the petition, which is the date the DOL accepted the labor certification for processing, is April 30, 2012. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary does not possess a U.S. bachelor's degree or foreign equivalent as required by the terms of 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. *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

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

- (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
- (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is left to USCIS to determine whether the offered position and the beneficiary qualify for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority

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).

to make the two determinations listed in section 212(a)(14).³ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

³ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

The beneficiary must also 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).

The beneficiary must also meet all of the minimum requirements of the offered position as set forth on the labor certification by the priority date. 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*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] 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]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

A 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. Comm. 1977). See also, *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (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 *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *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).

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's in Engineering or a closely related field.
- H.5. Training: None required.
- H.6. Experience in the job offered: 36 months.
- H.7. Alternate field of study: Computer Science or a closely related field.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Accepted.
- H.10.A Number of months experience in alternate occupation: 36.
- H.10-B Identify the job title of the acceptable alternate occupation: Developer, Software Engineer, Consultant, Team Leader-Projects, Web Developer.⁴
- H.14. Specific skills or other requirements: Requires a Bachelor's degree in Engineering, Computer Science, or a closely related field plus three years of experience; knowledge of application design, development, implementation and enhancement; experience in data management methodologies, technologies and standards; project management skills and ability to utilize the full systems development life cycle; knowledge of Java, JSP, Oracle, AMQ, XSLT and Spatial Data Management Technologies; and, strong skills in WEB application development and prepared by qualified evaluation service or in accordance with 8 CFR § 214.2(h)(4)(iii)(D).

Employer will accept any suitable combination of education, training, and/or experience, including experience gained in related alternate occupations such as Developer, Software Engineer, Consultant, Team Leader-Projects, Web Developer, and/or other similar positions.

⁴ The word "Developer" is not completely spelled out, but the record indicates that the word was intended to be "Developer."

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Bachelor's in Computer Information Systems obtained in 1997 from the [REDACTED]

The record contains copies of education credentials attributable to the beneficiary as follows:

A copy of a diploma from the [REDACTED] India, indicating that the beneficiary received a degree of Bachelor of Science (Forestry), having qualified in the year 2000.

The accompanying transcript indicates only four semesters of study. The record does not contain any other transcripts. It is noted that a Bachelor of Science in Forestry is not a closely related field to a Bachelor's degree in Engineering.

As indicated in our Notice of Intent to Dismiss (NOID) issued on November 27, 2013, Part H.8 of the ETA Form 9089 does not permit any alternate combination of education and experience. The petitioner, through counsel, emphasizes that an alternate would be accepted as set forth in H.14 as "prepared by qualified evaluation service or in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)." In support of this contention, the petitioner submitted two credentials evaluations to the underlying record and submitted an additional evaluation in response to the NOID. The NOID summarized various discrepancies within the evaluations and we continue to find inconsistencies as follows:

1. An evaluation was submitted from Dr. [REDACTED] Evaluator, of [REDACTED] dated June 25, 2007. Dr. [REDACTED] determines that the beneficiary's Bachelor's degree from [REDACTED] is the U.S. equivalent of a four-year course of study resulting in a Bachelor of Science in Forestry. He then considers the beneficiary's subsequent "6.3" years of employment experience and professional training and concludes that the combination of the beneficiary's academic and professional work experience amounts to the U.S. equivalent of a Bachelor's in Computer Information Systems. Dr. [REDACTED] uses a formula of three years of work experience for one year of college training. It is not clear whether Dr. [REDACTED] is using the same work experience, to conclude that it is equivalent to a specified amount of undergraduate study, as the 36-month experience required by the ETA Form 9089. Even where an ETA Form 9089 explicitly permits the substitution of experience for education, such experience cannot be simultaneously used to fulfill this requirement as well as any experience requirement in addition to a specified educational requirement.

Further this evaluation lists the beneficiary's employment with [REDACTED] as running from January 2001 to October 2003, but the

⁵ The record contradicts this assertion as [REDACTED] is a credentials evaluation service, not an institution of higher learning.

ETA Form 9089 lists it as beginning February 22, 2001. Additionally, the evaluation lists the beneficiary's employment with [REDACTED] (India) as beginning March 2006 to date (June 25, 2007) but the ETA Form 9089 states that the employment began June 1, 2006.

2. An evaluation was submitted from Dr. [REDACTED] and [REDACTED] dated October 18, 2012. Dr. [REDACTED] also concludes that the beneficiary's Bachelor's degree from [REDACTED] represents a four-year course of study and is the U.S. equivalent of a Bachelor of Science in Forestry. He then considers the beneficiary's subsequent "6" years of employment experience and professional training and concludes that the combination of the beneficiary's academic and professional work experience amounts to the U.S. equivalent of a Bachelor's in Computer Information Systems. Dr. [REDACTED] also uses a formula of three years of work experience for one year of college training.

In citing the beneficiary's experience that he considered, Dr. [REDACTED] evaluation contains several inconsistencies. First, it lists [REDACTED] as the beneficiary's employer from February 2005 to April 2006. There is no [REDACTED] listed on the ETA Form 9089 that employed the beneficiary during this time. During this period of time, according to the ETA Form 9089, the beneficiary's employment is claimed to have been with [REDACTED]. Second, the ETA Form 9089 does not state that the beneficiary worked for [REDACTED] between September 2010 and February 2011. During the period from September 1, 2010 to January 31, 2011, the ETA Form 9089 claims that the beneficiary worked for [REDACTED] as a senior developer. Third, the evaluation lists the beneficiary's employment with [REDACTED] (a [REDACTED] company) as running from August 2008 to December 2009, but the ETA Form 9089 and employment letter states that the employment was from June 23, 2008 to November 26, 2008. Fourth, the evaluation relies on the beneficiary's employment with [REDACTED] (New Hampshire) from April 2008 to June 2008, but this employment does not appear on the ETA Form 9089. Fifth, the evaluation cites the beneficiary's employment with Yahoo from June 2006 to March 2008, but the ETA Form 9089 lists the beneficiary's end date as October 17, 2007 and indicates that the beneficiary was employed with [REDACTED] from October 2007 to March 2008.

In response to the NOID, the petitioner submitted an evaluation from [REDACTED] for [REDACTED] dated December 6, 2013. This evaluation also uses a similar formula of three years of experience equating to one year of college training and determines that the beneficiary's six years of employment is the equivalent of not less than two years of bachelor's level training in computer information systems. The evaluation concludes that the beneficiary has the equivalent of a Bachelor of Science in Computer Information Systems.

It is noted that the evaluation states that it is prepared by Professor [REDACTED] Ph.D. but it is

signed by [REDACTED]. In the summary section it states that the evaluation was performed by Morningside Evaluations and was prepared and certified on the sixth of December, but the signature is that of [REDACTED]. This must be explained with any further filings.

This evaluation also contains several inconsistencies. First, it lists the beneficiary's employment with [REDACTED] from August 2008 to December 2009, but the ETA Form 9089 and employment letter state that this employment ran from June 23, 2008 to November 26, 2008. Second, it lists the beneficiary's employment with [REDACTED] as July 2001 to February 2002, but the ETA Form 9089 states that this employment ran from February 2001 to October 2003. Third, the evaluation includes the beneficiary's employment at [REDACTED] from February 2002 to December 2002, but this is not included on the ETA Form 9089 and the record claims that the beneficiary was employed with [REDACTED] during this time. Fourth, employment with [REDACTED] from January 2003 to April 2006 is claimed on the evaluation. As stated above, this employment is not claimed on the ETA Form 9089, which states that the beneficiary was employed by [REDACTED] during this time. This also conflicts with the claim of employment in the [REDACTED] evaluation, also signed by [REDACTED]. Fifth, the evaluation lists the beneficiary's employment with [REDACTED] from June 2006 to March 2008, but the ETA Form 9089 and employment letters list the ending date with Yahoo as October 2007. The record claims that the beneficiary was working for [REDACTED] from October 2007 to March 2008, not [REDACTED]. Sixth, the evaluation includes the beneficiary's employment with M2S from April 2008 to June 2008, which is not claimed on the ETA Form 9089.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also, Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)).

We do not find that the inconsistencies and discrepancies in the evaluations have been resolved. The record does not support the conclusions of the evaluators, in that the evaluators rely on experience gained by the beneficiary that is not verified in the record. The record does not establish that the terms of the labor certification have been met, even as the petitioner defined the acceptable alternative to the primary requirements in H.14 of the ETA Form 9089.

Beyond the decision of the director and as referenced in the NOID, the employment verification letters also contained deficiencies:

1. The employment verification letter, dated August 10, 2005, from [REDACTED], which states that the beneficiary worked as

- a software engineer for them from January 22, 2001 to October 31, 2003, failed to state whether the job was full-time or part-time and failed to describe the beneficiary's duties. Moreover, the beneficiary's resume, which was submitted to the underlying record, indicates that the beneficiary's [REDACTED] employment ran from July 2001 to February 2002 and then states that he worked for Frog Works (India) from February 2002 to December 2002.
2. The employment verification letter from [REDACTED] (India), dated January 31, 2004 states that it employed the beneficiary as a consultant software engineer from November 12, 2003 to January 31, 2004. It does not describe the beneficiary's duties or state whether the position was full-time or part-time. Additionally, the beneficiary's resume omits any employment with [REDACTED] and states that the beneficiary worked for [REDACTED] (India) from January 2003 to April 2004 as a software developer/software engineer; from May 2004 to July 2005 as a senior developer and software engineer; and from August 2005 to April 2006 as an offshore technical lead.
 3. The employment verification letter, dated March 27, 2006, from [REDACTED] states that the beneficiary worked for it from April 14, 2004 until February 24th 2006 and "resigned as a Senior Software Engineer." It failed to identify the beneficiary's job duties, whether he worked full-time or part-time, and failed to state whether the beneficiary was a senior software engineer during the entire period of employment or held a different position.
 4. The employment verification "Service Certificate," dated November 14, 2007, from [REDACTED] (India) states that the beneficiary was a senior web developer from June 1, 2006 to October 17, 2007 but fails to state whether the position was full-time or part-time and fails to describe the beneficiary's duties.
 5. The employment verification letter, dated March 31, 2008, from [REDACTED] (India) stated that it employed the beneficiary from October 2007 to March 31, 2008 as a team leader-projects but failed to confirm whether the position was full-time or part-time and failed to identify the beneficiary's job duties. It is noted that this company is not mentioned on the beneficiary's resume.
 6. The [REDACTED] submitted a letter, dated February 26, 2010 on a letterhead that only designated "Citi" with no address. The letter stated that it employed the beneficiary from June 23, 2008 to November 26, 2008 and that he demonstrated proficiency in "C, Perl, and Active Director." The letter failed to identify the beneficiary's job title or duties and failed to indicate whether the job was full-time or part-time. Further, the beneficiary's resume claimed that the beneficiary's employment with this firm ran from August 2008 to December 2009.
 7. The employment verification letter dated August 25, 2011, from [REDACTED] (New Hampshire) claimed that the beneficiary worked as a software engineer, approximately 40 hours per week from January 7, 2009 to August 27, 2010 and described the beneficiary's job duties. The company also submitted an undated letter indicating that the beneficiary was employed as a consultant from April 21,

2008 to June 13, 2008, but did not state whether the employment was full-time or part-time. The beneficiary's resume indicates that the beneficiary was employed for [REDACTED] as a consultant from April 2008 to June 2008 and as a senior programmer for this company from January 2009 to September 2010.

8. The employment letter, dated September 1, 2010 from [REDACTED] (New Jersey) states that it employed the beneficiary as a senior developer from September 2, 2010 to January 31, 2011. The letter describes the beneficiary's job duties but does not indicate whether the job was full-time or part-time. Additionally, the beneficiary's resume indicates that he began working for [REDACTED] as a consultant in September 2010.

In response to the NOID, counsel states that the beneficiary is unable to get additional experience letters from [REDACTED]. Counsel states that the beneficiary's resume is erroneous, but asserts that the experience letters are independent, objective evidence of the beneficiary's actual experience. Counsel submitted the following documentation in support of the beneficiary's experience in response to the NOID:

1. A copy of the employment verification letter from [REDACTED] previously submitted to record, accompanied by a copy of a 2011 W-2 issued to the beneficiary by [REDACTED] for \$19,360, a copy of an employment agreement between [REDACTED] and the beneficiary indicating that his employment would begin on August 30, 2010 and he would be paid at the rate of \$55.00 per hour, and a copy of what counsel has maintained is the beneficiary's final pay stub from [REDACTED] reflecting that he was paid for 48 hours for the pay period ending February 6, 2011. The gross year-to-date amount shown on the pay stub reflected as 312 hours amounts to \$17,160 not the \$19,360 claimed on the W-2. Further, no evidence of full-time employment was submitted for 2010 and the employment agreement states that the employee could schedule his own working hours with [REDACTED]'s client. Also, as noted above, this contradicts the claim of employment with [REDACTED] beginning in September 2010, despite counsel's assertions that the resume should be ignored.
2. Copies of the two employment verification letters from [REDACTED] accompanied by a 2009 W-2 issued to the beneficiary for \$70,155.94, a copy of an unsigned December 19, 2008 job offer letter indicating that the beneficiary's salary would be an annualized amount of \$75,000, and a copy of a generalized position description of "Software Engineer II" set forth on [REDACTED] letterhead. As indicated above, the span of this employment is inconsistent with the beneficiary's resume in that it claims that he began work with [REDACTED] in September 2010. At most, it verifies the employment in the year 2009.
3. A copy of the employment verification letter of [REDACTED] contained in the underlying record, together with a copy of a [REDACTED] job offer letter to the beneficiary dated September 27, 2007 accompanied by a description of compensation and terms of employment. It is noted that none of these documents describes the beneficiary's duties or confirms that he was actually employed full-

- time. Additionally, as noted above, the beneficiary's resume omits this employment.
4. A letter dated March 10, 2010, from [REDACTED] stating that the beneficiary was employed full-time as a senior web developer from June 1, 2006 to October 17, 2007 and acquired proficiency in PHP, Perl, C and MySQL, accompanied by a job offer letter and a copy of a pay stub for September 2007. We will accept this as confirmation of this employment for the time stated but note that the beneficiary's resume claims that this employment ran until March 2008.
 5. Two job offer letters from [REDACTED] dated February 1, 2005 and September 10, 2004, respectively, together with a letter dated April 7, 2004, which offers the beneficiary a job as a software engineer. They were accompanied by copies of a pay stub and a salary card. Neither pay document identifies the payer. Further, as noted above, no description of the beneficiary's duties is contained in these documents. Additionally, the beneficiary's resume claims that he worked for [REDACTED] from May 2004 to July 2005 and from August 2005 until April 2006, which covers the part of the same period of employment asserted by the employment verification letter submitted to the underlying record.
 6. Copies of two job offer letters from [REDACTED]" with one dated November 18, 2003. The letterhead of these documents is different from the original employment verification letter, which was dated January 31, 2004. Additionally, the letters do not clarify whether the job was full-time or part-time or identify the beneficiary's duties. As previously noted, the beneficiary's resume claims that he worked for Freescale Semiconductors from January 2003 to April 2004.

Counsel maintains that the petitioner has established that the beneficiary has the credentials and the work experience required by the terms of the labor certification. Counsel asserts that the beneficiary's work experience listed on the resume should be disregarded as the other evidence independently establishes the beneficiary's claimed experience. As specified above, we find that there are too many inconsistencies and omissions to ignore, which have not been resolved. The employment history outlined in the beneficiary's resume raises questions about the claims on the ETA Form 9089, in the credentials evaluations and in the employment verification letters. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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. As indicated above, the beneficiary's employment history has been represented quite differently on his resume, the credentials evaluations and the ETA Form 9089. *See Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

We accept the beneficiary's employment with [REDACTED] in 2009 and his employment with [REDACTED] from June 1, 2006 to October 17, 2007, totaling approximately 28.5 months. We conclude, however, that the record does not establish 36 months of full-time experience in the job offered as an application architect or in one of the alternate occupations set forth on Part 10-B of the ETA Form 9089 as of the priority date. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

We note that the beneficiary needs 6 years (based on the formula of 3 years of experience equating to 1 year of college) of pertinent experience to be deemed to have a Bachelor of Science degree in computer science or a closely related field as permitted by the labor certification. Together with the 36 months experience in the job offered or in an alternate occupation defined in H.10-B of the ETA Form 9089, this totals 108 months. Based on the foregoing, we conclude that the record fails to demonstrate that the beneficiary has the additional 72 months (6 years) of work experience required to obtain the equivalent of a Bachelor of Science degree or that the required 36 months of work experience has been established.

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*, 299 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) (recognizing AAO *de novo* authority).

The petitioner has failed to establish that the beneficiary met the minimum educational or experience requirements of the offered position set forth on the labor certification. Therefore, the beneficiary does not qualify for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act. 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.

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.