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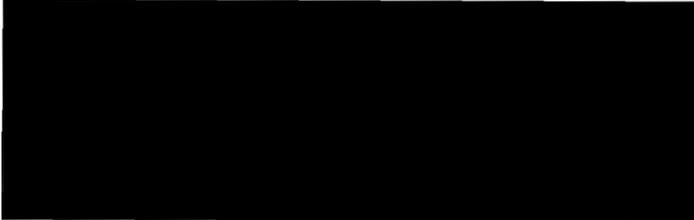
U.S. Department of Homeland Security
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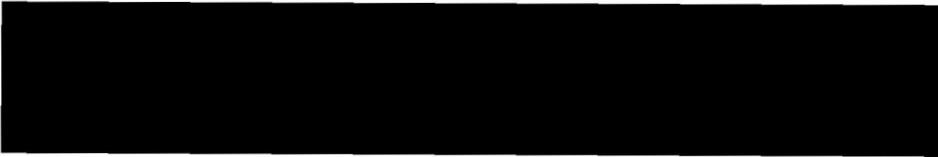
FILE: LIN-04-044-50539 Office: NEBRASKA SERVICE CENTER Date: **SEP 07 2006**

IN RE: Petitioner:
Beneficiary:



PETITION: 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, Chief
Administrative Appeals Office

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

The petitioner is a health care facility for handicapped children. It seeks to employ the beneficiary permanently in the United States as a disability recreational therapist. A photocopy of a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. No original ETA 750 is found in the record. The director determined that the petitioner had not established that the beneficiary had the training required to qualify as a skilled worker in the occupation of disability recreational therapist, and denied the petition accordingly.

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 or seasonal nature, for which qualified workers are not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Comm. 1977). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is May 28, 2003.

The Form ETA 750 states in blocks 14 and 15 that the position of disability recreational therapist requires an associate degree in any major field of study, or a foreign academic equivalent, or a combination of education and/or work experience in lieu of formal education that has been evaluated to be equivalent to a United States associate's degree. On the Form ETA 750B, signed by the beneficiary on April 29, 2003, the beneficiary did not claim to have worked for the petitioner.

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

Definitions. As used in this part:

Skilled worker means an alien who is capable, at the time of petitioning for this classification, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

The I-140 petition was submitted on December 4, 2003. On the petition, in Part 2, Petition type, the petitioner checked box "e" for "a skilled worker (requiring at least two years of specialized training or experience) or professional." (I-140 petition, Part 5). In Part 5 of the petition, Additional information about the petitioner, the petitioner claimed to have been established in 1975, to currently have "140+" employees, to have a gross annual income of "+\$20 Million," and to have a net annual income of "+[\$]889,000.00." (I-140 petition, Part 5). With the petition, the petitioner submitted supporting evidence.

In an undated decision which CIS electronic records show to have been issued on September 20, 2004, the director determined that the evidence failed to establish that the beneficiary's post-secondary education was relevant to the occupation of *disability recreational therapist*. The director therefore found that the beneficiary did not meet the regulatory definition of skilled worker, and denied the petition.

On appeal, counsel submits a brief and no additional evidence. Counsel also submits copies of three AAO decisions in petitions submitted previously by the petitioner which had been certified by the director to the AAO. Those decisions are not evidentiary documents, but are submitted as legal authority in support of the instant appeal.

Counsel states on appeal that the beneficiary's post secondary education is in the field of nursing and that nursing is one of the fields of study mentioned in the previous AAO decisions as relevant to positions with the petitioner.

Since no new evidence is submitted on appeal, the AAO will evaluate the decision of the director based on the evidence submitted prior to the director's decision.

The record contains a copy of a Bachelor of Science in Nursing degree awarded to the beneficiary on March 21, 1997 by Arellano University, Manila, Philippines, with supporting course transcript. The record also contains a copy of an academic evaluation dated April 8, 2003 by Morningside Evaluations and Consulting, New York, New York, which finds that the beneficiary's degree is the equivalent of a Bachelor of Science in Nursing degree from an accredited institution of higher education in the United States.

Copies of three AAO decisions submitted on appeal discuss the portion of the regulatory definition of skilled worker which states, "Relevant post-secondary education may be considered as training for the purposes of this provision." 8 C.F.R. § 204.5(l)(2). In those previous decisions, the AAO discusses the meaning of the word "relevant" in the foregoing definition and states, "for a beneficiary's post secondary education to be considered it must be logically related and have appreciable probative value as to the capacity of the beneficiary to perform the job duties on the basis of the educational qualifications alone." (AAO decision in LIN-03-110-55083, at 6). The AAO's reasoning was based on the definition of the term "relevant" found in Black's Law Dictionary, a definition which appears to address the meaning of that term as it relates to evidentiary questions. (AAO decision in LIN-03-110-55083, at 6, *quoting* Black's Law Dictionary 1293 (7th ed. 1999)).

Counsel states that the petitioner does not agree with the AAO's interpretation of the regulatory definition of skilled worker. Nonetheless, counsel states that even following the AAO's interpretation, the beneficiary in the instant petition satisfies the regulatory definition. The beneficiary's field of studies was nursing, which counsel states was one of the fields listed by the AAO as clearly relevant to positions with the petitioner.

For purposes of the instant appeal, it is not necessary to decide whether the AAO's reasoning in its prior decisions was a correct interpretation of the regulations and of the Act. None of the three cases submitted by the petitioner has been published as a precedent case. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

Moreover, although none of the three AAO decisions submitted by the petitioner specifically mentions the field of nursing, two of the decisions state that study "in various fields of health care" would be sufficient to qualify as relevant post-secondary education for the position of developmental disability specialist. (AAO decisions in LIN-

03-067-51563, at 8, and in LIN-03-110-55083, at 8). The other AAO decision finds that the beneficiary's education in the field of medicine is sufficient for that occupation. (AAO decision in LIN-03-072-51157, at 7).

The offered position in the instant petition is not developmental disability specialist, but rather disability recreational therapist. Nonetheless, the job duties for the two positions contain many similarities. The position of developmental disability specialist includes the following duties, among others: "To develop and implement a continuous active treatment program for each profoundly mentally and physically handicapped resident to enable each individual to function as independently as possible and prevent skill regression." (AAO decision in LIN-03-110-55083, at 5, *quoting* ETA 750 in that petition). The position of disability recreational therapist includes the following duties, among others: "Organize and direct medically approved recreation program for patients in pediatric mental retardation facility. Direct and organize activities to implement a continuous active treatment program for mentally and physically handicapped resident children to enable each individual to function as independently as possible and prevent skill regression." (ETA 750 in the instant petition, block 13.)

In his decision in the instant petition, the director summarizes the beneficiary's education in the field of nursing, and states that the educational evaluation in the record finds that the beneficiary's degree is the equivalent of a Bachelor of Nursing from an accredited institution of higher education in the United States. However, the director makes no analysis of whether the field of nursing is relevant to the offered position of disability recreational therapist. The director simply states the conclusion that "the beneficiary does not possess the requisite post-secondary education." (Director's decision, September 20, 2004, at 5).

The director erred in failing to consider whether the beneficiary's education was relevant to the offered position. Moreover, the field of nursing is one which is clearly relevant to the offered position of disability recreational therapist. The duties of the offered position involve work with mentally and physically handicapped children, under a medically approved recreation program. Training as a nurse is closely related to those duties. Therefore the beneficiary's education satisfies the regulatory definition of skilled worker.

In addition, the evidence in the record is also sufficient to establish that the beneficiary met all of the requirements stated by the petitioner in blocks 14 and 15 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has established that the beneficiary had a Bachelor of Science in Nursing degree on May 28, 2003, and that the beneficiary's degree was equivalent to a Bachelor of Science in Nursing degree from an accredited institution of higher education in the United States. As noted above, to be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

For the foregoing reasons, the assertions of counsel on appeal are sufficient to overcome the decision of the director concerning the education of the beneficiary.

In his decision, the director did not discuss the petitioner's ability to pay the proffered wage.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient

to pay the annual amount of the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered prima facie proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on April 29, 2003, the beneficiary did not claim to have worked for the petitioner and no other evidence in the record indicates that the beneficiary has been employed by the petitioner.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750). *See also* 8 C.F.R. § 204.5(g)(2).

CIS electronic records show that the petitioner has filed a total of 302 I-140 petitions since 1996. The great majority of those petitions have been filed since 2002. The number of I-140 petitions filed was 4 in 1996, 9 in 1997, 2 in 1998, 5 in 1999, 7 in 2000, 11 in 2001, 56 in 2002, 125 in 2003, 66 in 2004, 5 in 2005, and 12 in 2006, through August 22, 2006.

As noted above, the instant petition was filed on December 4, 2003. During the year 2003 the petitioner filed a total of one hundred twenty five I-140 petitions, including the instant petition.

Even if a petition has been withdrawn by the petitioner, the petitioner has the right to substitute a new beneficiary on an ETA 750 labor certification application by filing a new I-140 petition, supported by a new ETA 750B for the new beneficiary. The ETA 750's underlying any withdrawn petitions remain valid, with the same priority dates. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, Immigration and Naturalization Service, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996); *see* Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 4, § 43.04 (Mathew Bender & Company, Inc. 2004) (available at "LexisNexis" Mathew Bender Online). Therefore the certified ETA 750's underlying any withdrawn petitions retain potential relevance to the petitioner's total proffered wage commitments for a given year. Similarly, for any petitions which have been denied, the underlying approved ETA 750 would remain available for a new I-140 petition for the same beneficiary or for a substituted beneficiary, provided that the reason for the earlier I-140 denial was one which could be cured by a new petition for same beneficiary, or for a substituted beneficiary.

The record in the instant case contains some information about the proffered wages for the beneficiaries of the other petitions submitted by the petitioner. The copies of three previous AAO decisions submitted by counsel on appeal state that the proffered wages to the beneficiaries of those petitions. The proffered wages were \$7.88 per hour in two petitions and \$7.66 per hour in the third petition. The petitioner has submitted no list of

proffered wages for each of the beneficiaries of the other I-140 petitions it has filed. The AAO will therefore use the rate of \$7.66 as the basis for estimating the petitioner's proffered wage commitments to the beneficiaries of the petitioner's other I-140 petitions. An hourly wage of \$7.66 for a 40-hour work week is equivalent to an annual wage of \$15,932.80.

In the year 2003 the petitioner filed one hundred twenty five total petitions, including the instant petition. Therefore, in addition to the instant petition, the petitioner filed one hundred twenty four I-140 petitions that year. At an estimated annual proffered wage level of \$15,932.80 for each beneficiary, one hundred twenty four additional I-140 petitions would result in an additional wage commitment of \$1,975,667.20 by the petitioner in the year 2003. Adding that amount to the proffered wage of \$15,891.20 for the beneficiary of the instant petition produces a total estimated proffered wage commitment of \$1,991,558.40 in the year 2003.

The instant I-140 petition states in Part 5 that the petitioner was formed in 1975 and employs "140+" employees. The regulation at 8 C.F.R. § 204.5(g)(2) states that where a petitioner employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. The language "may accept" in the above regulation indicates that CIS is not required to accept such a statement, but rather may exercise its discretion not to accept such as statement. *See* 8 C.F.R. § 204.5(g)(2).

The record contains a copy of a letter from a director of the petitioner which states as follows:

I, [REDACTED] do hereby certify that I am a Director of [REDACTED], a corporation authorized to do business under the laws of the State of Illinois.

The corporation is now and will be for the expected future be able [sic] to pay the wages offered to our employees.

The corporation employs more than 140 people at our Champaign location.

For the fiscal year which ended June 30, 2003, financial results indicate that the corporation had gross revenues in excess of \$26 million and net revenues in excess of \$1,225,000."

I hereby certify that the information provided herein, as of June 30, 2003 is true, accurate and complete in every material respect.

(Letter from [REDACTED] Director, June 30, 2003).

The letter from [REDACTED] does not state that Mr. [REDACTED] is a financial officer of the petitioner, as required by the regulation at 8 C.F.R. § 204.5(g)(2). Moreover, the content of that letter is not sufficient to establish the petitioner's ability to pay the proffered wage during the relevant time period. The letter states that the petitioner's net revenues are in excess of \$1,225,000.00 per year. That amount of net revenues is less than the estimated \$1,991,558.40 in proffered wage commitments which the petitioner has made in the one hundred and twenty five I-140 petitions which it submitted in 2003, including the instant petition.

As another means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return for a given year, 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. Tex. 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.*, the court held that the Immigration and Naturalization Service, now CIS, 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. 623 F. Supp. at 1084.

The evidence indicates that the petitioner is a nonprofit corporation. The corporate name of the petitioner is [REDACTED]. The record contains a copy of an annual corporation report of the petitioner dated May 1, 2003 stating that it is a nonprofit corporation organized under the laws of the State of Illinois. A document in the record titled Organizational Overview states that the petitioner is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. No copies of corporate income tax returns of the petitioner have been submitted for the record nor have any copies of Form 990 Return of Organization Exempt from Income Tax of the petitioner been submitted for the record. The record therefore provides no basis for determining the net income of the petitioner based on tax return information.

The record contains copies of audited combined financial statements of the petitioner, and of another corporation, [REDACTED].

The combined financial statements are for the years ended June 30, 2001 and June 30, 2002. The audit report accompanying the financial statements is dated September 17, 2002. That date suggests that the audit report for the following year should have been available by about that date in 2003. The instant I-140 petition was filed on December 4, 2003, and no request for evidence was issued by the director. The record before the director therefore closed on December 4, 2003 with the filing of the I-140 petition and its supporting evidence. Nonetheless, no financial statement for the year ending June 30, 2003 was submitted for the record.

According to the Organization Overview mentioned above, the petitioner and [REDACTED], are separate corporations, but have a common board of directors. The petitioner is incorporated under the laws of the State of Illinois and it owns and operates four skilled nursing-pediatrics facilities in Illinois. One of those facilities is [REDACTED] which is the trade name under which the instant petition was filed. The other corporation, [REDACTED] is incorporated under the laws of the State of Indiana. It owns and operates three skilled nursing geriatric facilities in Indiana and it also has a lease for the operation of another healthcare facility in Indiana.

Most portions of the combined financial statements for the years ended June 30, 2001 and June 30, 2002 present combined financial information for the petitioner and for [REDACTED], with no separate figures for each corporation. However, for the year ended June 30, 2002 income and expenses statements and balance sheets are stated separately for each corporation.

The income and expense statement of the petitioner shows the information in the following table.

Year ending	Net income	Wage increases needed to pay the proffered wage	Surplus or deficit
6/30/02	\$298,998.00	not applicable	not applicable
6/30/03	not submitted	\$1,991,558.40*	no information

* The estimated total proffered wage commitments of the petitioner for the one hundred twenty five petitions submitted in 2003, including the instant petition.

The above information is insufficient to establish the petitioner's ability to pay the proffered wage in the year 2003, which is the only year at issue in the instant petition.

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are a corporate taxpayer's current assets less its current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. If a corporation's net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The net current assets are expected to be converted to cash as the proffered wage becomes due. Thus, the difference between current assets and current liabilities is the net current assets figure, which if greater than the proffered wage, evidences the petitioner's ability to pay.

Calculations based on the balance sheet information for the petitioner for the year ended June 30, 2002 yield the amount for year-end net current assets as shown in the following table.

Year ending	Net current assets	Wage increase needed to pay the proffered wage	Surplus or deficit
6/30/02	\$4,544,905.00	not applicable	not applicable
6/30/03	not submitted	\$1,991,558.40*	no information

* The estimated total proffered wage commitments of the petitioner for the one hundred twenty five petitions submitted in 2003, including the instant petition.

The above information shows substantial net current assets as of June 30, 2002. That figure is equivalent in accounting terms to the figure for the petitioner's net current assets for the beginning of its following fiscal year, from July 1, 2003 through June 30, 2003. The following fiscal year includes the priority date of May 28, 2003. The figure of \$4,544,905.00 is significantly greater than the estimated total proffered wage commitments of the petitioner for 2003 of \$1,991,558.40. However, the absence of financial statements for the fiscal year ended June 30, 2003 prevents an analysis of whether the petitioner's net current assets remained that strong throughout the year. The I-140 petition was not submitted until December 4, 2003. As of that date, the petitioner's audited financial statements for the year ending June 30, 2003 should have been available. The record contains no explanation for the absence of those statements.

The audited financial statements therefore fail to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

The record also contains copies of unaudited combined financial statements for the years ended June 30, 2002 and June 30, 2003. Unaudited financial statements are not persuasive evidence. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and of its ability to pay the proffered wage, those statements must be audited. Unaudited statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence of a petitioner's ability to pay the proffered wage. Moreover, the unaudited combined financial statements do not present **any information separately for the petitioner, but rather present only combined figures for the petitioner and for [REDACTED]**. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). In the case of a nonprofit corporation, the fact that the members of its board of directors are also the members of the board of directors of another nonprofit corporation does not affect the independent legal status of either corporation. Nothing in the governing regulation at 8 C.F.R. § 204.5 allows CIS to consider the assets or resources of individuals or entities that have no legal obligation to pay the wage. *See Sitar Restaurant v. Ashcroft*, 2003 WL 22203713 at *3 (D. Mass. Sept. 18, 2003).

In his decision, the director did not address the issue of the petitioner's ability to pay the proffered wage. For that reason, the instant petition must be remanded to the director to determine whether the evidence establishes the petitioner's ability to pay the proffered wage during the relevant period, as well as to pay the proffered wages to the beneficiaries of the other petitions filed by the same petitioner in 2003. On remand the director may request updated financial information from the petitioner and may also request information on the number of any alternative petitions filed for beneficiaries in different preference categories. The petitioner is required to establish its ability to pay the proffered wage for each offered job for which a petition was filed during the year 2003. If the same job was the subject of two or more alternative petitions that year, the proffered wage for that job should be counted only once when calculating the petitioner's total wage commitments.

Another issue which must be addressed on remand by the director concerns the original ETA 750. As noted above, no original ETA 750 is found in the record. The record on appeal is a record of proceeding and it does not include the entire A-file of the beneficiary. In a letter in the record dated December 1, 2003, counsel states that the petitioner has previously filed an I-140 petition with receipt number LIN-04-008-51247 for the same beneficiary in the unskilled preference category, which is the "Other workers" category of section 203(b)(3)(A)(iii) of the Act, defined in the regulation at 8 C.F.R. § 204.5(l)(2). Presumably the original certified ETA 750 was submitted in support of that prior I-140 on behalf of the beneficiary and will be found in the record of proceeding in that petition. An original certified ETA 750 is required for approval of the instant I-140 petition in order to assure that the same ETA 750 is not used as the basis for another I-140 petition on behalf of another beneficiary as a substituted beneficiary.

For the foregoing reasons, a second reason for a remand to the director is to ascertain whether an original certified ETA 750 has been filed, and if so, to assure that the original ETA 750 will be used in support of the instant I-140 petition and no other I-140 petition.

In summary, the decision of the director concerning the education of the beneficiary is withdrawn. The petition is remanded to the director to evaluate of the petitioner's ability to pay the proffered wage and to consider matters concerning the original ETA 750, as discussed above.

ORDER: The petition is remanded to the director for actions consistent with the above decision.