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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JUN 18 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record of proceeding, the director issued a notice of intent to revoke (NOIR), and ultimately did revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on September 17, 2010. In the Form I-129 visa petition, the petitioner described itself as a Thai specialty restaurant established in 2003, with five employees.¹ On the Form I-129, the petitioner listed its gross annual income as \$712,660, but failed to provide its net annual income. In order to continue to employ the beneficiary in what it designated as a business development analyst position, the petitioner sought to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The position was approved for what was designated as a business development analyst position. Thereafter, a site visit was conducted at the beneficiary's place of employment, as specified in the petition. Upon subsequent review of the record of proceeding upon which approval of the petition was based, the director issued a NOIR, and ultimately did revoke the approval of the petition. Thereafter, counsel for the petitioner submitted an appeal of the decision.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's NOIR; (3) the response to the NOIR; (4) the director's revocation notice; and (5) the Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

¹ For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, the record is reviewed for evidence that the petitioner's operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

With regard to the revocation of the approval of a petition, the regulation at 8 C.F.R. § 214.2(h)(11) states the following:

Revocation of approval of petition--(i) General. (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition. . . .

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
 - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
 - (3) The petitioner violated terms and conditions of the approved petition; or
 - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
 - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.
- (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

As a preliminary matter, the AAO finds that the bases specified for the revocation action are proper grounds for such action. The director's statements in the NOIR were adequate to notify the petitioner of the intent to revoke approval of the petition in accordance with the statutory provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A)(1),(2),(3), and (4). The documents submitted in response to the NOIR failed to rebut and overcome the grounds for revocation. The director determined that: (1)

the petitioner failed to establish that the beneficiary is eligible for classification as an alien employed in a specialty occupation; and (2) the petitioner failed to comply with the terms and conditions of employment. Upon review of the record of proceeding, the AAO agrees that the petitioner has not overcome the bases for the revocation of the petition and the appeal will be dismissed, and approval of the petition will remain revoked.

In this matter, the petitioner stated on the Form I-129 and supporting documentation that it seeks the beneficiary's services as a business development analyst on a full-time basis at the rate of pay of \$36,171 per year. In its letter of support, dated September 9, 2010, the petitioner described the duties of the proffered position as follows:

To remain at the forefront of the industry, [the petitioner] employs a Business Development Analyst who utilizes knowledge of business administration to oversee and analyze internal processes and recommend and implement improvements to business operations, such as supply changes and organizational systems. Through this constant analysis of business procedures, the Business Development Analyst assists and directs management in operating more efficiently and effectively. Assessing how individuals and the organization as a whole can best operate, the Business Development Analyst will regularly interview personnel and conduct on-site observations to ascertain the work performed, equipment and personnel used and consider how employees interact. By compiling and analyzing this data regarding the restaurant's operations, the Business Development Analyst will identify training needs, coach individuals to encourage improvements to performance, and train workers in food preparation.

Furthermore, the Business Development Analyst identifies ways in which [the petitioner] can reach more customers, develop a broader base, and provide services that ensure patrons' loyalty. By researching marketing and advertising outlets, analyzing the marketing and advertising methods of local competitors, and developing and maintaining relationships with area businesses, the Business Development Analyst ensure that [the petitioner] offers the most innovative approaches to attract customers.

In addition, the position calls for assigning duties, responsibilities and work stations to employees in accordance with scheduling requirements, peak hours of operation and special events. The Business Development Analyst controls inventories of food, equipment, smallware, reports shortages and surpluses to owners, and suggests new products that will improve efficiency. Furthermore, the Business Development Analyst must be aware of sanitation and safety procedures, ensuring quality and sanitation in the kitchen and a safe environment for patrons and staff.

Further, the petitioner stated "[d]ue to the complexity of these tasks, [the petitioner] requires that the Business Development Analyst possess at least a Bachelor's Degree in Business Management, Business Administration, Marketing, Finance or similar field."²

With the petition, the petitioner also submitted a job description that listed the position requirements as a "Bachelor's Degree in Business Management, Business Administration, Economics, Marketing, Finance or other directly-related Business Degree." No explanation for the variance was provided.

In addition, the petitioner provided several documents in support of the petition. More specifically, the documentation included the following: (1) printouts from its website; (2) menus and promotional materials; and (3) documents relating to the beneficiary's credentials.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Market Research Analysts" - SOC (ONET/OES Code) 19-3021, at a Level I (entry level) wage.

In the petition, the petitioner indicated that the beneficiary had been serving in the proffered position since September 2007. The petition was approved for what the petitioner designated as a business development analyst position. On March 21, 2011, an administrative site visit was conducted to verify the information within the petition.³ The officer conducting the site visit spoke to the cook and the

² The petitioner claims that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position. Briefly, the AAO notes that a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

³ A site visit is an administrative inquiry relating to the petitioner's burden of proof. Agency verification methods may include but are not limited to review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections; and interviews. *See generally* sections 103, 214, and 291 of the Act, 8 U.S.C. §§ 1103, 1184, and 1361 (2006); 8 C.F.R. § 103.2(b)(7). As in all visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. A site visit may lead to the discovery of adverse information, as in the present case, but it is just as likely to confirm the petitioner's eligibility for the benefit sought. Here, the director properly notified the petitioner of the information, and the petitioner was

manager on location who stated that the beneficiary works as a manager of advertising with responsibilities in promotional marketing. The officer reviewed a pay statement issued to the beneficiary for a period from March 5, 2011 to March 18, 2011. The officer found that the beneficiary was paid \$197.16 for that pay period and his year-to-date or first quarter wage was \$3,391.19.⁴ The beneficiary was not present during the interview; it was communicated that the beneficiary was out getting restaurant supplies.

The director reviewed the report regarding the site visit and then issued the NOIR. The NOIR contained a detailed statement regarding the information that USCIS had obtained from the site visit report and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation. The petitioner and counsel submitted a response and additional evidence. Specifically, counsel submitted (1) a letter from the petitioner verifying the beneficiary's position and the duties (providing a job description virtually identical to the job description above); (2) a letter from ADP, the petitioner's payroll company, stating that "by end of the year [the beneficiary] will show on his w2 total gross wages of \$36,171"; (3) the beneficiary's 2010 Form W-2, Wage and Tax Statement, showing wages as \$32,821.88; and (4) a copy of the receipt notice for the Form I-140 filed by the petitioner on behalf of the beneficiary. The director reviewed the evidence and determined that the documentation did not overcome the grounds for revocation. Accordingly, on September 12, 2011, the director revoked the approval of the petition.

Thereafter, new counsel for the petitioner submitted an appeal of the director's decision. With the appeal and brief, counsel provided additional documentation, including (1) copies of previously submitted documents; (2) cover sheets from TurboTax issued to the beneficiary for the tax periods of 2008, 2009 and 2010 (the tax returns were not provided); (3) Form W-2, Wage and Tax Statements, issued to the beneficiary for 2009 and 2010; (4) a report entitled "*The U.S. Citizenship and Immigration Services' Adjudication of Petitions for the Nonimmigrant Workers (I-129 Petitions for H-1B and H-2B visas)*"; (5) the petitioner's financial documents, including State of Illinois - Form UI-3120, Employer's Contributions and Wage Report, and Quarterly Wage and Tax Reports; and (6) documents relating to the beneficiary's status.

The AAO reviewed the record of proceeding in its entirety, including the documentation submitted with the petition, in response to the NOIR and in support of the appeal, as well as the information obtained during the site visit. The AAO notes that the record of proceeding contains material discrepancies regarding the proffered position, and the petitioner has not sufficiently resolved the inconsistencies. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 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

provided with an opportunity to respond.

⁴ The AAO notes that the amount indicated on the beneficiary's pay stub is significantly below his proffered wage which should have been \$1,391.19 for a two-week period and \$9,042.75 for the quarterly wage.

pointing to where the truth, in fact, lies, will not suffice. *Id.* As will be discussed, the petitioner has not met its burden of proof in this regard.

As indicated in the NOIR, the beneficiary was not on the business premises during the onsite visit. It was stated that the beneficiary was out getting the restaurant supplies. In addition, the cook and manager indicated that the beneficiary works as a manager of advertising with responsibilities in promotional marketing. In response to the NOIR, the petitioner relies primarily upon its own statement in support of the assertion that the beneficiary performs the duties of the proffered position as stated in the H-1B petition. Notably, the responsibilities for the proffered position as provided by the petition in response to the NOIR is virtually identical to the description provided with the initial petition. The statement contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties manifest themselves in their day-to-day performance within the petitioner's business operations. The petitioner did not provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary performs. The tasks as described fail to communicate (1) the actual work that the beneficiary performs, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions are conclusory and unpersuasive, as they are not supported by substantive evidence.

The AAO notes that the beneficiary had been employed by the petitioner for approximately four years when the NOIR was issued. However, the petitioner's letter contains general duties of the occupation rather than specific information regarding the beneficiary's actual daily duties. The duties of the position as provided by the petitioner in response to the NOIR fail to adequately describe the substantive nature of the work that he performs within the petitioner's business operations. That is, it fails to provide a sufficient factual basis for conveying the substantive matters that engage the beneficiary in the actual performance of the proffered position, so as to persuasively support the claim that the beneficiary is employed in the capacity specified in the petition. The petitioner failed to submit documentary evidence to establish the actual day-to-day duties performed by the beneficiary.

On appeal, counsel states that one of the beneficiary's responsibilities is "to suggest new products that improve efficiency, yet maintain sanitation and a safe environment" and claims that the beneficiary "briefly left his place of work to pick up restaurant supplies to further the responsibility." Counsel further claims that "such sample purchases are appropriate when deciding whether to implement equipment through the restaurant chain." Counsel also stated that the officer conducting the site visit "was unwilling to take the time to allow the employee to explain the purpose of his trip, detail the supplies purchased, and how this particular purchase is in tandem with his role as a business development analyst." However, counsel does not provide any evidence to corroborate his statement or evidence that the purchases made by the beneficiary relate to "improving efficiency, yet maintain[ing] sanitation and [a] safe environment." Counsel further asserts that "the employer's response to the July notice of intent insinuates the types of limited purchases by [the beneficiary]."⁵ The AAO reviewed the petitioner's response to the NOIR, but

⁵ The AAO notes that the record of proceeding does not contain a letter of support from the petitioner dated

notes that the petitioner merely restates the beneficiary's proffered position and proposed duties as reflected in the support letter dated September 9, 2010. The petitioner does not discuss the types of purchases made by the beneficiary. Moreover, later in the appeal, counsel asserts that the beneficiary "was well within the scope of employment, when he made a nominal deviation to purchase sample supplies." However, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review of the record of proceeding, the AAO agrees that the petitioner did not overcome the basis for the revocation of the petition. In the instant case, there is a lack of documentation to corroborate the assertion that the beneficiary is performing the duties as described in the initial petition. The petitioner failed to provide sufficient probative evidence to substantiate its claim regarding the beneficiary's duties as a business development analyst. Specifically, the petitioner failed to submit independent, objective evidence to refute or otherwise explain the statements made by the cook and manager to the USCIS officers regarding the beneficiary's duties. The petitioner has not sufficiently explained and overcome the implication of the statements made to the site visit inspectors.

The AAO finds that the petitioner has provided insufficient probative documentation to substantiate its claims regarding the actual work that the beneficiary is performing to establish eligibility for this benefit. That is, there is a lack of substantive, documentary evidence to substantiate its claim that the beneficiary is performing the caliber of work required to qualify the proffered position as a specialty occupation.

In the revocation notice, the director determined that there were discrepancies in the salary offered to the beneficiary as stated in the H-1B petition and the wages actually paid to the beneficiary. In the appeal, counsel claims that "this revocation took place in spite of the fact that the agreement is that the employer will pay an annual salary, not a weekly or monthly salary." Counsel suggests that a petitioner is not required to "pay uniform portions of an annual wage in the form of a weekly or monthly paycheck" because "the labor condition agreement with the Department of Labor requires the employer to pay an annual salary."

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A). The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. By signing the Form I-129 petition and LCA, the petitioner attests that it will comply with the wage requirements.

The primary rules governing an H-1B petitioner's wage obligations appear in the U.S. Department of Labor regulations at 20 C.F.R. § 655.731. This regulation generally requires that the H-1B employer fully pay the LCA specified H-1B annual salary: (1) in prorated installments to be disbursed no less than once a month; (2) in 26 bi-weekly pay periods, if the employer pays bi-weekly; and (3) within the work year to which the salary applies.

More specifically, the pertinent part of 20 C.F.R. § 655.731(c)(1) states that "[t]he required wage must be paid to the employee, cash in hand, free and clear, when due." The regulations continue by stating that for "salaried employees, wages will be due in prorated installments (e.g., annual salary divided into 26 bi-weekly pay periods, where employer pays bi-weekly) paid no less often than monthly." See 20 C.F.R. § 655.731(c)(4). The regulations provide for an exception but indicate that the petitioner's documentation of wage payments "must show the employer's commitment to make such payment and the method of determining the amount thereof, and must show unequivocally that . . . upon payment and distribution of such other payments that are pending, will be met for each current or future pay period." *Id.*

By signing the Form I-129, the petitioner confirmed "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" and it "agrees to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment." The petitioner attested that it had read and agreed to the labor condition statements at Section H., which included confirming that it would "[p]ay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for nonproductive time." The required wage must be paid to the employee, cash in hand, free and clear, when due. See 20 C.F.R. § 655.731(c)(1).

In this case, the petitioner stated in the Form I-129 petition and LCA that the beneficiary is employed on a full-time position. On the Form I-129 petition (pages 3 and 13) and the LCA, the petitioner reported that the salary for the proffered position is \$36,171 per year. The instructions to Form I-129 state that "[t]he rate of pay is the salary or wages paid to the beneficiary. Salary or wages must be expressed in annual full-time amount and **do not include non-cash compensation or benefits** (emphasis added)."

During the site visit, the officer reviewed pay records regarding the beneficiary's salary. The officer reviewed a pay statement issued to the beneficiary for a period from March 5, 2011 to March 18, 2011. The officer found that the beneficiary was paid \$197.16 for that pay period and his year-to-date or first quarter wage was \$3,391.19.⁶ As previously noted, based upon the offered wage as stated in the H-1B petition and LCA, the pay statement should have reflected a salary of \$1,391.19 for a two-week period and \$9,042.75 for the quarterly wage.

In response to the NOIR and with the appeal, the petitioner and counsel submitted several documents. In reviewing the documentation provided by the petitioner, the documentation raises additional questions. For example, the letter from [REDACTED] dated August 3, 2011 states that "by end of

⁶ The AAO notes that the amount indicated on the beneficiary's pay stub is significantly below his proffered wage which equates to \$1,391.19 for a two-week period and \$9,042.75 for the quarterly wage.

the year [the beneficiary] will show on his w2 total gross wages of \$36,171.00." No further information was provided. The AAO also notes that the second quarter statement from 2011 shows that the beneficiary was paid \$5,200.00 for the second quarter, which is below the proffered quarterly wage of \$9,042.75. The petitioner did not acknowledge or address the reason that the salary as indicated on the quarterly statement does not reflect a prorated installment of the offered salary as stated on the Form I-129 petition and LCA. The evidence does not establish that the petitioner has paid the beneficiary wages when due "in prorated installments (e.g., annual salary divided into 26 bi-weekly pay periods, where employer pays bi-weekly) paid no less often than monthly." Furthermore, the petitioner does not claim that there are nondiscretionary payments to supplement its wage obligations, and there is no evidence that, if there were such payments, that the value of the benefits has been tabulated and reported. The discrepancy in the wage raises questions about the terms and conditions of the beneficiary's employment. The documentation does not support a finding that the petitioner paid the beneficiary the required wages under the statutory and regulatory provisions.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 591-92. Moreover, as previously discussed, a simple assertion by counsel on appeal does not qualify as independent and objective evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506.

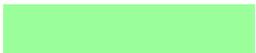
When a petitioner fails to resolve discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. The record of proceeding lacks sufficient documentary evidence that establishes or corroborates the substantive nature of the beneficiary's duties. 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)). As previously mentioned, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 591-92.

Based upon a complete review of the appeal and the record of proceeding, the petitioner has failed to overcome the revocation grounds specified in the NOIR and the subsequent revocation decision.⁷ Accordingly, the appeal is dismissed. The approval of the petition remains revoked.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act. The

⁷ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). However, as the appeal is dismissed, and the petition is revoked for the reasons discussed above, the AAO will not further discuss the additional issues and deficiencies that it observes in the record of proceedings.

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petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition remains revoked.