



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 01 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 (“AAO”) 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,

Michael T. Kelly
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, 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 April 1, 2009. The petitioner stated that it is a “tent & manufacturing & rentals” business, established in 1984, with 39 employees. Seeking to employ the beneficiary in what it designates as an industrial designer position, the petitioner filed this H-1B petition in an endeavor 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 petition was approved on June 2, 2009.¹ However, on May 13, 2010, the director revoked that approval, by a decision issued to the petitioner in a letter entitled “Notice of Revocation of Non-Immigrant Petition.”

The revocation decision followed an NOIR, dated February 22, 2010, and the petitioner’s response to the NOIR. Thereafter, the petitioner filed a timely appeal.

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 petitioner’s response to the NOIR; (4) the director’s revocation notice; and (5) the Form I-290B (Notice of Appeal) and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

As will be evident in the discussion below, the AAO finds that the petitioner has failed to overcome the grounds specified in the decision for revoking the petition, which the AAO finds, indicated that (1) statements in the petition regarding the beneficiary’s experiences (used as a basis for establishing the beneficiary’s qualifications to serve in a specialty occupation) were at least inaccurate and not true and correct (grounds for revocation under 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) and (4) that the approval of the petition violated the H-1B regulations regarding beneficiary qualification to serve in an H-1B specialty occupation or involved gross error (grounds for revocation under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). Accordingly, the appeal will be dismissed, and approval of the petition will remain revoked.

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 governs revocations that must be preceded by notice and 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 stamp on the petition indicates that it was approved on June 2, 2009. However, the approval notice, Form I-797B, Notice of Action, is dated June 3, 2009.

- (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.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed the grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and as it also allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B).

The AAO will first recount some salient facts from the record of proceeding, in order to set the stage for a discussion of the AAO's analysis behind its decision to dismiss this appeal.

In this matter, the petitioner stated on the Form I-129 and supporting documentation that it seeks the beneficiary's services in what it designates as an industrial designer position on a full-time basis. On the Form I-129 H-1B Data Collection and Filing Fee Exemption Supplement, on page 13, at Part A, Section 3, the petitioner stated that the beneficiary has no diploma. The petitioner purports to qualify the beneficiary for the proffered position with the beneficiary's work experience. In support of the petition, the petitioner, through counsel, submitted, *inter alia*, (1) an evaluation by [REDACTED] President, [REDACTED] dated March 26, 2008, equating the beneficiary's professional work experience to a U.S. bachelor's degree in industrial design; (2) an undated letter by [REDACTED] Director, [REDACTED] in Spanish, and its English translation, stating that the beneficiary was employed at [REDACTED] from January 8, 1996 to February 15, 2008; (3) a letter by [REDACTED] Personnel Director, [REDACTED]

[REDACTED], dated March 24, 2008, stating that the beneficiary has been employed by the company from February 25, 2008 to the present; and (4) additional documentation. The director approved the petition on June 2, 2009.

Subsequent to the petition's approval, the United States Consulate General in Guadalajara, Jalisco, Mexico ("U.S. Consulate") reviewed the record of proceeding and information elicited from the beneficiary, as well as public and government records. Based upon this information, the U.S. Consulate returned the petition to the director for review. The U.S. Consulate notified USCIS that during the course of the visa interview process, information was presented that was not available to the director at the time the petition was approved. On the U.S. Department of State's supplementary application for a non-immigrant visa (Form DS-157), the beneficiary indicated that he never finished the Mexican equivalent of a high school education. In its letter of support, the petitioner stated that the beneficiary possessed over 13 years of experience in the industrial design field. The consular officer asked the beneficiary about his alleged work experience with [REDACTED] that was used to qualify him for an H-1B designation. The U.S. Consulate reported that the Mexican Constitution (Article 123) and the Social Security Law (Chapter 1, Article 12) mandate that employers in Mexico, such as the beneficiary's former employer, [REDACTED] and his current employer, [REDACTED] enroll the beneficiary in the Mexican Social Security Institute ("IMSS"). According to the U.S. Consulate, the beneficiary told the consular officer that he was enrolled in the IMSS for all the years of his employment with [REDACTED] and that deductions were taken out of each of his biweekly paychecks. However, according to IMSS, the beneficiary was only registered as an employee of [REDACTED] from August 2002 to March 2006, a period of less than four years, and was never registered as an employee of [REDACTED].

Thereafter, on February 22, 2010, the director issued an NOIR to the petitioner. The NOIR contained a detailed statement regarding the information that USCIS had obtained from the U.S. Consulate and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation. Upon review of the record, the AAO finds that the NOIR placed the petitioner on notice that revocation of the approval of the petition was contemplated on grounds that are within the scope of the revocation-on-notice provisions.

Counsel for the petitioner responded to the NOIR. In a letter dated March 22, 2010, counsel stated that (1) the beneficiary denies making a statement that he was enrolled in the IMSS for all the years of his employment with the two employing companies and that deductions were taken out of each of his biweekly paychecks²; (2) the "[b]eneficiary still asserts that he worked for [REDACTED] from 1996 to 2008 . . . and from February 25, 2008 to present for [REDACTED] . . .;" and (3) the petitioner and the beneficiary made no fraudulent statements or misrepresentations.³ The petitioner continues to claim that the beneficiary worked for the two companies listed in the petition for the duration of the

² Counsel provides no corroborating statement from the beneficiary to substantiate this assertion or the following one in this summary.

³ Counsel should note that statements that are untrue, incorrect, or inaccurate may be grounds for revocation under the clear reading of the pertinent regulatory provisions. Fraud or deliberate misrepresentation is not required.

period listed in the petition. In support of these assertions, counsel submitted (1) a written statement from the petitioner's CEO, [REDACTED], dated March 22, 2010, stating that the beneficiary has been working for the petitioner in the [REDACTED] office from February 25, 2008 to the present and that the petitioner has "been paying [the beneficiary] for his work for [REDACTED] as an industrial designer by Payroll check from March 1st of 2009 to present in accordance with regulations under the Mexican Social Security system"; (2) a written statement from [REDACTED] Director, [REDACTED] dated March 22, 2010, stating that the beneficiary was employed at [REDACTED] from January 8, 1996 to February 15, 2008, and that, starting in May of 1999, they "registered [the beneficiary] under the Mexican Social Security system and continued to employ him without any changes . . . until 15 February 2008 when he left the company"; and (3) copies of two untranslated documents, which counsel claims are printouts of the beneficiary's Mexican social security records.

Upon review of the documentation submitted in response to the NOIR, the AAO notes that neither the petitioner's written statement nor the statement of the beneficiary's prior employer's director [REDACTED] is supported by corroborating evidence (such as relevant business records).

Moreover, upon further review of the documentation submitted in response to the NOIR, the AAO notes that because the petitioner and counsel failed to submit certified translations of the two untranslated documents, those documents have no evidentiary weight. *See* 8 C.F.R. § 103.2(b)(3). Moreover, the documents lack any supplementary explanatory documentation from IMSS as to when those two pages were produced; the information upon which they were produced; the dates and sources of the information from which they were produced; as to what the various entries on the pages indicate; and whether those pages are inconsistent with any other information that IMSS had in its records.

In its letter in response to the NOIR, dated March 22, 2010, counsel also stated that the NOIR "fails to state factual grounds other than speculation that because Social Security deductions may not have been made in earlier years by the employer . . . that beneficiary did not work for the company. . . . It only means that the employer may have violated reporting and deduction laws." However, the AAO notes that the information indicating that the petitioner and [REDACTED] "may have violated reporting and deduction laws," casts a shadow on their credibility. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, without documentary evidence to support the claim that the beneficiary worked for the two companies for the duration of the period listed in the petition, 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).

The director reviewed counsel's response to the NOIR but found the information submitted insufficient to refute the findings in the NOIR. The director revoked the approval of the petition on May 13, 2010. Thereafter, the petitioner and counsel submitted an appeal.

On appeal, counsel asserts that the evidence does not show that any misrepresentation was made, and that an allegation of misrepresentation cannot be fairly attributed to the petitioner. Counsel stated that the beneficiary's work experience remains valid, notwithstanding that his employers failed, for some years, to comply with Mexican social security laws.

Counsel reiterated that the beneficiary (1) denies making a statement, at the visa interview, that social security payments were deducted from his paychecks throughout his employment and (2) claims that the consular officer pressured him to make the aforementioned statement and later attributed such statement to him.

For the reasons that will be discussed below, the AAO agrees with the director's decision to revoke the approval of the H-1B petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the approval of the petition will remain revoked.

In the revocation decision, the director cited the provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(11)(iii)(A)(4), which respectively provide for revocation upon notice in instances where "the statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact," and where "the petitioner violated requirements of section 101(a)(15)(H) of the Act or [8 C.F.R. § 214.2(h)]."

In addressing these grounds for revocation, the AAO will address the underlying factual issue stated in the decision of "whether the petitioner has established that the beneficiary is qualified in a specialty occupation by virtue of possessing a baccalaureate degree or the equivalent in a specific field of study which is closely related to the position being offered."

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualifications to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent the petitioner must satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), by establishing that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

Upon review of the entire record of proceeding, including the submissions on appeal and, earlier, in response to the NOIR, the AAO finds that the petitioner has failed to effectively rebut the evidence cited by the NOIR and the revocation decision which, the AAO also finds, indicates that the petition's information regarding the beneficiary's experience was inaccurate with regard to the extent of the beneficiary's years of employment.

As noted earlier, the petitioner submitted an evaluation by [REDACTED] President, [REDACTED] dated March 26, 2008, equating the beneficiary's professional work experience to a U.S. bachelor's degree in industrial design. However, the evaluator has not submitted any evidence that she is "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." Thus, this evaluation does not satisfy the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Also, since the record indicates that the beneficiary has no post-secondary education, and the evaluator evaluated the beneficiary's work experience, this evaluation is not an evaluation of education pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Given that the record is devoid of any evidence to satisfy the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), the AAO will now determine, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), whether the evidence in the record of proceeding is sufficient to merit a USCIS determination, that the beneficiary, through his work experience, has attained at the time of the petition's approval "the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . ."

At the outset, the AAO observes that the petitioner and the [REDACTED] evaluator of the beneficiary's experience have both misstated – and misapplied – the so-called "three-for-one rule" at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for equating years of experience to years of college-level credit in a specific

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

specialty at a regionally accredited college or university in the United States. First, the so-called “three-for-one rule” at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is one for USCIS’ application and determination alone. Second, there is no mandate for a simple 3-to-1 straight chronological equivalency ratio whereby three years of experience in a particular specialty categorically merits recognition as equivalent to one year of college course-work in that specialty. Rather, as is clearly evident in the regulation, to qualify for credit, the petitioner must have “clearly demonstrated” that the claimed years of experience satisfy the stringent, unambiguous, and multi-level standards specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which states, in pertinent part:

[I]t must be *clearly demonstrated* [1] that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁵;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

[Emphasis added.]

Upon a complete review of the record of proceeding, and based on the findings of the Fraud Prevention Unit of the U.S. Consulate, the AAO finds that there is a lack of documentary evidence establishing the beneficiary's qualifications for the proffered position. The petitioner failed to submit corroborating evidence of the beneficiary's progressively responsible experience. The two

⁵ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

employment experience letters that were submitted with the petition only provide the beneficiary's job title and alleged dates of employment and do not provide information regarding the size and nature of the employing companies. The letters also do not contain substantive information regarding the beneficiary's roles, duties, and responsibilities, and whether such duties and responsibilities progressed during the period of claimed employment, and whether they were performed by peers who had, or under the supervision of persons who had, attained at least a bachelor's degree level of knowledge in a pertinent specialty. Also, as noted earlier, the two written statements from the two employers submitted in response to the NOIR are not affidavits. Thus, the evidence in the record of proceeding does not establish that the beneficiary is qualified for classification as an H-1B nonimmigrant worker in a specialty occupation under the regulations.

On the Form I-290B, counsel stated that "[f]ailure of an employer to properly enroll in and pay payroll taxes for an employee does not negate the actual 12 years of work experience of the beneficiary employee." While that statement may be correct if supported by corroborating evidence, in the instant case, counsel has not provided sufficient evidence to support his assertion that evidence of the beneficiary's "12 years of work experience" is "documented with specificity in the record." As previously noted, 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. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Further, the AAO finds that, as will be discussed in due course below, the record lacks evidence sufficient to establish that any of the claimed work qualified for recognition as equivalent to any college's or university's coursework.

As noted earlier, in response to the NOIR, the petitioner, through counsel submitted written statements from the petitioner and Mr. [REDACTED] to establish that the beneficiary worked for [REDACTED] and [REDACTED], respectively, for the period claimed by the petitioner and the beneficiary. As discussed above, the AAO did not find this evidence persuasive as the written statements are not affidavits. Moreover, the two written statements contradict the information that USCIS received from the U.S. Consulate regarding the periods that the beneficiary was enrolled in the [REDACTED]. The record contains no evidence to reconcile the inconsistency between the beneficiary's statement at the interview that social security payments were deducted throughout his more than 12 years of employment, with the evidence from [REDACTED] that the deductions were taken only from August 2002 to March 2006, a period of less than four years. 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. *Matter of Ho*, 19 I&N Dec. at 591. 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. at 591-92.

Furthermore, the petitioner did not submit any other supporting evidence to establish that the beneficiary did, in fact, have a minimum of at least 12 years of work experience in industrial design with the two companies, such as copies of payroll records, paystubs, or other corroborating evidence. Thus, the record of proceeding lacks documentary evidence that overcomes the stated grounds for revocation and establishes or corroborates the beneficiary's work experience for the period claimed

in the petition. 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 AAO also notes that there are some inconsistencies in the record. For instance, in its letter of support, dated March 31, 2009, the petitioner claimed that the beneficiary has over 13 years of work experience in industrial design. Later, in an undated letter addressed to the attention of the "American Consulate," the petitioner stated that the beneficiary has "15 years of experience." As previously stated, 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. at 591-92. In addition, 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. *Matter of Ho*, 19 I&N Dec. at 591.

Finally, in its response to the NOIR and on appeal, counsel asserts that the beneficiary denied making a statement that social security payments were deducted from his paychecks throughout his employment and claims that the consular officer pressured the beneficiary to make such a statement and later attributed such statement to the beneficiary. Counsel also asserts that a consular officer pressured the beneficiary's brother to make such a statement, as well, and later attributed such a statement to the beneficiary's brother. The record contains no indication that counsel was present at the interview at the U.S. Consulate in Mexico. Counsel's assertions with respect to what transpired at the interview stem from a conversation that he had with the beneficiary after the interview. Without documentary evidence to support the claim that the beneficiary did not make the statements attributed to him at the visa interview, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Furthermore, with respect to the beneficiary's brother's case, it must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Thus, in the instant case, the AAO will not review the beneficiary's brother's record of proceeding.

In sum, the record does not contain adequate documentation regarding the beneficiary's progressively responsible experience to establish that he possesses the equivalent of a United States baccalaureate or higher degree in a specific specialty related to the occupation. Moreover, the petitioner did not provide sufficient evidence to overcome the stated grounds for revocation that the petitioner appears to have misrepresented that the beneficiary has at least 12 years of qualifying work experience and that the petitioner appears to have violated the requirements of section 101(a)(15)(H) of the Act or [8 C.F.R. § 214.2(h)] because the beneficiary lacks sufficient education and the evidence relating to his work experience appears to be inaccurate. Therefore, for the reasons discussed above, the record of proceeding does not establish that the beneficiary possesses the

equivalent to a bachelor's degree or higher from an accredited institution in the United States in a specific specialty that would be the minimum required to perform the proffered position.

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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

In regard to the above paragraph, it is important to note that even if the petitioner had effectively rebutted the grounds for revocation based upon inaccurate, untrue, and incorrect statements in the petition regarding the times and places of the beneficiary's previous employment, the evidence of record would still fail to satisfy the beneficiary-qualification requirements specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(4) and (h)(4)(iii)(D)(5).

The approval of the petition will remain revoked and the appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed. The approval of the petition will remain revoked.