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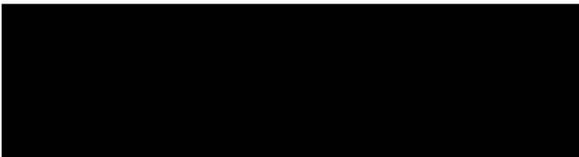
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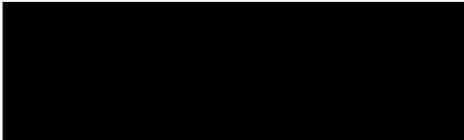


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 03 2007  
SRC 06 230 52809

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] is a motel. It seeks to employ the beneficiary permanently in the United States as an assistant motel manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary had acquired the necessary qualifying employment experience as of the priority date of the visa petition. The director also determined that the petitioner had not established its continuing financial ability to pay the proffered wage and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary obtained the qualifying work experience and that the petitioner had the continuing financial ability to pay the proffered wage.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

The regulation at 8 C.F.R. § 204.5(1)(3) further provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

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

The regulation at 8 C.F.R. § 204.5(g)(2) also 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 that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 30, 2001.<sup>1</sup> The proffered wage is stated as \$10.00 per hour, which amounts to \$20,800 per year.

The visa preference petition was filed on July 25, 2006. Part 5 of the petition indicates that the petitioner was established on May 20, 1998, claims a gross annual income of \$891,577, a net annual income of \$105,375, and currently employs twelve workers.

Form ETA 750B signed by the beneficiary on January 20, 2001, does not indicate that he worked for the petitioner. His qualifying employment as a motel manager is listed merely as "several motels and hotels in the United Kingdom London, UK." This employment is claimed from November 1989 to December 1993.

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that the alien must have a minimum of two years of work experience in the job offered as an assistant motel manager. The duties are described as including:

Assist in management and operation of a franchised motel; hire and train personnel; responsible for customer service, maintenance and repairs of premises, income and expenses, preparing and proposing budget, maintaining records, preparing reports, deciding on room rates, advertising, publicity, resolving guest complaints, purchasing, and compliance with all local, state, & federal reporting requirements.

In support of the beneficiary's qualifying past work experience, the petitioner provided copies of two letters from past employers. A letter from the Meridien Leisure Hotels in Windsor, Berkshire, England, dated December 20, 1993, is signed by [REDACTED] as vice-president. She states that the beneficiary joined the

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<sup>1</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

hotel in December 1990 as an assistant general manager and in six months was promoted to general manager. She adds that he worked for them from July 1992 to December 1993.

The other letter is from the Sydney House Hotel in Chelsea, England and is undated. It is signed by [REDACTED] as general manager and states that the beneficiary worked for the hotel as a front desk manager from November 1989 to December 1990.

In support of the petitioner's financial ability to pay the proposed wage offer of \$20,800 per year, the petitioner provided a copy of its 2005 Form 1065, U.S. Return of Partnership Income. The petitioner's tax return indicates that it is a limited liability company.<sup>2</sup>

In 2005, the petitioner's tax return's Schedule(s) [REDACTED] Share of Income, Deductions, Credits, etc., reflect that the four members are: 1) [REDACTED] who owns 45% and is identified as the manager on the preference visa petition; 2) [REDACTED] who owns 18% and resides in the UK; 3) [REDACTED] who owns 17% and resides in the UK at the same address as [REDACTED]; 4) [REDACTED] who owns 20% and resides in Massachusetts.

The tax return also reflects that its ordinary income in 2005 was not exclusively from a trade or business. Where a partnership has income from sources other than from a trade or business, net income is found on Schedule K, Form 1065, page 4, Analysis of Net Income (Loss), line 1. In this case it was reported as \$96,377.

In addition to its federal income tax return for 2005 and copies of bank statements (checking account) for October 2005 through June 2006, the petitioner submitted copies of its federal employer's quarterly tax returns (Form 941) for the third and fourth quarters of 2005, as well as for the first quarter of 2006. These are shown with the same address at 804 Lynnhaven Parkway in Virginia Beach, Virginia as shown for the Wynnwood Inn as indicated on the preference visa. Additional copies of state quarterly tax reports for a Travelodge Motel at 4810 Oldwick Court, Virginia Beach, Virginia operated by the petitioner and covering the same periods were also submitted. Both businesses use the federal tax identification number indicated on the preference visa petition and on the petitioner's 2005 federal income tax return. The petitioner also supplied copies of the state sales and use tax returns for the months of October 2005 through June 2006.

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<sup>2</sup> A limited liability company (LLC) is an entity formed under state law by filing articles of organization. An LLC may be classified for federal income tax purposes as if it were a sole proprietorship, a partnership or a corporation. If the LLC has only one owner, it will automatically be treated as a sole proprietorship unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. See 26 C.F.R. § 301.7701-3. The election referred to is made using IRS Form 8832, Entity Classification Election. In the instant case, the petitioner, an LLC formed under Virginia law, is considered to be a partnership for federal tax purposes.

These are listed as belonging to Travelodge at 804 Lynnhaven. Copies of employee payroll reports submitted with the quarterly tax returns do not include the beneficiary's name.

The director issued a request for evidence on August 14, 2006, instructing the petitioner to provide a letter from the Meridian Leisure Hotels which clearly indicates whether the beneficiary began working there in December 1990 or July 1992 and which describes the beneficiary's duties during his employment. The director also requested that the petitioner provide a letter from the Sydney House Hotel which describes the beneficiary's duties. She further requested that the petitioner submit documentation establishing its continuing ability to pay the proffered wage from April 2001 to the present, advising the petitioner that this evidence must be in the form of copies of annual reports, federal tax returns, or audited financial statements, and may be accompanied by additional documentation. The director also noted that the beneficiary's address in England was the same as for [REDACTED] who are listed as two of the petitioner's owners on the tax return. She requested the petitioner to state whether the beneficiary had any ownership interest in its business and to identify whether there is any familial relationship between the beneficiary and the petitioner's owners.

In response, the petitioner, through counsel, provided copies of the petitioner's federal income tax returns for 2001, 2002, 2003 and 2004. They contain the following information:

|                                | 2001     | 2002     | 2003      | 2004      |
|--------------------------------|----------|----------|-----------|-----------|
| Net Income (Sched. K, pg. 4)   | \$10,337 | \$99,162 | -\$21,352 | -\$35,060 |
| Current Assets (Sched. L)      | \$86,554 | \$90,827 | \$82,937  | \$129,485 |
| Current Liabilities (Sched. L) | \$13,461 | \$60,503 | \$98,426  | \$114,596 |
| Net current assets             | \$73,093 | \$30,324 | -\$15,489 | \$ 14,889 |

As noted in the above table, net current assets are the difference between the petitioner's current assets and current liabilities and represent a measure of a petitioner's liquidity during a given period.<sup>3</sup> Besides net income, and as an alternative method of reviewing a petitioner's ability to pay the proffered wage, CIS will examine a petitioner's net current assets as a possible resource out of which a proffered wage may be paid. A partnership's year-end current assets and current liabilities are generally shown on Schedule L of a Form 1065 tax return.<sup>4</sup> Current assets are found on line(s) 1(d) through 6(d) and current liabilities are specified on line(s) 15(d) through 17(d). If a partnership's year-end 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.

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

<sup>4</sup> Certain partnerships are not required to complete Schedule L. See Internal Revenue Service Publication 541 (Rev. November 2004)

Counsel's transmittal letter indicates that no additional letters from the Meridian Leisure Hotels or Sydney House Hotel could be obtained in order to provide a description of the beneficiary's duties. He states that the petitioner was not able to procure this from the beneficiary as it has been more than twelve years since the beneficiary worked for these businesses and he could not locate the previous employers. Counsel asserts that the reference within the Meridian Hotels letter to July 1992 was a clerical mistake in that the date should have been July 1991, in order to logically relate the reference to the beneficiary's promotion six months following his hiring date in December 1990. Counsel further disclaims any ownership interest that the beneficiary has in the petitioning business but adds that the beneficiary is the brother of [REDACTED] the partner who owns a 17% interest in the petitioner.

The director denied the petition on December 13, 2006. The director determined that the petitioner had established its ability to pay the proffered wage in 2001 and 2002 but had not demonstrated this ability in 2003, 2004, 2005 or 2006. The director additionally found that neither the employment verification letters provided nor the beneficiary's recitation of past employment on the Form ETA 750B were sufficient in describing the beneficiary's duties or periods of employment so as to confirm that he had obtained two years of qualifying experience in the job offered of assistant motel manager. Finally, the director noted that the tax returns indicating that the beneficiary's sister owned 17% of the petitioning business obliges the petitioner to demonstrate that this relationship was disclosed to the DOL during the labor certification process.

On appeal, in support of the petitioner's ability to pay the proffered wage, counsel submits a copy of the petitioner's 2000 federal income tax return, as well as copies of the petitioner's bank statements (checking account) for July through December 2006 and one for December 2003, a copy of a bank statement (savings account) for December 2006 and for December 2004. Counsel also provides a sworn statement from the Ila [REDACTED] the petitioner's 45% member. [REDACTED] states that the beneficiary's sister is a foreign silent partner and played no role in the decision to offer the certified position to the beneficiary and that the Department of Labor did not require them to disclose this relationship. He additionally states that had the beneficiary been hired in 2001, the petitioner's net income would have increased in 2003 and 2004. [REDACTED] also adds that as a result of problems with Comfort Inn including a decrease in referrals, the petitioner changed franchise affiliation in 2003 to Wynnwood Inn but paid liquidated damages and a franchise settlement of \$150,000 and \$97,222 in 2004.

With regard to the petitioner's ability to pay the proffered wage of \$20,800 per year, and citing *Masonry Masters, Inc. v. Thornburgh*, 875 F.2d 898 (D.C. Cir. 1989), counsel asserts that if the beneficiary had been employed in the certified position then the petitioner's income would have increased. Counsel also maintains that depreciation may be appropriately added to net income in determining the petitioner's ability to pay as it represents a paper loss and not an actual loss of funds. He additionally contends that the petitioner's ability to pay the proffered wage may be positively evaluated in light of the principles set forth in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967) whereby a petitioner's ability to pay the proffered wage rested, in part, upon its reasonable expectation of increasing future profits. It is noted that although part of *Masonry Masters, Inc. v. Thornburgh* mentions the ability of the beneficiary to generate income, the holding is based on other grounds and is primarily a criticism of CIS for failure to specify a formula used in determining the proffered wage. Further, in this instance, no detail or documentation has been provided to explain how the

beneficiary's employment as an assistant motel manager would have significantly increased profits. This hypothesis cannot be concluded to outweigh the evidence presented in the corporate tax returns.

It is noted that counsel's reliance on the balances in the petitioner's bank statements is misplaced. 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. For example, an appropriate case might exist where the petitioner has otherwise established the ability to pay the proffered wage through its audited financial statements, annual reports, or federal tax returns and must account for a couple of months at the end of the relevant period where the balances support a petitioner's positive financial profile. It is noted, however, that bank statements reveal only a portion of a petitioner's financial status and do not reflect other encumbrances that may affect a petitioner's ability to pay a certified wage. The regulation at 8 C.F.R. § 204.5(g)(2), does not state or imply that bank statements are to be considered a substitution for the required forms of evidence. In this case, 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 corresponding tax return, such as within its net income reported on page 1 of the return or the cash specified on Schedule L which is already included in the calculation of the petitioner's net current assets. In this case, it is noted that for 2006, an audited financial statement has not been provided either to the underlying record or on appeal. It cannot be concluded that other evidence submitted, including the petitioner's respective bank statements, a Form 941 for the first quarter of 2006, or various state sales and use tax documents establish its ability to pay the certified salary for this period.

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 first year 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 during a given period, CIS will first examine whether the petitioner may have employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage during a given period, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. To the extent that the petitioner paid wages less than the proffered salary, those amounts will be considered in calculating the petitioner's ability to pay the proffered wage. In this case, the record contains no indication that the petitioner employed the beneficiary.

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 taxable income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. If it equals or exceeds the proffered wage, the petitioner is deemed to have established its ability to pay the certified salary during the period covered by the tax return. 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. "The [CIS] may reasonably rely on net taxable income as reported on the employer's return." *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1053 (S.D.N.Y. 1986) ((citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, *supra*, and *Ubeda v. Palmer*, *supra*; see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532, 536 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985)). 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 depreciation deduction will not be included or added back to the net income. This figure recognizes that the cost of a tangible asset may be taken as a deduction to represent the diminution in value due to the normal wear and tear of such assets as equipment or buildings or may represent the accumulation of funds necessary to replace perishable equipment and buildings. But the cost of equipment and buildings and the value lost as they deteriorate represents a real expense of doing business, whether it is spread over more years or concentrated into fewer. With regard to depreciation, the court in *Chi-Feng Chang* further noted:

Plaintiffs also contend that 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. (Original emphasis.) *Chi-Feng Chang* at 536.

If an examination of the petitioner's net taxable income or wages paid to the beneficiary fail to successfully demonstrate an ability to pay the proposed wage offer, CIS will review a petitioner's net current assets. As noted above, CIS will consider *net current assets* as an *alternative* method of demonstrating the ability to pay the proffered wage. In this case, as shown above, the petitioner established its ability to pay the proffered wage of \$20,800 in 2001 by its net current assets of \$73,093; in 2002 by either its net income of \$99,162 or its net current assets of \$30,324; and in 2005 by its net income of \$96,377.

As noted above, *Matter of Sonogawa* is sometimes applicable where the expectations of increasing business and profits overcome evidence of small profits. That case, however related to petitions filed during an uncharacteristically unprofitable or difficult year within a framework of profitable or successful years. During the year in which the petition was filed, the *Sonogawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of time

when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look*. Her clients included movie actresses, society matrons and [REDACTED]. The petitioner had lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere.

In this matter, in 2003, neither the petitioner's net income of -\$21,352, nor its net current assets of -\$15,489 was sufficient to cover the certified salary of \$20,800. Similarly, in 2004, neither the petitioner's net income or -\$35,060, nor its net current assets of \$14,889 was sufficient to meet the certified wage. Although the petitioner's explanation for the decreasing bookings in 2003 and the incursion of the additional \$150,000 royalty liquidated damages in 2004, as shown on the attachment to that tax return, may be a reasonable one, the current record does not sufficiently detail the specific problems which precipitated the penalty incurred or establish that this occurrence constituted the kind of unique and unusual circumstance that might be overlooked. As noted above, the record suggests that the petitioner also operates or has operated under a Travelodge franchise. It raises a question of whether problems with a parent franchise have occurred in the past or may be likely to reoccur which may affect the petitioner's financial health. As the current record does not sufficiently establish that the losses incurred in 2003 and 2004 constituted the kind of unique circumstances that may otherwise support the petition's approval pursuant to *Matter of Sonegawa, supra*, it cannot be concluded that sufficient evidence has been provided for 2003 and 2004 to demonstrate the petitioner's ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) requires that a petitioner demonstrate a *continuing* ability to pay the proffered wage. Based on the foregoing, the petitioner has not established its ability to pay the certified salary in 2003 or 2004.

As to the beneficiary's qualifying experience, on appeal, counsel cites the regulation at 8 C.F.R. § 204.5(g)(1) which provides in pertinent part that:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

In this case, counsel reiterates that the reason for the beneficiary's inability to obtain detailed letters from former employers corroborating his dates of employment and duties performed was that he could not locate the businesses since he worked there more than 12 years ago and the businesses changed hands since then. Counsel maintains that the beneficiary's statements on the ETA 750B as to his dates of employment and duties performed should be accepted due to the long period of time that has passed since his actual employment. Counsel also renews the assertion that the Meridian Leisure Hotel letter reference to "Jul 1992" was obviously a clerical mistake as the letter also states that the beneficiary was promoted "within six months to General Manager."

On this matter, we do not concur with counsel. It is noted at the outset that CIS has the authority to inquire as to whether the alien is qualified for the classification sought:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977).

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). *See also Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9<sup>th</sup> Cir. 1984).

It is further noted that the duties described on the alien labor certification for the certified position of an assistant motel manager are fairly extensive and authoritative. The labor certification requires two years of qualifying employment experience. The fact that the petitioner elected to sponsor a beneficiary whose qualifying experience was eight years old when the labor certification was submitted and thirteen years old when the preference petition was filed does not lessen the petitioner's burden. Nor can we accept the beneficiary's own statement as to his experience and duties performed at unidentified motels and hotels in the United Kingdom as probative of his qualifying experience. 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)). The AAO finds that neither of the two letters submitted to the record referring to the beneficiary's employment as a front desk manager, assistant and general manager documents in any way what specific duties the beneficiary performed in order to judge whether that experience may be deemed qualifying for the purpose of satisfying the terms of the labor certification. Moreover, although counsel's suggestion as to the possible clerical mistake in the Meridien Leisure Hotels letter may have merit, it may also be questioned as to whether such a clerical mistake could have occurred with the first date mentioned (December 1990). As it is, we must concur with the director's conclusion that the petitioner failed to establish the beneficiary's qualifying past employment experience.

The AAO additionally notes that 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 Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). If or when future proceedings may be filed involving this petitioner and beneficiary, after determining through available evidence whether a blood, marital, financial or other relationship may have been existent between the beneficiary and past and current members of the petitioner, the director is advised to seek an advisory opinion from the Department of Labor to determine whether such relationships, if known, would have affected eligibility in the labor certification proceedings. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986). Guidance relating to documentation that may be required to determine the beneficiary's influence upon the job opportunity may be found at 20 C.F.R. § 656.17(l).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.



**ORDER:** The appeal is dismissed.