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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

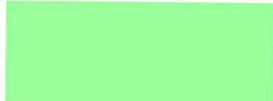


U.S. Citizenship
and Immigration
Services



DATE: **MAR 13 2014**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



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

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: On August 8, 2007, United States Citizenship and Immigration Services (USCIS), Nebraska Service Center (NSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the NSC director (the director) on January 30, 2009. On April 3, 2013, the director issued a Notice of Intent to Revoke (NOIR) and on May 13, 2013, the director issued a Notice of Revocation (NOR). The director dismissed a subsequent motion to reopen and motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, 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.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner describes itself as a dental lab. It seeks to permanently employ the beneficiary in the United States as a dental lab technician. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹ The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is January 24, 2007. *See* 8 C.F.R. § 204.5(d). The director’s decision revoking approval of the petition concludes that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of experience stated on the labor certification because the qualifying employment listed on the labor certification and in an employment letter was found to be inconsistent with a Form G-325A, Biographical Information Sheet, signed by the beneficiary. The director was also unable to verify the existence of the claimed qualifying employer in South Korea. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director found that the evidence submitted by the petitioner in response to the NOIR failed to overcome the inconsistencies in the record or to provide independent, objective evidence that the qualifying employer existed. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

The record shows that the appeal is properly filed, timely 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

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 grants preference classification to qualified immigrant who hold baccalaureate degrees and are members of the professions.

submitted upon appeal.² On appeal, counsel submits a brief, an affidavit and verification of employment letter from the qualifying employer, a notarial certificate regarding South Korean statutes pertaining to bookkeeping, and copies of documentation already in the record.

The Secretary of DHS has the authority to revoke the approval of any petition approved by her under section 204 for good and sufficient cause. *See* Section 205 of the Act; 8 U.S.C. § 1155. This means that notice must be provided to the petitioner before a previously approved petition can be revoked. More specifically, the regulation at 8 C.F.R. § 205.2 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).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

(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 unrebutted, 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.

Here, in the NOIR dated April 3, 2013, the director gave the petitioner notice that the qualifying experience on the labor certification and in an experience letter submitted below were found to be inconsistent with the Form G-325A signed by the beneficiary and that the director was unable to verify the existence of the qualifying employer. The director advised the petitioner in the NOIR that the instant

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).

case involved inconsistencies regarding the beneficiary's qualifying experience. The director specifically asked the petitioner to submit additional evidence to overcome the inconsistencies.

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke 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. The director's NOIR sufficiently detailed the evidence of the record, pointing out specific evidence or information relating to the inconsistencies regarding the beneficiary's qualifying experience in the labor certification, experience letter and on the Form G-325A, that would warrant a denial if unexplained and un rebutted, and thus was properly issued for good and sufficient cause.

As set forth in the director's NOIR and NOR, the issue in this case is whether the beneficiary possesses the minimum required experience on the labor certification. 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: None.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study: None accepted.

- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Not Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

The labor certification states that the beneficiary qualifies for the offered position based on experience as a dental lab technician with [REDACTED] in [REDACTED] South Korea, from March 15, 1998 until December 7, 2001. No other experience is listed. 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(l)(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 a verification of experience certificate, dated May 10, 2007, from [REDACTED] president, on [REDACTED] letterhead stating that the company employed the beneficiary as a “dental laboratory” from March 15, 1998 until December 7, 2001. However, the letter incorrectly states the beneficiary’s job title as “dental laboratory” and describes the beneficiary’s duties in language identical to the language utilized on the Form 9089 to describe the proffered job duties. The verification of experience is in English, there is no Korean version of the document, nor is there a certificate of translation. Moreover, the verification of experience is inconsistent with a Form G-325A the beneficiary submitted in connection with an application for adjustment of status. The Form G-325A indicates that the beneficiary had been unemployed for the past five (5) years up until July 31, 2007, the date on which the beneficiary signed the Form G-325A. The Form G-325A did not list a last occupation abroad for the beneficiary. It is incumbent upon a petitioner to resolve the inconsistencies in the record concerning the beneficiary’s experience by independent objective evidence and any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the director’s NOIR the petitioner submitted an experience letter, dated April 10, 2013, from [REDACTED] president, stating that [REDACTED] employed the beneficiary as a dental lab technician from March 15, 1998 until December 7, 2001. However, the letter does not provide a detailed description of the beneficiary’s job duties. The letter is also not on company letterhead, is in English, there is no Korean version of the document, nor is there a certificate of translation. While the letter states that the business has operated at [REDACTED] South Korea and the address and phone number has not changed, USCIS is unable to verify that the business exists. The letter states that the beneficiary received cash payments and that there are no pay vouchers for the beneficiary. Furthermore, the experience letter is inconsistent with the Form G-325A which does not list a last occupation abroad for the beneficiary. *See Matter of Ho*, 19 I&N Dec. at 591-92. Finally, despite the director’s specific request of independent, objective evidence to establish that the qualifying employer

existed or that the beneficiary was employed by the qualifying employer, the petitioner failed to provide such evidence.

On appeal, counsel submits an affidavit, dated May 20, 2013, from [REDACTED] owner, [REDACTED] stating that, due to the small size of the company he does not have a computerized accounting and payroll system and he does not have the manual bookkeeping records covering 1998 to 2001 as they are all outside the required bookkeeping period. The affidavit is accompanied by a verification of wage payment, dated May 20, 2013, indicating the beneficiary was employed as a dental lab technician with [REDACTED] from May 15, 1998 to December 7, 2001. Counsel also submitted a notarial certificate stating that under the tax law, income tax and corporate tax obligation records are to be kept for five (5) years and under the labor standard law, wage ledger records are to be kept for three (3) years.

While counsel's contentions regarding bookkeeping records and tax documents may be sound, the argument that the failure to include the beneficiary's qualifying employment on the Form G-325A was merely clerical error is unpersuasive. The Form G-325A specifically requested that the beneficiary list his last occupation abroad. Further, the Form G-325A reflects that the beneficiary resided in [REDACTED] South Korea from March 1998 until January 2002. As such, the Form G-325A is inconsistent with the qualifying experience listed on the labor certification and experience letters. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Specifically, the beneficiary's residence in [REDACTED] is approximately 3.5 hours away from [REDACTED] the town in which the beneficiary claims he gained the qualifying experience. The fact that the affidavits, verifications of employment and experience letter are not contemporaneous with the events, coupled with the lack of other contemporaneous documentation to verify the beneficiary's qualifying employment lessens the probative weight of this evidence. As such the petitioner has failed to provide independent, objective evidence sufficient to overcome the inconsistencies in the record. Finally, the petitioner has failed, despite specific requests by the director, to provide independent, objective evidence that the qualifying employer exists or existed.

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

Beyond the decision of the director,³ the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

³ 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).

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.⁴ If the petitioner's net income or net current assets are not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm'r 1967).

The record contains Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, from the petitioner to the beneficiary reflecting payments in the amount of \$46,200.00 in 2008, 2009 and 2010; and \$23,100.00 in 2011. The petitioner must, therefore, establish that it had the ability to pay the full proffered wage in 2007, the difference between the proffered wage and the actual wages paid to the beneficiary in 2011, and the full proffered wage from 2012 onward.

The record before the director closed on April 19, 2013, with the receipt by the director of the petitioner's submissions in response to the director's notice of intent to NOIR. As of that date, the petitioner's 2011 federal income tax return was the most recent return available. However, the record does not any contain annual reports, federal tax returns, or audited financial statements for the petitioner for 2007 through 2011.⁵ This issue must be addressed in any future filings. While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation. Further, the petitioner failed to establish that factors similar to

⁴ See *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. 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); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010).

⁵ The record contains the petitioner's financial statements for 2007. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The accountant's report that accompanied those financial statements makes clear that they are reviewed statements, as opposed to audited statements. The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. Reviews are governed by the American Institute of Certified Public Accountants' Statement on Standards for Accounting and Review Services (SSARS) No.1., and accountants only express limited assurances in reviews. As the account's report makes clear, the financial statements are the representations of management and the accountant expresses no opinion pertinent to their accuracy. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Sonegawa existed in the instant case, which would permit a conclusion that the petitioner had the ability to pay the proffered wage.

According to USCIS records, the petitioner has filed 12 other I-140 immigrant petitions on behalf of other beneficiaries. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). The evidence in the record does not state the priority date, proffered wage or wages paid to each beneficiary, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions in 2007 or in 2011 onward. This issue must also be addressed in any future filings.

Accordingly, after considering the totality of the circumstances, the petitioner has also failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

The Form I-140 petition identifies [REDACTED] as the employer and the petitioner. In this instance, no employee or officer of [REDACTED] signed the Form I-140 visa petition.

Based on a review of the record, including the signature on a letter confirming the intent of the petitioner to file the Form I-140 immigrant petition on behalf of the beneficiary, an individual other than an authorized official of [REDACTED] signed Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable

signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form.

(Emphasis added.) The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to Forms I-140 until 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign Form I-140 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, [REDACTED], did not sign the petition.⁶ Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-140 petition on behalf of the petitioning employer since 1991 when legacy INS removed the “or authorized representative” language. The requirement for a signature *under penalty of perjury* cannot be met by a “Power of Attorney” authorized signature, such as the one found in the letter from the petitioner confirming its intent to file the Form I-140 immigrant petition on behalf of the beneficiary. Practically, the signature requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petition. To this end, the employer’s

⁶ The petitioning U.S. employer [REDACTED], also did not sign the original certified ETA Form 9089 which was submitted with the immigrant petition. USCIS will not approve a petition unless it is supported by an original certified ETA Form 9089 that has been signed by the employer, beneficiary, attorney and/or agent. See 20 C.F.R. § 656.17(a)(1).

signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” To be valid, 28 U.S.C. § 1746 requires that declarations be “subscribed” by the declarant “as true under penalty of perjury.” *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: “Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury.” 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration “for” another. Without the petitioner’s actual signature as declarant, the declaration is completely robbed of any evidentiary force. See *In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] knowledge.” Thus, the Form I-140 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney’s unsupported assertions on the petition and the job offer have no evidentiary value.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While we do not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O’Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.