U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC-04-069-51515 Office: CALIFORNIA SERVICE CENTER Date: AUG 2 3 2007

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center ("director") denied the immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office ("AAO"). The appeal will be dismissed.

The petitioner is in the business of construction, and seeks to employ the beneficiary permanently in the United States as a carpenter ("Finish Carpenter"). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's October 20, 2005 decision, the case was denied as the director concluded that the petitioner would not employ the beneficiary as a permanent full-time employee in accordance with the certified ETA 750.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

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.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2), and 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. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b).

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 ("DOL"). *See* 8 CFR § 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).

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

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on September 17, 2001. The proffered wage as stated on the Form ETA 750 is $26.75 per hour, 40 hours per week, which is equivalent to $55,640 per year. The labor certification was approved on July 11, 2003. The petitioner filed an I-140 Petition for the beneficiary on January 13, 2004. The petitioner listed the following information on the I-140 Petition: established: February 1, 2001; gross annual income: $555,817; net annual income: not listed; and current number of employees: 4.

As the petition initially filed did not establish the beneficiary's eligibility for the benefit sought, Citizenship and Immigration Services ("CIS") arranged for an interview and instructed the petitioner to bring along more specific evidence to establish eligibility for the benefit sought. On August 16, 2005, the petitioner and the beneficiary were interviewed at the CIS Santa Ana, California District Office. Based on the interview and information obtained at that interview, the director concluded that the petitioner did not intend to employ the beneficiary full-time in accordance with the terms of the certified ETA 750. Specifically, the decision provided:

> Evidence in the record indicates that the beneficiary entered the United States as a Crewman in C-1 status, on November 18, 1995, under an assumed name and remained in the country till the present. The beneficiary never worked for the petitioner, nor as a carpenter in the U.S.
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> The petitioner, in support of his statements provided [a] real estate broker license and states that he does not have [a] contractor's license. The petitioner further states that he byes [sic] homes "fixer uppers," rehabilitates them and sells them. The petitioner further states that the beneficiary's proposed employment is intended to be for the petitioner's subcontractors such as De Guzman Company, Amanlulu [sic] General Contractor and other contractors picked from [the] Yellow Pages. Therefore, the petitioner does not have contractor's license to engage in contractor's work, and the beneficiary would not be employed by the petitioner, but for various contractors who perform periodic work for the petitioner on an as needed bases [sic]. Further, the petitioner submitted IRS Tax Returns, EDD Quarterly Wage and Withholding Report, showing that he owns a viable real estate agency. Employees listed in EDD Forms working for the petitioner are clerks, programmers, sales people and managers. There are no employees at Inex Home Improvement Company performing construction work. The evidence presented does not meet the requirement of full-time employment.

The director denied the petition on October 20, 2005. The petitioner appealed and the matter is now before the AAO.

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).

CIS must look to the job offer portion of the labor certification to determine the required terms of, and 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). 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, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. *See* 20 C.F.R. § 656.30(c)(2).

On the Form ETA 750A, the "job offer" states that the position requires four years of experience[2] in the job offered, as a finish carpenter with duties including:

> Specialize in finish carpentry such as installing interior and exterior trim, build stairs, lay hardwood floors using carpenter's tools and power tools and conforming to local building codes. Study blueprints, sketches or building plans for information pertaining to type of material required. Select specified type of lumber or other materials; prepare layout, using rule, framing square, and calipers; mark cutting and assembly lines on materials using pencil, chalk and marking gauge; shape materials to prescribed measurements using saws, chisels and planes; assemble, cut and shape materials and fasten them together with nails, dowel pins or glue; verify trueness of structures and lay subfloors with building paper to keep out moisture and lay hardwood, parquet and wood-strip block floors by nailing floors to subfloor or cemented them to mastic. Fit and install prefabricated window frames.

The petitioner did not list any educational requirements in Section 14. The offer is based on a 40-hour work week with a schedule of 7:00 a.m. to 4:00 p.m, from Monday thru Saturday, with Tuesdays off.

Based on the information obtained during the interview from the petitioner and the beneficiary, the director concluded that the petitioner was unable to provide full-time employment in accordance with the certified ETA 750 job description above, but rather that the beneficiary would be subcontracted out to unknown subcontractors and not work in the employ of the petitioner.

On appeal, counsel provides that the petitioner met its burden of proof for the petition to be granted, and that CIS did not dispute the petitioner's ability to pay the proffered wage, or that the beneficiary was qualified for the position.

While the petitioner, Inex Home Improvement, can demonstrate its ability to pay the proffered wage, and that the beneficiary has the requisite prior experience for the position, the issue is whether the petitioner, Inex, intends to employ the beneficiary full-time in accordance with the terms of the certified Form ETA 750, or

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[2] The petitioner provided documentation in accordance with 8 C.F.R. § 204.5(l)(3) that the beneficiary had the required four years of prior experience as a carpenter based on prior employment obtained in the Philippines. The letter provided to document the beneficiary's experience matches the experience listed on the beneficiary's Form ETA 750B.

whether the beneficiary will be subcontracted out, and perform work for a different employer for less than 40 hours, and, therefore, not employed in accordance with the certified Form ETA 750. This raises the additional issue of whether the job offer is realistic.

The certified ETA 750 states that the beneficiary will work for the petitioner, but that the work location will change based on construction sites. At the interview, the petitioner provided that the beneficiary will work for "the petitioner's subcontractors such as [redacted] [sic] General Contractor and other contractors picked from Yellow Pages."

On appeal, counsel asserts that the beneficiary will work for, and would be under the supervision of, [redacted] a licensed contractor, who is employed by _____ a property management company, also owned by the petitioner's owner.[3] The petitioner's owner provided a letter in support sworn under penalty of perjury that the beneficiary would be supervised by [redacted]

The owner's statement, however, does not address the issue raised in the director's denial, that the petitioner stated that the beneficiary will work for "the petitioner's subcontractors such as [redacted] Amanlulu [sic] General Contractor and other contractors picked from Yellow Pages." The statement provides only that the beneficiary will be supervised by [redacted], an individual that works for a company other than the petitioner.

If subcontractors other than the petitioner are to employ the beneficiary, this raises the issue of who is the beneficiary's actual employer. In determining the actual employer, the regulation at 20 C.F.R. § 656.3 provides:

> Employer means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm or corporation.

Further, 20 C.F.R. § 656.3 provides that employment means, "Permanent full-time work by an employee for an employer other than oneself."

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[3] Counsel similarly argues that the CIS decision is based on speculative conclusions and not supported by the record. Counsel contends that the fact that the petitioner does not have a contractor's license does not mean that it is not able to lawfully employ the beneficiary. Further, counsel provides that under section 7053 of the California Business and Professions Code ("CBPC") it is lawful for an unlicensed person to work as an employee under the supervision of a licensed contractor, and, therefore, the petitioner may lawfully employ the beneficiary as a carpenter, if he works under the supervision of a licensed contractor. Section 7053 specifically provides that:

> Except as provided in Article 10 (commencing with Section 7150), this chapter does not apply to any person who engages in the activities herein regulated as an employee who receives wages as his or her sole compensation, does not customarily engage in an independently established business, and does not have the right to control or discretion as to the manner of performance so as to determine the final results of the work performed.

In *Matter of Smith*, 12 I&N Dec. 772 (1968), the petitioner, a staffing service, provided a continuous supply of secretaries to third-party clients. The district director determined that the staffing service, rather than its clients, was the beneficiary's actual employer. To reach this conclusion, the director looked to the fact that the staffing service would make contributions to the beneficiary's social security, worker's compensation, and unemployment insurance programs; would withhold federal and state income taxes; and would provide other benefits such as group insurance. *Id.* At 773.

In *Matter of Ord*, 18 I&N Dec. 285 (Reg. Comm. 1992), a firm sought to utilize the H-1B nonimmigrant visa program and temporarily outsource its aeronautical engineers to third-party clients on a continuing basis with one-year contracts. In *Ord*, the Regional Commission determined that the petitioning firm was the beneficiary's actual employer, not its clients, in part because it was between an employer and a job seeker, but had the authority to retain its employees for multiple outsourcing projects.

In *Matter of Artee*, 18 I&N Dec. 366 (Comm. 1982), the petitioner sought to utilize the H-2B program to employ machinists who were to be outsourced to third-party clients. The commissioner again determined that were a staffing service does more than refer potential employees to other employers for a fee, where it retains its employees on its payroll, etc. The staffing service rather than the end-user is the actual employer. *Id.*

The record does not contain any documentation as to who would pay the beneficiary if the beneficiary is outsourced to work for various subcontractors, whether the petitioner would pay the beneficiary, or whether based on the subcontract, the subcontractor would pay the beneficiary. Further, the record does not contain evidence that the work would be full-time, or that the petitioner would have multiple concurrent projects where the beneficiary's permanent employment would be required. Additionally, as the director raised in his decision, the petitioner did not provide evidence that it paid any employees, but instead provided California state Employment Development Department ("EDD") reports for [redacted] Based on the information that the petitioner provided, it is unclear that the petitioner employs any individuals. Rather, it would appear that the petitioner's owner employs individuals through [redacted][4]

As the petitioner, [redacted] would be responsible for payment and employment of the beneficiary; it is insufficient that the petitioner's owner also owns [redacted]. The beneficiary cannot be paid by [redacted][5] Both companies are distinct entities with separate tax identification numbers. A corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning

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[4] The owner also provided in his statement that the petitioner has relocated to a different address, but will remain located within the same metropolitan statistical area for purposes of determining the position's wage. The new address for the petitioner reflects that the business will be located at the same location as [redacted]

[5] The record does not reflect that the petitioner is employing the beneficiary, or that it has in the past employed the beneficiary, which while not required, would help to determine the issue of who will pay the beneficiary if the beneficiary is working pursuant to a subcontract. The record does contain the beneficiary's individual federal tax returns for the years 2000, 2001, and 2004. The beneficiary lists his occupation as a carpenter on his 2000 and 2001 tax returns, and lists his occupation as termite inspection in 2004. The beneficiary's 2000 taxes and Forms 1099 show that he received income in the amount of $4,500 from [redacted] Construction, with a federal taxpayer identification number of 618-62-8187, a number separate from [redacted], or the petitioner, Inex. In 2004, the beneficiary received income from a company TBA Inc., and Cornerstone, Inc. d/ba/ Acme Termite and Pest Control.

corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

As noted previously, the petitioner must establish that its job offer to the beneficiary is a realistic one. 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. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

Counsel further questions the director's assertion that since the petitioner is not a licensed contractor that the petitioner cannot employ the beneficiary. Counsel provides that under Section 7044(b) of the California Business and Professions Code that an "unlicensed contractor may lawfully be employed under the supervision of a licensed contractor."[6] Counsel further provides that the petitioner has provided evidence in the form of sworn testimony that the beneficiary will work under the supervision of a licensed contractor. The supervisor would be [redacted] a licensed contractor employed by [redacted], a property management company, also owned by the petitioner's owner. Counsel provided a copy of [redacted] contractor's license in support.

As noted above, the relevant question is, who will be the beneficiary's actual employer if the beneficiary is supervised by [redacted] and working on projects for unknown subcontractors, not whether the beneficiary will be employed by a licensed subcontractor. If the petitioner has been in business since 2001 and has a regular business of buying and fixing up properties, the petitioner should have been able to provide evidence of employees paid, projects completed, and that full-time employment was available, and so forth at the time of the interview. The petitioner, however, did not provide any such evidence.

Counsel next argues that it is DOL and not DHS who may determine the issue of full-time employment. He asserts that DOL certifies the labor certification based on 20 C.F.R. § 656.24 and whether the employer has met the requirements of 20 C.F.R. § 656 and has shown that there are no qualified US workers who are able, willing, qualified, and available at the place of the job opportunity. Further, counsel asserts that in the absence of fraud or willful misrepresentation that DOL's determination is not subject to review. Counsel asserts that CIS' role is to determine whether the beneficiary qualifies for the position described in the ETA 750, and that the petitioner has the ability to pay the proffered wage. Counsel contends that CIS now seeks to

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[6] Section 7044(b) of the California Business and Professions Code specifically provides:

> This chapter does not apply to any of the following:
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> . . . .
>
> (b) An owner of property, building or improving structures thereon, or appurtenances thereto, who contracts for such a project with a subcontractor or subcontractors licensed pursuant to this chapter.
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> However, this exemption shall apply to the construction of single-family residential structures only if four or fewer of these structures are intended or offered for sale in a calendar year. This limitation shall not apply if the owner of property contracts with a general contractor for the construction.

deny the I-140 petition on the basis of criteria for which CIS was never authorized to evaluate the petition in the first place.

The labor certification is evidence of an individual alien's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
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> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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>> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

*See also* 20 C.F.R. § 656.3.

Following approval of the labor certification, that labor certification forms the basis for the job offer to the beneficiary. 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. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). It is within CIS' role to determine whether the job offer is realistic and that the petitioner intends to employ the beneficiary in accordance with the terms of the labor certification. *See Sunoco Energy Development Company*, 17 I&N Dec. 283 (R.C. 1979); *see also* 20 C.F.R. § 656.30(c)(2). Where the petitioner has provided no evidence that it employs anyone, and provides that the beneficiary will be working for subcontractors, it is reasonable to question whether the petitioner has a realistic and bona fide job offer for the beneficiary.

Counsel contends that the petitioner meets the definition of employer under 20 CFR 656.3 as a "person, firm, or association, or corporation which currently has a location within the United States to which U.S. workers can be referred and which proposes to employ a full time worker."

While the petitioner may meet the definition of an employer, the issue as addressed above is whether the petitioner will be the beneficiary's actual employer.

Counsel further contends that under 8 C.F.R. § 103.2(b)(16) an applicant shall be allowed to inspect the record of proceeding, and that the determination shall be based on information disclosed to the applicant or petitioner unless classified. Counsel contends that the derogatory information was only disclosed in the denial, but that CIS failed to disclose "its Memorandum of the Interview" to the petitioner.

8 C.F.R. § 103.2(b)(16) provides that "an applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs."

> (i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [CIS] and of which the applicant is unaware, he/she shall be advised of this fact and offered an

> opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.
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> (ii) Determination of statutory eligibility. A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

The petitioner was informed that the petition was deficient and allowed to address and supplement the record at the time of the interview. During the interview, the petitioner was unable to document that the petitioner employed any other employees, and further, stated that the beneficiary would be employed by subcontractors, which led to the director's conclusion that the petitioner did not intend to employ the beneficiary in accordance with the terms of the certified Form ETA 750. The director based the denial on information obtained from an interview with the beneficiary and the petitioner's owner, so that the conclusion was drawn from facts ascertained at the interview with the petitioner and beneficiary present rather than arbitrary speculation.

The record of proceeding does not support a determination that the petitioner would be the actual employer. The petitioner provided no evidence that the petitioner would pay the beneficiary's wages, that it would make contributions to the beneficiary's social security, worker's compensation, and unemployment insurance programs, would withhold federal and state income taxes, or would provide other benefits such as group insurance. *See Matter of Smith*, 12 I&N Dec. at 773. Further, the record does not support a determination that the petitioner will actually employ the beneficiary on a permanent full-time basis in accordance with 20 C.F.R. § 656.3.

The record additionally contains other inconsistencies, which raise doubts as to the validity of the petition. For instance, the beneficiary lists his home address on his individual Forms 1040, and the Form ETA 750B as: [redacted] lists his business address as: [redacted] of July [redacted] 2007 and *see also* phonebook results for [redacted] Reseda," [redacted] It is unclear why the beneficiary is living at [redacted] address.[7,8] Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

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[7] Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See also Paris Bakery Corporation,* 1998-INA-337 (Jan. 4, 1990) (en banc), which addressed familial relationships: "We did not hold nor did we mean to imply in [redacted] that a close family relationship between the alien and the person having authority, standing alone, establishes, that the job opportunity is not bona fide or available to U.S. workers. Such a relationship does require that this aspect of the application be given greater attention. But, in the final analysis, it is only one factor to be considered. Assuming that there is still a genuine need for the employee with the alien's qualifications, the job has not been specifically tailored for the alien, the Employer has undertaken recruitment in good faith and the same has not produced applicants who are qualified, the relationship, per se, does not require denial of the certification." It is unclear whether there is a relationship between the two parties, but if there is a relationship and the petitioner failed to disclose this to DOL during the labor certification process, then the

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 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Based on the foregoing, the petitioner has failed to overcome the basis for denial, that the petitioner would not employ the beneficiary as a permanent full-time employee in accordance with the certified ETA 750. 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.

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bona fides of the job offer may be in question.

[8] Further, we note that the petitioner has sponsored a second individual who also lists his home address as Mr. Manlulu's work address.