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EAC-04-220-52031

Office: VERMONT SERVICE CENTER

Date: **AUG 01 2007**

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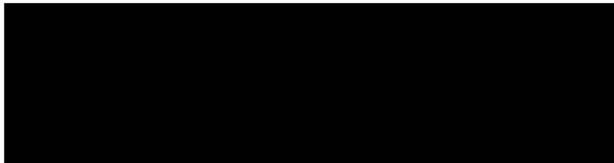
Petitioner:



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, Chief  
Administrative Appeals Office

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

The petitioner is a property management company. It seeks to employ the beneficiary permanently in the United States as a heating and air conditioning installer servicer (mechanic). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the record did not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, 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 February 3, 2006 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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 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 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. *See* 8 C.F.R. § 204.5(d). 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 received on May 8, 2002.<sup>1</sup> The proffered wage as stated on the Form ETA 750 is \$21.06 per hour (\$38,329.20 per year<sup>2</sup>). The Form ETA 750 states that the position requires two years of experience in the proffered position.

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<sup>1</sup> Counsel claims that the priority date in the instant case should be April 20, 2001 and that the May 8, 2002 priority date was assigned by the DOL Philadelphia Offices upon receipt of the RIR conversion request.

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<sup>3</sup>. Relevant evidence in the record includes the petitioner's Form 1065 U.S. Return of Partnership Income for 2001, 2002 and 2004, bank statements for the petitioner's checking accounts for some months from December 2001 to November 2005, the petitioner's payroll record, the beneficiary's W-2 form and cancelled checks for 2005, and documentation pertinent to the petitioner's line of credit and shareholders' personal line of equity credit. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner is structured as a general partnership. On the petition, the petitioner claimed to have been established in 1995, and to currently employ 3 workers. The petitioner did not provide information regarding its gross annual income and net annual income on the petition. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B signed by the beneficiary on April 13, 2001, the beneficiary did not claim to have worked for the petitioner.

On appeal, counsel asserts that although the petitioner reported \$0 ordinary income on line 22 of the Form 1065 Schedule M-2 line 3, Forms 1099 issued to the petitioner, bank statements of the petitioner's accounts and full payment of the proffered wage to the beneficiary in 2005 have demonstrated that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date to the present.

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, Citizenship and Immigration Services (CIS) requires the petitioner to demonstrate financial resources sufficient to pay 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).

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Although counsel's assertion is supported with the receipt stamp of April 20, 2001 by office of employment Security, counsel does not submit any other supporting documents such as the DOL office notice with the priority date of April 20, 2001. In addition, the DOL final determination indicates May 8, 2002 as the date of acceptance for processing and the Form ETA 750A also shows that the local DOL office received the form on May 8, 2003. Therefore, the AAO will consider May 8, 2002 as the priority date of this case.

<sup>2</sup> The Form ETA 750 shows that the beneficiary will work 35 hours per week and be paid at the rate of \$21.06 per hour, and therefore, the annual proffered wage is \$38,329.20. The AAO notes that in her February 3, 2006 denial decision the director mistakenly calculated the annual salary as \$43,804.80 based on working 40 hours a week.

<sup>3</sup> 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).

In determining the petitioner's ability to pay the proffered wage during a given period, 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. In the instant case, the petitioner submitted the petitioner's payroll record, the beneficiary's W-2 form and cancelled checks for 2005. These documents show that the petitioner paid the beneficiary at the rate of \$21.06, totaling \$35,380.80 in 2005, which is \$2,948.40 less than the proffered wage that year. Counsel claimed that the shortage of \$2,948.40 was from the beneficiary's 4 weeks unpaid leave, that the petitioner demonstrated that it paid the beneficiary the full proffered wage in 2005, and therefore, the petitioner established its ability to pay the proffered wage through examination of current full payment of the proffered wage per CIS instructions. The AAO concurs with counsel's assertion that the petitioner paid the full proffered wage to the beneficiary in 2005, however, the petitioner has not established its ability to pay the proffered wage from the priority date to 2004. The regulation at 8 C.F.R. § 204.5(g)(2) requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is May 8, 2002. Thus, the petitioner must show its ability to pay the proffered wage not only in 2005, when counsel claims it actually began paying the proffered wage rate, but it must also show its continuing ability to pay the proffered wage in 2002 through 2004. Demonstrating that the petitioner is paying the proffered wage in a specific year may suffice to show the petitioner's ability to pay for that year, but the petitioner must still demonstrate its ability to pay for the rest of the pertinent period of time. The record does not contain W-2 forms, 1099 forms or other regulatory-prescribed evidence showing that the petitioner paid the beneficiary in 2002 through 2004. Therefore, the petitioner failed to establish that it paid the beneficiary the proffered wage for these relevant years. The petitioner is obligated to demonstrate that it could pay the proffered wage of \$38,329.20 in 2002 through 2004.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next 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). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, 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. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net*

*income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

The evidence indicates that the petitioner is a partnership. The record contains copies of the petitioner's Form 1065 U.S. Return of Partnership Income for 2001<sup>4</sup>, 2002 and 2004. According to the tax returns, the petitioner's fiscal year is based on a calendar year. The petitioner's 2002 and 2004 tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of \$38,329.20 per year from the priority date:

- In 2002, the Form 1065 stated net income<sup>5</sup> of \$54,292.
- In 2004, the Form 1065 stated net income of \$18,695.

Therefore, for the year 2002 the petitioner had sufficient net income to pay the proffered wage while the petitioner's net income was not sufficient to pay the beneficiary the proffered wage in 2004.

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's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, 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>6</sup> A partnership's year-end current assets are shown on Schedule L to the Form 1065, lines 1 through 6. Its year-

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<sup>4</sup> However, the petitioner's 2001 tax return is not necessarily dispositive since as discussed above the priority date is considered to be May 8, 2002 instead of April 20, 2001 as counsel claims. Therefore, the AAO will review the petitioner's tax returns for 2002 and 2004 in determining the petitioner's ability to pay the proffered wage.

<sup>5</sup> Where a partnership's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on Line 22 of page one of the petitioner's Form 1065. The instructions on the Form 1065, U.S. Partnership Income, state on page one, "Caution, Include only trade or business income and expenses on lines 1a through 22." Where a partnership has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K (pages 3-4 of Form 1065) is a summary schedule of all the partners' shares of the partnership's income, credits, deductions, etc. The net income is reported on Analysis of Net Income (Loss) line 1 Net income (loss) on page 4 of Form 1065. See Internal Revenue Service, Instructions for Form 1065, at <http://www.irs.gov/pub/irs-pdf/i1065.pdf>. In the instant case, the net income figures for 2002 and 2004 take into account the rental income (loss) noted by counsel in his appeal brief.

<sup>6</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 accounts

end current liabilities are shown on lines 15 through 17. If the total of a partnership's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

Calculation based on the Schedule L's attached to the petitioner's tax return for 2004 yields that the petitioner had current assets of \$1,964, current liabilities of \$0, thus, net current assets of \$1,964 in 2004. Therefore, the petitioner did not have sufficient net current assets to pay the proffered wage of \$38,329.20 per year for the year 2004.

The record before the director closed on July 26, 2004 with the receipt by the director of the petitioner's initial submission of the petition. As of that date the petitioner's federal tax return for 2003 should have been available. However, the petitioner did not submit its 2003 tax return, nor did counsel explain why the tax return was not submitted. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Counsel submitted 1099 forms issued to the petitioner in 2003 claiming that the petitioner had rental income of \$35,191 that year. However, the tax return would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. The income reflected on 1099 forms does not account for the petitioner's business expenses. Therefore, the AAO cannot determine the petitioner's net income in 2003. The petitioner failed to establish its ability to pay the proffered wage in 2003 because it failed to submit its tax return or other regulatory-prescribed evidence.

Therefore, 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 continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, its net income or its net current assets in 2003 and 2004.

The record contains bank statements of the petitioner's checking accounts covering certain months during a period from December 2001 to November 2005. Counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that was considered in determining the petitioner's net current assets.

Counsel asserts that the petitioner has funds available in credit lines which are available to pay the proffered wage to the beneficiary from the date of filing till present. To support his assertion, counsel submitted the petitioner's line of credit account statement for February 2002 showing that the petitioner had maximum line of credit of \$25,000 with available credit of \$24,109. In calculating the ability to pay the proffered salary, CIS will not augment the petitioner's net income or net current assets by adding in the corporation's credit

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payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

limits, bank lines, or lines of credit. A “bank line” or “line of credit” is a bank’s unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. *See Barron’s Dictionary of Finance and Investment Terms*, 45 (1998).

Since the line of credit is a “commitment to loan” and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner’s existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the corporation’s net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, CIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm’s liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, CIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

The record shows that the petitioner is structured as a general partnership with two general partners, [REDACTED] and [REDACTED], each owning 50 percent of the partnership interests. A general partner is personally liable for the partnership’s total liabilities. As such, a general partner’s personal assets may be utilized to show the ability to pay the proffered wage. Therefore, CIS will consider the general partners’ income and their liquefiable assets and personal liabilities as part of the petitioner’s ability to pay. In the instant case, the record of proceeding does not contain any documents showing the general partners’ liquid assets, such as cash balances in accounts of savings, money market, certificates of deposits showing extra available funds for the general partners to pay the proffered wage and/or personal expenses. However, on appeal counsel claims that general partners’ personal lines of credit provide the petitioner the ability to pay the proffered wage. Counsel submits letters from [REDACTED] and [REDACTED] claiming that they had in 2001 and still have personal lines of credit of \$57,000 and \$130,000 respectively to pay the proffered wage. The record also contains bank statements showing that [REDACTED] had \$32,174 available credit on a credit limit of \$57,6000 as of February 11, 2005 and that [REDACTED] had available credit of \$135,000 as of September 30, 2003. However, evidence submitted has not established that the unused funds from the line of credit were available to pay the proffered wage at the ends of the years 2003 and 2004. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, a general partner’s personal expenses and liabilities must also be examined in order to make a determination that his or her assets are truly available to pay the proffered wage. The record of proceeding does not contain enough information regarding the general partner’s personal expenses. As such, the petitioner has not demonstrated that the general partners’ assets may be utilized to pay the proffered wage and it is not clear whether the general

partners had available funds sufficient to pay the proffered wage and the general partners' living expenses at the end of each year 2003 and 2004.

Counsel submits two pages of Vermont Service Center (VSC)'s Written Answers to American Immigration Lawyers Association (AILA)'s Liaison Questions (3/4/03) and ISD Liaison Minutes (6/27/02) from AILA InfoNet. Counsel's reliance on the AILA minutes is misplaced. Counsel does not provide a published citation relating to the use of total assets or depreciation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS), formerly the Service or INS, are binding on all CIS 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).

Counsel submits a copy of *Ranchito Coletero*, 2002-INA-104 (2004 BALCA). Counsel does not state why he submits this case and how DOL Board of Alien Labor Certification Appeals (BALCA) precedent is binding on the AAO. 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, BALCA 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).

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the Department of Labor.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified an additional ground of ineligibility and will discuss whether or not the petitioner has demonstrated with regulatory-prescribed evidence that the beneficiary possessed the requisite two years of experience in the job offered prior to the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

To determine whether a beneficiary is eligible for an employment based immigrant visa, 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 mechanic. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |                    |         |
|-----|--------------------|---------|
| 14. | Experience         |         |
|     | Job Offered        | 2 years |
|     | Related Occupation | Blank   |

The duties of the proffered job are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 13, 2001 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, he represented that he has been unemployed since October 1998. Prior to that, he represented that he worked as a full-time (working 40 hours a week) "Mechanic" for "Chugurety" in Tbilisi, Georgia from 1994 to 1998. He did not provide any additional information concerning his employment background on that form.

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) of 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.

In corroboration of the Form ETA-750B and the regulation quoted above, the petitioner provided a reference letter from the beneficiary's former employer. This letter was dated February 10, 2001, from Housing Utility Limited Company "Service Center "Chugurety" of Chugurety district of Tbilisi city with official seal affixed and signed by the head of the company. This letter stated concerning the beneficiary's work experience in pertinent part that:

According to the work record card [the beneficiary] worked in Department of Building since 1994 to October of 1998. He produced all kinds of internal works including install, inspect, repair, tune and maintain functional parts of machinery equipment, using hand tools, power tools, electronic equipment, testing devices, as well as operate equipment to test it functioning.

The experience does not verify the beneficiary's full time employment and does not indicate the starting month of the beneficiary's employment. Without the starting date, it is not clear whether or not the beneficiary had the two full time years of qualifying experience as required for the proffered position if he worked on part-time basis. The record of proceeding does not contain any other evidence to support the beneficiary's qualifications. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered for the proffered position as required by the ETA 750 with the Chugurety letter.

Therefore, the petitioner did not establish with regulatory-prescribed evidence the beneficiary's prior at least two years of experience as a full time mechanic, and further failed to establish that the beneficiary is qualified for the proffered position.

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.

**ORDER:** The appeal is dismissed.