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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 1 3 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. Counsel has filed motions to reopen and reconsider our decision. We dismissed the motions and affirmed our initial decision. Counsel filed a third motion to reopen and reconsider our decision. The third motion to reopen and reconsider will be granted. Our previous decisions will be affirmed. The appeal is dismissed and the petition remains denied.

The petitioner describes itself as a low income housing tax credit – residential housing limited partnership. It seeks to permanently employ the beneficiary in the United States as a tax credit administrator. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1]

The petition is accompanied by a Form ETA 750, Application for Alien 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 July 31, 2002. *See* 8 C.F.R. § 204.5(d).

Our decisions dismissing the appeal and the subsequent motions conclude that the beneficiary's education does not meet the minimum requirements of the labor certification or the requested immigrant visa preference classification. In our last decision dated May 28, 2013, we determined that the motion did not qualify for consideration as a motion to reopen as the petitioner did not provide new facts or evidence, or for consideration as a motion to reconsider as the petitioner failed to support the motion with pertinent precedent decisions establishing that our prior decisions were based on an incorrect application of law or policy. In our May 28, 2013 decision dismissing the motions, we noted that the record failed to demonstrate the petitioner's ability to pay the proffered wage from each year from the priority date, or that the beneficiary possessed the minimum requirements for the proffered position from the priority date.

A motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) if the petitioner provides new facts with supporting documentation not previously submitted. A motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) if the petitioner asserts that the director and this office made an erroneous decision through misapplication of law or policy. The instant motion qualifies for consideration as a motion to reopen because the petitioner submits new evidence, including evidence of the petitioner's ability to pay the proffered wage and the beneficiary's qualifications. The instant motion also qualifies for consideration as a motion to reconsider because the petitioner asserts an error in the application of law in that the beneficiary possesses a bachelor's degree and five years of progressive post-baccalaureate experience.

[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees, whose services are sought by an employer in the United States.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K·R.K· Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v.*

Coomey, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION
Grade School: N/A.
High School: N/A.
College: 6 years.
College Degree Required: Master's or equivalent.
Major Field of Study: Business Administration or relevant field.
TRAINING: None Required.
EXPERIENCE: None Required.
OTHER SPECIAL REQUIREMENTS: None.

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (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 the instant case, the labor certification states that the beneficiary possesses a Master's degree in Personnel Management and Industrial Relations from Nagpur University, India, completed in 1991. The labor certification also states that the beneficiary possesses a Master's Degree in Economics from [redacted] completed in 1988.

The record contains the following educational documentation:

- A copy of the beneficiary's Provisional Certificate and academic transcripts from [redacted] India indicating completion of the B.A. Final examination in April 1986.
- A copy of the beneficiary's Master of Arts degree in Economics and academic transcripts from [redacted] India issued 1989.
- A copy of the beneficiary's Master's degree in Personnel Management and Industrial Relations and transcripts from [redacted], India.

On motion, the petitioner submits two additional evaluations.[2] The first evaluation is from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) dated February 8, 2012 and concludes that the combination of the beneficiary's three-year Bachelor of Arts degree and two-year Master of Arts (Economics) degree from [redacted] are comparable to a bachelor's degree from a regionally accredited college or university in the U.S. The AACRAO evaluation further concludes that the beneficiary's Master's degree in Personnel Management and Industrial Relations from [redacted] is comparable to a second bachelor's degree from a regionally accredited college or university in the U.S.

The second evaluation is from The [redacted] dated August 17, 2012 and also concludes that the combination of the beneficiary's three-year Bachelor of Arts degree and two-year Master of Arts (Economics) degree from [redacted] are comparable to a bachelor's degree from a regionally accredited college or university in the U.S, and that the beneficiary's Master's degree in Personnel Management and Industrial Relations from [redacted] is comparable to a second bachelor's degree from a regionally accredited college or university in the U.S.

Therefore, the record demonstrates that the beneficiary possesses the equivalent of two U.S. bachelor's degrees. The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must be denied for this reason.

On motion, counsel asserts that the beneficiary qualifies for proffered position based on the equivalent of an advanced degree pursuant to 8 C.F.R. § 204.5(k)(2).[3]

As noted above, the labor certification states that the minimum requirements for the proffered position are a Master's degree or equivalent in Business Administration or a relevant field. The terms of the labor certification do not indicate that a combination of education and experience, such as that defined in 8 C.F.R. § 204.5(k)(2), is an acceptable alternative to the required Master's degree. Therefore, the beneficiary does not meet the minimum requirements for the proffered position as set forth on the labor certification.

We note that, even if the petitioner had established its intent to accept a combination of education and experience in lieu of a U.S. master's degree or foreign equivalent degree, the record does not establish that the beneficiary possesses the equivalent of an advanced degree (a Bachelor's degree and five years of progressive post-baccalaureate experience) pursuant to 8 C.F.R. § 204.5(k)(2), as claimed by the petitioner.

As noted above we find that the beneficiary possesses two foreign bachelor's degrees equivalent to two degrees earned from an accredited U.S. college or university, one in 1991 and the other in 1988.

[2] In our previous decisions, we discussed each evaluation. In our current decision we will address the two latest evaluations.

[3] 8 C.F.R. § 204.5(k)(2) states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree."

The labor certification states that the beneficiary qualifies for the offered position based on experience as:

- General Manager/ Tax Credit Administrator with the petitioner from January 1999 until present.
- Senior Personnel Manager with , in India from August 1995 until February 1996.
- Senior Personnel Administrator with from July 1991 until July 1995.

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(g)(1) states:

> (1) General. Specific requirements for initial supporting documents for the various employment-based immigrant classifications are set forth in this section. In general, ordinary legible photocopies of such documents (except for labor certifications from the Department of Labor) will be acceptable for initial filing and approval. However, at the discretion of the director, original documents may be required in individual cases. Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered

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 an experience letter from , President/General Partner on the petitioner's letterhead stating that the company employed the beneficiary as a Tax Credit Administrator from January 28, 1998 until August 20, 2012. However, the letter cannot be used to establish the beneficiary's progressive work experience because the work experience was earned with the petitioner. We will consider employment experience prior to the date the beneficiary began employment with the petitioner.[4]

[4] This position is supported by the Board of Alien Labor Certification Appeals (BALCA). *See Delitizer Corp. of Newton,* 88-INA-482, May 9, 1990 (BALCA). *Delitizer* determined that 20 C.F.R. § 656.21(b)(6) does require that employers establish "the 'dissimilarity' of the position offered for certification from the position in which the alien gained the

The record also contains an experience letter from Vice President (Operations) and Factory Manager on India letterhead stating that the company employed the beneficiary as an Assistant Manager (Personnel) from August 1995 to February 1996.

The record also contains copies of the beneficiary's hiring documents with India. These documents establish that the beneficiary was employed as a Personnel and Administration Officer from August 1, 1992 to July 28, 1995.

In support of the beneficiary's five years of progressive work experience, the record contains two affidavits drafted by the beneficiary on October 8, 2012. The beneficiary provides his job duties with India and India and that all attempts to obtain experience letters from these companies have been unsuccessful. The record contains no evidence of the beneficiary's attempts to obtain additional information from his previous employers. The beneficiary's affidavits are self-serving and do not provide independent, objective evidence of his prior work experience. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). However, even if we accepted this as evidence of the beneficiary's prior experience, the total experience claimed is less than five years.

Therefore, 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. Here, that burden has not been met.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

required experience." *Delitizer Corp. of Newton,* at 4. In its decision, BALCA stated that Certifying Officers should consider various factors to establish that the requirement of dissimilarity under 20 C.F.R. § 656.21(b)(6) has been met, and that, while Certifying Officers must state the factors considered as a basis for their decisions, the employer bears the burden of proof in establishing that the positions are dissimilar. *Delitizer Corp. of Newton,* at 5. In the instant case, the beneficiary did not represent on Form ETA 750, Part B that he had been employed with the petitioner in any position other than the proffered position. As discussed above, in order to utilize the experience gained with the employer, the employer must demonstrate that the job in which the alien gained experience was not similar to the job offered for certification. *See Delitizer Corp. of Newton.* Therefore, we cannot consider the beneficiary's experience gained with the petitioner as qualifying experience to meet the requirements of the labor certification by the priority date.