



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 015 52993 Office: CALIFORNIA SERVICE CENTER Date: APR 04 2006

IN RE: Petitioner:  
Beneficiary:



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:



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, Director  
Administrative Appeals Office

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

The petitioner is an import/export corporation. It seeks to employ the beneficiary permanently in the United States as an import/export manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and the director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

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.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The regulation at 8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* 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.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. The petitioner must also 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 March 16, 2001. The proffered wage as stated on the Form ETA 750 is \$25.30 per hour (\$52,624.00 per year). The Form ETA 750 states that the position requires two years experience.

With the petition, counsel submitted copies of the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; compiled financial statements; and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

Because the Director determined the evidence submitted with the petition was insufficient demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, consistent with 8 C.F.R. § 204.5(g)(2), the Director requested on March 3, 2003, June 27, 2003, October 2, 2003, January 9, 2004, pertinent evidence of the petitioner's ability to pay the proffered wage beginning on the priority date.

The director requested the petitioner's annual reports, federal tax returns, or audited financial statements. The director requested the petitioner's and the beneficiary's U.S. Internal Revenue Service (IRS) U.S. federal tax return printouts for 2000, 2001 and 2002 as well as IRS printouts of the beneficiary's W-2 Wage and Tax Statements for 2001, 2002 and 2003. Also, the director requested a signed complete copy of the petitioner's U.S. federal tax returns for 2002 and 2003 as filed by the petitioner as well as California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last four quarters that were accepted by the State of California. The director requested that the forms should include the names, social security numbers and number of weeks worked for all employees. The director requested a Social Security's Administration earnings history of the beneficiary.

In response to the request for evidence of the petitioner's ability to pay the proffered wage beginning on the priority date, counsel submitted copies of the following documents: the petitioner's U.S. Internal Revenue Service (IRS) Form 1120-A tax returns for year 2001, 2002 and "2003 ending 04/30/2003", the California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports as well as the beneficiary's U.S. Internal Revenue Service (IRS) Form 1040 tax returns for 2001 and 2002, a W-2 Wage and Tax Statement and a Form 1099-MISC for 2002, and a Social Security's Administration earnings history.

In June of 2004 the director issue a Notice of Intent to Deny the petition to the petitioner.

Consistent with the regulation at 8 CFR § 204.5(l)(3)(ii), the Director requested on June 27, 2003, October 2, 2003, and January 9, 2004, pertinent evidence that the beneficiary has the requisite experience as stated on the labor certification petition. The director indicated that two previous submitted letters of experience were deficient in some regards as noted in the record of proceeding, and, the director requested additional letters of experience, as well as work identification, pay stubs or tax returns. The director indicated the beneficiary's registration certificate and tax identification card already submitted were insufficient.

In response to the requests for evidence, the petitioner submitted two additional (the [REDACTED] and [REDACTED] letters) employment verification letters as discussed below; evidence that the beneficiary was working with New World Trading Company in 1988; and a document from the Egyptian Ministry of Finance. Further, the petitioner submitted a letter from a former employee of New World Trading Company to verify the beneficiary's employment at that company, a letter from [REDACTED] a registration card issued by the City of Cairo; and, a copy of the beneficiary's passport.

The director denied the petition on July 23, 2004, finding that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, and, that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition.

On appeal, counsel asserts that the director misinterpreted the evidence submitted to prove the ability to pay the proffered wage. Also, counsel contends that the beneficiary has the requisite two years experience as import-export manger.

Counsel has submitted the following documents to accompany the appeal statement: a letter from an accountant; a statement from [REDACTED] and, a U.S. federal tax return 1120X for tax year ending April 2002.

In determining the petitioner's ability to pay the proffered wage during a given period, U.S. Citizenship and Immigration Services (CIS) will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. Evidence was submitted to show that the petitioner employed the beneficiary.

According to W-2 Wage and Tax Statements and Form 1099-MISC in the record of proceeding, the petitioner paid the beneficiary the following:

- In 2002, \$5,400.00 in wages (W-2) from petitioner; or,<sup>1</sup>
- In 2002, \$4,200.00 in wages (W-2) from petitioner.
- In 2002, \$49,000.00<sup>2</sup> in compensation (MISC-1099).
- In 2003, \$14,168.00 in wages (W-2) from petitioner
- In 2003, \$42,000.00 in compensation (MISC-1099).

In 2002, the petitioner paid the beneficiary \$54,400.00; and, in 2003, \$56,168.00. Since the proffered wage is \$52,624.00 per year, this is more than the wage. Absent the inconsistencies discussed below, these amounts would demonstrate the ability to pay the proffered wage for the years 2002 and 2003.

The beneficiary's U.S. Internal Revenue Service (IRS) Form 1040 tax returns stated the following:

- In 2001, no taxable income (wages) stated, and, gross receipts (Schedule C as a consultant) of \$54,000.00.<sup>3</sup>
- In 2002, taxable income (wages) of \$5,400.00 and \$48,000.00 (Schedule C) as business compensation.
- In 2003, taxable income of \$14,168.00 and \$42,000.00 as business compensation.

The wage and compensation figures stated on the beneficiary's personal tax returns could not be verified except where totals match W-2 or Form MISC-1099 issued by the petitioner or another employer.

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<sup>1</sup> Two W-2 statements with different wage amounts were issued to the beneficiary on 2002.

<sup>2</sup> This amount conflicts with the beneficiary's Schedule C business compensation amount stated in 2002.

<sup>3</sup> There is no Form 1099 submitted in the record of proceeding to identify the payer for the compensation the beneficiary is declaring on his Form 1040 tax return.

The petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports stated wage paid the beneficiary as follows:

- For the calendar quarter ending March 31, 2002, \$0.00.
- For the calendar quarter ending June 30, 2002, \$2,400.00.
- For the calendar quarter ending September 30, 2002, \$3,000.00.
- For the calendar quarter ending December 31, 2002, \$0.00.
- For the calendar quarter ending June 30, 2003, \$1,265.00.
- For the calendar quarter ending September 30, 2003, \$6,578.00.
- For the calendar quarter ending December 31, 2003, \$6,325.00.
- For the calendar quarter ending March 31, 2004, \$8,349.00.

The record of proceedings contains a Social Security Administration wage and compensation history for years 2001 and 2002. The beneficiary reported self-employment compensation of \$13,421.00 in 2001; and, in 2002, \$12,490.00 self-employment compensation and \$4,200.00 in wages. These amounts declared to the Social Security Administration conflict with the above statements, and they were not explained by either the petitioner or the beneficiary. 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. 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, 591-592 (BIA 1988).

Alternatively, in determining the petitioner's ability to pay the proffered wage, CIS will examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, (9th Cir. 1984) ); *see also Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F.Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held that the Service had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. *Supra* at 1084. The court specifically rejected the argument that CIS should have considered income before expenses were paid rather than net income. Finally, no precedent exists that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh, Supra* at 537. *See also Elatos Restaurant Corp. v. Sava, Supra* at 1054.

The tax returns<sup>4</sup> demonstrated the following financial information concerning the petitioner's ability to pay the proffered wage of \$52,624.00 per year from the priority date of March 16, 2001:<sup>5</sup>

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<sup>4</sup>The petitioner's fiscal year is calculated from May 1, 2000 and April 30, 2001. Therefore the year 2000 tax return is probative.

<sup>5</sup> Counsel states in his cover letter dated April 1, 2004, to the director's fourth request for evidence dated January 9, 2004, that he is attaching the petitioner's 2003 U.S. federal tax return as evidence. However no 2003 return is found in the record of proceedings. There is a letter from petitioner's accountant dated October 7, 2004 that "Aable's 2003 income tax return has not been completed...."

<sup>5</sup> IRS Form 1120, Line 28.

- In 2000, the Form 1120 stated taxable income<sup>6</sup> of \$7,105.00.
- In 2000, the Form 1120X stated taxable income of \$8,487.00.
- In 2001, the signed Form 1120-A stated taxable income of \$9,852.00.
- In 2001, the unsigned Form 1120-A stated taxable income of \$53,947.00.
- In 2001, the Form 1120X stated taxable income of \$53,947.00.
- In 2002, the Form 1120-A stated taxable income<sup>7</sup> of \$10,760.00.

Based upon the above tax returns submitted, the petitioner did not demonstrate it had taxable income to pay the proffered wage from March 16, 2001 to 2002. Concerning the introduction of three tax returns for 2001, when the record of proceeding contains differing tax returns, only U.S. Internal Revenue stamped or certified returns will suffice to demonstrate that one, or all of the returns are credible. *Matter of Ho, Supra*. There is a letter dated October 7, 2004, from petitioner's accountant in the record of proceeding that states filed a Form 1120X to reflect different data for tax year 2001.

Therefore, for tax years 2000 through 2002, the petitioner had insufficient taxable income according to the probative evidence mentioned above to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets:

- The petitioner paid the beneficiary \$5,400.00 and \$49,000.00 in 2002. In 2002, the Form 1120-A stated taxable income of \$10,760.00. The proffered wage is \$52,624.00 per year. The sum of these three figures is more than the proffered wage.

The petitioner's net current assets can be considered in the determination of the ability to pay the proffered wage especially when there is a failure of the petitioner to demonstrate that it has taxable income to pay the proffered wage. In the subject case, as set forth above, the petitioner did not have taxable income sufficient to pay the proffered wage at any time between the years 2000 and 2002 for which the petitioner's tax returns are offered for evidence. Evidence submitted for tax year 2001 is conflicting and for the reasons given above cannot be regarded as probative and reliable.

CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage. Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>8</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. That schedule is included with, as in this instance, the petitioner's filing of Form 1120 federal tax return. The petitioner's year-end current liabilities are shown on lines 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage. The petitioner's year-end current liabilities are shown on Part III of the Form 1120-A return.

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<sup>6</sup> IRS Form 1120, Line 28.

<sup>7</sup> IRS Form 1120-A, Line 24.

<sup>8</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Examining the Form 1120-A U.S. Income Tax Returns submitted by the petitioner, Schedule L found in each of those returns indicates the following:

- In 2000, petitioner's Form 1120<sup>9</sup> return stated current assets of \$13,772.00 and \$0.00 in current liabilities. Therefore, the petitioner had \$13,772.00 in net current assets. Since the proffered wage is \$52,624.00 per year, this sum is less than the proffered wage.
- In 2001, petitioner's unsigned Form 1120-A return stated current assets of \$1,357.00 and \$0.00 in current liabilities. Therefore, the petitioner had \$1,357.00 in net current assets. Since the proffered wage is \$52,624.00 per year, this sum is less than the proffered wage.
- In 2001, petitioner's signed Form 1120-A return stated current assets of \$3,287.00 and \$356.00 in current liabilities. Therefore, the petitioner had \$2,931.00 in net current assets. Since the proffered wage is \$52,624.00 per year, this sum is less than the proffered wage.
- In 2002, petitioner's Form 1120-A return, Part III was submitted in blank.

Therefore, for the period March 16, 2001 through 2002 from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the ability to pay the beneficiary the proffered wage at the time of filing through an examination of its net current assets.

Counsel has submitted a compiled financial statement dated March 31, 2002 for the business to show the ability to pay the proffered wage. Counsel cites no legal precedent for the admissibility of the compiled financial statement, and, according to regulation,<sup>10</sup> copies of annual reports, federal tax returns, or audited financial statements are the means by which petitioner's ability to pay is determined.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. An audit is conducted in accordance with generally accepted auditing standards to obtain reasonable assurance whether the financial statements of the business are free of material misstatement. Evidence of the ability to pay shall be, *inter alia*, in the form of copies of audited financial statements with a declaration of the maker indicating their manner of preparation and certifying the financial statements to be audited. Non-audited financials have limited evidentiary weight in Service deliberations in these matters. The statements presented were not audited.

The accounting service that prepared the financial statement in a cover letter dated September 25, 2002 to that report qualified the financial statement as follows:

Management has elected to omit substantially all the disclosures ordinarily included in the financial statements; they might influence the user's conclusions about the company's assets, liabilities, capital, revenues, and expenses. Accordingly, these financial statements are not designated for those who are not informed about such matters.

With important data withheld by petitioner, and, the accountants curtailed to produce only a compiled report, the statement can have little probative value in the determination of the ability to pay the proffered wage.

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<sup>9</sup> Because the petitioner's fiscal year is calculated from May 1, 2000 and April 30, 2001, the year 2000 tax return is probative of the ability to pay the proffered wage.

<sup>10</sup> 8 C.F.R. § 204.5(g)(2).

There is no evidence the petitioner paid the beneficiary wage or compensation in year 2001. There is a lack of clear and irrefutable evidence for tax year 2001 to show the petitioner's taxable income. There is a conflict between wages and compensation reported to the U.S. Social Security Administration for the beneficiary for years 2001 and 2002.

A second issue to be discussed below is whether or not the petitioner had established that the beneficiary has the requisite experience as stated on the labor certification petition. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is March 3, 2000. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa. Citizenship & 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, item 14, sets forth the minimum education, training, and experience that an applicant must have for the position of an import/export manager.

In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education .....
  - Grade School C
  - High School C
  - College N/A
  - College Degree Required N/A
  - Major Field of Study Blank
  - Training .....
    - No. of Years/Months 0
    - Type of Training N/A
  - Experience .....
    - Years 2
    - Related Occupation .....
      - Years 0

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15, set s forth work experience for the position of an import/export manager:

15. WORK EXPERIENCE

(a)

NAME AND ADDRESS OF EMPLOYER  
 6166 Packard Street, Los Angeles CA 90035  
 NAME OF JOB

Import/Export Manager  
DATE STARTED  
Month – 5 [May] Day 1 Year 1998  
DATE LEFT  
Month – Present [03/05/2001]  
KIND OF BUSINESS  
Import/Export  
DESCRIBE IN DETAIL DUTIES...  
Direct foreign sales and service ...  
NO. OF HOURS PER WEEK  
40

(b)

NAME AND ADDRESS OF EMPLOYER  
[REDACTED]  
NAME OF JOB  
Import/Export Manager  
DATE STARTED<sup>11</sup>  
Month – 12 [December] Day 15 Year 1988  
DATE LEFT  
Month – 5 [May] Day 31 Year 1995  
KIND OF BUSINESS  
Import/Export  
DESCRIBE IN DETAIL DUTIES...  
Direct foreign sales and service ...  
NO. OF HOURS PER WEEK  
40

As evidence of the beneficiary's work experience, an employment verification letter was submitted from [REDACTED] vice president of the New World Trading Company<sup>12</sup> as dated May 1, 1995. It is on that company's letterhead. According to the letter, the beneficiary worked as 'Import and Export' manager from December 1998 to May 1995.

An employment verification letter was submitted from [REDACTED] dated April 5, 2003, who states that he worked in the New World Trading Company from July 1987 to May 1995 just before its closing in June of 1995. Mr. [REDACTED] does not state his work capacity or job title in the company. He states that the beneficiary worked from December 1988 to May 1995 and describes in detail the beneficiary's job duties.

An employment verification letter was submitted from [REDACTED] dated August 15, 2003, on the letterhead of [REDACTED] who states that he worked in the New World Trading Company from July 1987 to May 1990. Again, he describes the beneficiary's job duties as a manager of Import and Export in detail. In this letter, Mr. [REDACTED] identifies himself as Administration Manager of New World for Trading.

<sup>11</sup> The information as stated is as amended by the petitioner prior to certification of the Alien Employment Application.

<sup>12</sup> According to a certificate from the Egyptian Ministry of Economic and Commerce Foreign Trade, under name of importer, it identifies the beneficiary as doing business as [REDACTED] whose commercial name is New World for Import, Export and Commercial Agencies.

An employment verification letter was submitted from the petitioner, [REDACTED] as dated December 5, 2003, that states that he was a partner with the beneficiary in the New World Trading Company, and, he describes the beneficiary's duties with this partnership.

As supplemental evidence, the petitioner has submitted a document from the Egyptian Ministry of Finance; the beneficentation tax identification card; a registration card issued by the City of Cairo; and, a copy of the beneficiary's passport.

There exist inconsistencies in the averments and information provided by the beneficiary, and his former associate as reported above. [REDACTED] states he was a partner with the beneficiary in the New World Trading Company, while the beneficiary stated the beneficiary was a manager. [REDACTED] said he worked at New World Trading Company to May 1995 or May 1990. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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 591-592 also states: "It is incumbent on 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 pointing to where the truth, in fact, lies, will not suffice."

When the record of proceeding contains inconsistencies the petitioner needs to submit competent objective proof to resolve the inconsistencies. *Matter of HO, Supra*. The AAO concurs with the director's determination that no such evidence supports the petitioner's claims that the beneficiary has two years of experience as an import/export manager. No document such as a letter of credit, bill of lading, paid invoice, ledger book or pay stub contained in the record of proceeding establishes that the beneficiary was employed for two years in an employment capacity with duties similar to the duties of the proffered position. Without supporting evidence, the AAO does not find the evidence of the beneficiary's work experience as an import/export manager from the beneficiary's associate and his former partner, now the petitioner, to be credible. As stated above, and, as found in the record of proceedings, the employment letters of experience submitted by [REDACTED] were inconsistent. There is no prior experience or training as an import/export manager found in the record of proceeding.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wages beginning on the priority date. The evidence submitted does not demonstrate credibly that the beneficiary had the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

Counsel's contentions cannot be concluded to outweigh the evidence presented in the corporate tax returns as submitted by petitioner that by any test shows that the petitioner has not demonstrated its ability to pay the proffered wage from the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor.

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 not met that burden.

**ORDER:** The appeal is dismissed.