U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 20 2006

WAC-04-259-51289

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a law office. It seeks to employ the beneficiary permanently in the United States as a lawyer (foreign legal consultant). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying employment experience. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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.

As set forth in the director's May 23, 2005 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary possessed the requisite four years of experience and was qualified for the proffered position prior to the priority date.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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 provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 30, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal[1]. On appeal, counsel submits three notarized letters from the beneficiary's clients companies, a letter from the Iranian Bar Association, the beneficiary's receipts of income tax returns for 1995 and 1996, a copy of the Directory of Attorneys at Law in Tehran and Provinces, and five notarized letters from attorneys-at-law. Other relevant evidence in the record includes the beneficiary's license to practice law in Iran, sworn affidavit of the beneficiary, and sworn affidavits from the beneficiary's two clients. The record does not contain any other evidence relevant to the beneficiary's requisite four years of experience.

On appeal, counsel asserts that the evidence being submitted clearly overcome the grounds of denial that the petitioner has not presented conclusive proof that the beneficiary had the requisite four years of experience.

---

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany 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).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of lawyer (foreign legal consultant). In the instant case, item 14 requires Bachelor's or higher degree in law and political science as the minimum education requirements. The applicant must also have four years of experience in the job offered or four years of experience in the related occupation of attorney-at-law.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, she represented that she has been working as a legal consultant for Richard Hoffman, Esq. since June 2000, and was unemployed from November 1995 to June 2000. Prior to that, she practiced law as an attorney in Tehran, Iran from November 1980 to August 1996 after working as attorneyship (apprenticeship) for the Law Office of Seyed Hossein Kabir in Tehran, Iran from May 1977 to November 1979. She does not provide any additional information concerning her employment background on that form.

The record of proceeding contains the copy of the beneficiary's bar membership, an affidavit from the beneficiary herself and two affidavits from the beneficiary's two former clients pertinent to the beneficiary's requisite four years of experience. One is from [redacted] a naturalized US citizen, and the other is from [redacted], a US permanent resident since 2002. The director determined that having a law degree, a law license and being a member of the Iranian bar does not automatically translate into having the required four years of experience as a lawyer, and without any other objective evidence to corroborate a self-declaration and two other affidavits from former clients and friends who claimed the beneficiary helped them with legal issues, there is inconclusive proof that the beneficiary had four years of full time working experience as a lawyer.

On appeal, counsel submits three notarized letters from the beneficiary's clients companies, a letter from the Iranian Bar Association, the beneficiary's receipts of income tax returns for 1995 and 1996, a copy of the Directory of Attorneys at Law in Tehran and Provinces, and five notarized letters from attorneys-at-law.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> 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 beneficiary claimed that she was self-employed in Iran from November 1980 to August 1996. It appears that a letter from a former employer as generally required by the above regulation is unavailable. Per the

regulation, other documentation relating to the alien's experience or training must be considered. *See* 8 C.F.R. § 103.2(b)(2)(i). The AAO concurs with the director's conclusion that having a law degree, a law license and being a member of the Iranian bar does not automatically translate into having the required four years of experience as a lawyer, and a self-declaration and two other affidavits from former clients are not conclusive proof that the beneficiary had four years of experience as a lawyer.

However, on appeal, additional evidence establishes that the beneficiary has the requisite four years of qualifying employment experience. The record contain the following documents pertinent to the beneficiary's four years of experience as a lawyer in Iran: a 1999 Iranian Bar Association Directory lists the beneficiary as a first class attorney-at-law with picture and law office address; a letter from the Iranian Bar Association verifies that the beneficiary "presented tax clearance notes to the Bar Association, which confirm that she practiced law in Iran from 1979 to 1996"; Organization for Financial Affairs of Iran Receipt of Tax Payment shows that the beneficiary paid taxes for her practice in 1995 and 1996; a letter from Reza Ashouri, 1st Grade Attorney-at-law, verifies that the beneficiary was involved in practicing law from 1979 to 1996 at No. 81, 2nd Floor, Shahr Tash Lane, Sohrevardi St., Tehran, Iran and he cooperated with the beneficiary in three cases regarding counseling affairs; a letter from Fakhri Monshian Motlagh, a member of the Iranian Bar Association with permit number 6240 verifies that the beneficiary practiced law as an Attorney-at-law at her own law office in Tehran from 1979 to 1996 and he rented the beneficiary's law office since 1997 and cooperated with her on penal cases; Mohammad Taher Asad Amraji verifies that from 1979 to 1986 he and the beneficiary rented a common legal office at No. 9, Pirnia Bldg., Neufle Le Chateau, Tehran and during the period they cooperated in about 20 cases; Mohammad Nasser Riazi, 1st Grade Attorney-at-Law, certifies that the beneficiary practiced law from 1979 to 1996 in Tehran and they cooperated from 1986 to 1996 in 17 penal cases; and Mohammad Rahimiha also certifies that the beneficiary practiced law from 1979 to 1996. Counsel also submits three letters from Khazar Tolid Company, Towchal Construction Company, and Thunder Industries Company claiming that the beneficiary was their attorney from 1992 to 1995, from 1980 to 1996 and from 1991 to 1996, respectively.

Upon reviewing the complete record, the AAO is convinced that with the evidence submitted on appeal and the evidence submitted previously the petitioner has provided sufficient evidence to demonstrate that the beneficiary was self-employed as a lawyer in Iran for more than four years and other documentation must be considered as permitted under the regulation at 8 C.F.R. § 204.5(g)(1). Therefore, the petitioner has established that the beneficiary possessed the requisite four years of experience as a lawyer (legal consultant) prior to the priority date.

Counsel's assertions on appeal have overcome the director's findings and demonstrate that the beneficiary met the experience requirements of the proffered position as designated on the Form ETA 750 prior to the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.