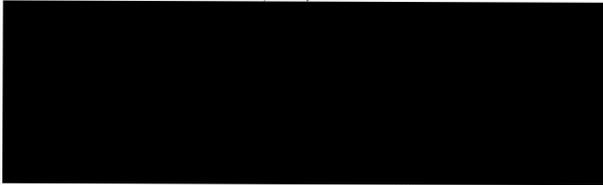


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Services

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Bb

FILE: [REDACTED] Office: TEXAS SERVICE CENTER  
SRC 06 136 51732

Date: DEC 26 2007

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision dated August 23, 2006 is withdrawn. The petition is remanded to the director for further consideration of the beneficiary's qualifications for the proffered position.

The petitioner is an electrical, mechanical and structural engineering firm. It seeks to employ the beneficiary permanently in the United States as a electrical engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the 2003 priority date of the visa petition, and through tax year 2004. 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 August 23, 2006 denial, the primary 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 accepted on December 31, 2003. The proffered wage as stated on the Form ETA 750 is \$39.35 an hour or \$81,848 per year. The Form ETA 750 states that the position requires a bachelor's degree in electrical engineering and two years of work experience in the job offered.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal<sup>1</sup>.

On appeal, counsel submits the petitioner's reviewed financial statements for tax year 2002 and its audited financial statements for tax years 2002 to 2005, a copy of a contract between the petitioner and the city of Long Beach, California, and a subcontract for the petitioner's services with regard to a Los Angeles Airport Services engineering project. Counsel also submits a copy of the petitioner's compiled financial statement for tax year 2000.<sup>2</sup>

Counsel also submits a letter dated September 11, 2006 written by [REDACTED] Vice President of Finance, TMAD Taylor & Gaines. In his letter, Mr. [REDACTED] examines the petitioner's financial statements and income tax returns for tax years 2002 to 2005. Mr. [REDACTED] submits a one-page document that lists the petitioner's current assets, property and equipment at cost, and work in progress, and other assets as of June 2006. Mr. [REDACTED] states that the audited financial statements reflect the petitioner's financial circumstances based on revenue and expenses accrued, while the petitioner's income tax returns reflect the petitioner's financial circumstances based on the petitioner's paid expenses and collected income. Mr. [REDACTED] states that the petitioner is profitable, in excellent standing, and employs approximately 300 people.<sup>3</sup>

The record also contains the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for tax years 2003 to 2005, and copies of the beneficiary's W-2 Wage and Statement forms for tax years 2001 to 2005. These documents indicate that the petitioner paid the beneficiary \$18,867.43 in tax year 2001, \$40,586.57 in tax year 2002, \$37,945.27 in tax year 2003, \$46,180.98 in tax year 2004 and \$64,253.87 in tax year 2005. The record also contains a copy of the petitioner's articles of incorporation as [REDACTED] on August 1, 1962 and a subsequent name change of one of the petitioner's subsidiaries

<sup>1</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).

<sup>2</sup> The financial statements are consolidated statements and appear to include data for the petitioner's subsidiaries. The petitioner's tax returns are also consolidated tax returns.

<sup>3</sup> In general, 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. The regulation further provides: "In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establish the prospective employer's ability to pay the proffered wage." On appeal, the AAO accepts Mr. [REDACTED] statement; however, the AAO will also examine the petitioner's income tax returns.

to [REDACTED] Engineers on December 27, 2004.<sup>4</sup> 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 C corporation. On the petition, the petitioner claimed to have been established in 1955, to have a gross annual income of \$32,986,442, and to currently employ 286 employees. On the Form ETA 750B, signed by the beneficiary on December 29, 2003, the beneficiary claimed to have worked for the petitioner since May 2001.

On appeal, counsel asserts that the events of September 11, 2001 impacted the petitioner's business and that it has taken until tax year 2005 for the petitioner to regain its financial momentum. Counsel also states that if the petitioner's net current assets as established by audited financial statements are in excess of the proffered wage, the petitioner ability to pay the proffered wage can be established. Counsel refers to minutes of a liaison meeting between representatives of the American Immigration Lawyers Association (AILA) and the Vermont Service Center in January 10, 2001 in support this assertion.

Counsel also refers to two unpublished AAO decisions, *Matter of X*, EAC 02 086 53457 (April 9, 2003), and *Matter of X*, WAC 02 031 56510 (April 15, 2003). Counsel asserts that these decisions indicate that the petitioner's gross income may be taken into consideration when evaluating the totality of the petitioner's circumstances, specifically when the tax returns reflect a consistent increase in gross revenue. Counsel states that the petitioner can demonstrate a consistent increase in gross revenues, and points out the petitioner recently signed two major contracts for additional engineering work.

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).

On appeal, counsel refers to the impact caused by the events of September 11, 2001 on the petitioner's profitability. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record of proceeding contains no evidence specifically connecting the petitioner's business decline to the events of September 11, 2001. A mere broad statement by counsel that, because of the nature of the petitioner's industry, its business was impacted adversely by the events of September 11, 2001, cannot by itself, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Rather, such a general statement merely suggests, without supporting evidence, that the petitioner's financial status might have appeared stronger had it not been for the events of September 11, 2001.

Counsel also refers to two unpublished AAO decisions for the proposition that more than the petitioner's tax returns should be examined in determining the petitioner's ability to pay the proffered wage. Counsel does not

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<sup>4</sup> The petitioner's Forms 851 contained in its federal tax returns identify TMAD Taylor & Gaines Engineers (EIN [REDACTED]) as a subsidiary corporation.

provide published citations for these decisions. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Similarly the AAO is not bound to the informal guidance provided to immigration practitioners by the Service Centers.

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 has established that it employed and paid the beneficiary during the relevant period of time the following wages: \$18,867.43 in tax year 2001, \$40,586.57 in tax year 2002, \$37,945.27 in tax year 2003, \$46,180.98 in tax year 2004, and \$64,253.87 in tax year 2005. The petitioner therefore did not establish that it paid the beneficiary the proffered wage as of the 2003 priority date and to the present time. Thus the petitioner has to establish its ability to pay the difference between the beneficiary's actual wages and the proffered wage in tax years 2003, 2004 and 2005.<sup>5</sup>

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.

<sup>5</sup> The AAO notes that the priority date for the instant petition is December 31, 2003, and the beneficiary's wages in tax years 2001 and 2002 are not dispositive in these proceedings. Thus, the AAO will not further discuss the beneficiary's wages or the petitioner's ability to pay the proffered wage in tax years 2001 or 2002.

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of \$81,848 per year from the priority date:

- In 2003, the Form 1120 stated a net income<sup>6</sup> of -\$632,396.
- In 2004, the Form 1120 stated a net income of -\$1,576,356.
- In 2005, the Form 1120 stated a net income of \$1,872,617.

Therefore, for the years 2003 and 2004, the petitioner did not have sufficient net income to pay the proffered wage. However, the petitioner did establish its ability to pay the proffered wage in tax year 2005. The AAO notes that the 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). Thus, the petitioner cannot establish its ability to pay the proffered wage as of the priority date and continuing based on its net income.

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>7</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation'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.

- The petitioner's net current assets during 2003 were -\$1,062,322.
- The petitioner's net current assets during 2004 were -\$2,620,536.

For tax years 2003 and 2004, the petitioner did not have sufficient net current assets to pay the difference between the beneficiary's actual wages and the proffered wage.

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

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<sup>6</sup>The petitioner's net income is its taxable income before NOL deduction and special deductions, as reported on Line 28 of the Form 1120.

<sup>7</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 payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets except for 2005.

Counsel asserts in her brief accompanying the appeal that there are other ways to determine the petitioner's continuing ability to pay the proffered wage from the priority date beyond the petitioner's tax returns or audited financial statements. As stated previously, neither counsel nor the petitioner provided sufficient evidence as to the impact on the petitioner's business operations due to the events of September 11, 2001 and in ensuing years. Therefore the AAO does not give much weight to this factor.

Counsel also refers to *Matter of Sonogawa* for the proposition that the petitioner's overall circumstances should be examined in determining the petitioner's ability to pay the proffered wage. *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967), relates to petitions filed during uncharacteristically unprofitable or difficult years but only in a framework of profitable or successful years. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner 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 *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere.

With regard to the instant petitioner, the evidence in the record as to the petitioner's longevity, and number of employees cannot be overlooked. Although CIS will not consider gross income without also considering the expenses that were incurred to generate that income, the overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal or borderline. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). While the petitioner was incorporated in 2000, a subsidiary of the petitioner was originally incorporated in 1962. The petitioner employs approximately 300 employees. The petitioner's gross income in tax years 2003 to 2005 was above \$25 million and it paid salaries and wages each year of between \$16 and \$18 million.

In the present matter, the petitioner has identified itself on IRS Form 1120 as a "personal service corporation." Pursuant to *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967), the petitioner's "personal service corporation" status is a relevant factor to be considered in determining its ability to pay. A "personal service corporation" is a corporation where the "employee-owners" are engaged in the performance of personal services. The Internal Revenue Code (IRC) defines "personal services" as services performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, and consulting. 26 U.S.C. § 448(d)(2). As a corporation, the personal service corporation files an IRS Form 1120 and pays tax on its profits as a corporate entity. However, under the IRC, a qualified personal service corporation is not allowed to use the graduated tax rates for other C-corporations. Instead, the flat tax rate is the highest marginal rate, which is currently 35 percent. 26 U.S.C. § 11(b)(2). Because of the high 35 per cent flat tax on the corporation's taxable income, personal service corporations generally try to distribute all profits in the form of wages to the employee-shareholders. In turn, the employee-shareholders pay personal taxes on their wages and thereby avoid double taxation. This in effect can reduce the negative impact of the flat 35 per cent tax rate. Upon consideration, because the tax code holds personal service corporations to the highest corporate

tax rate to encourage the distribution of corporate income to the employee-owners and because the owners have the flexibility to adjust their income on an annual basis, the AAO will recognize the petitioner's personal service corporation status as a relevant factor to be considered in determining its ability to pay.

CIS (legacy INS) has long held that it may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

In the present case, however, CIS does not examine the personal assets of the petitioner's owners, but, rather, the financial flexibility that the employee-owners have in setting their salaries based on the profitability of their personal service corporation. Clearly, the petitioning entity is a profitable enterprise for its owners. As previously noted, the petitioner's gross income in tax years 2003 to 2005 was above \$25 million and it paid salaries and wages each year of between \$16 and \$18 million. The officer compensation received in tax years 2003 to 2005 varies from \$590,733 to \$958,382. Thus, a review of the petitioner's gross profit and the amount of compensation paid out to the employee-owners confirms that the job offer is realistic and that the proffered salary of \$81,848 can be paid by the petitioner. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

The evidence submitted to the record establishes that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. 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 met that burden.

The evidence submitted to the record establishes that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. 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 met that burden.

Beyond the decision of the director, the AAO notes that the petitioner has not established that the beneficiary possesses a baccalaureate degree in electrical engineering, as stipulated by the Form ETA 750. 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).

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In addition, 8 C.F.R. §204.5(l)(3)(ii)(C) states:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of

concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on December 31, 2003.

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

- 14. Education
  - Grade School c
  - High School c
  - College c
  - College Degree Required Bachelor Degree
  - Major Field of Study Electrical Engineering

The applicant must also have two years of experience in the job offered, the duties of which 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 did not state any further special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information about schools, colleges and universities attended, including trade or vocational training, the beneficiary stated he attended [REDACTED] Institute of Technology, studying electrical engineering from August 1982 to September 1987, and that he received a B.E. (Elec). The record contains a letter entitled "Evaluation of Foreign Education and Training," dated October 12, 2000 written by [REDACTED] Chief Evaluator, [REDACTED] New York, New York. The record also contains the following academic credential documentation:

A copy of a document that states Bangalore University certifies that the beneficiary has been admitted to the degree of Bachelor of Engineering (Electrical) as of September 1987. The document is dated December 28, 1988;

Copies of a four-page document (undated) that contains the coursework for the four year bachelor of engineering degree course in electrical engineering at [REDACTED] Institute of Technology, Bangalore, India. This transcription appears to be signed by an individual identified as Professor and Head, Department of Electrical Engineering, [REDACTED]. Institute of Technology, Bangalore, India;

A copy of a document entitled Faculty of Science, on the letterhead of Guru Nanak Dev University, Amritsar, India, dated June 21, 1982. The document states that the beneficiary, son of [REDACTED] and of the [REDACTED] State has qualified in the subject of Mathematics of Pre-Engineering examination held in April 1982;

A copy of a second document entitled Pre-Medical Examination also from [REDACTED] University, Amritsar, India dated May 29, 1981 that states the beneficiary, son of G. L. Bajaj and of the D.A.V. College, Jullundur, has passed the university's Pre-Medical Examination held in April 1981;

A copy of a third document entitled Pre-University Examination from [REDACTED] University, Amritsar, Pre-University Examination that states the beneficiary, son of Goverdhan Lal Bajaj and of the D.A.V. College, Jullundur, has passed the Pre-University examination for the Science Group held in April 1980; and

A copy of a pass certificate that states the beneficiary, attending Mount St. Mary's, Delhi, India, was awarded an Indian Certificate of Secondary Education based on a November 1978 examination.

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides: "[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight." The AAO notes that the letter of educational equivalency submitted to the record by [REDACTED], Cultural House, Inc., New York, New York, contains educational information for a graduate of Kakatiya University, India, and also identifies the beneficiary as Sridhar Thammisetty. As such the petitioner's letter of educational equivalency is given no weight in these proceedings.

In examining the beneficiary's academic equivalency documents in the record, the AAO notes that the petitioner submitted evidence of a diploma from Bangalore University and a four page transcript of courses taken at [REDACTED] Institute of Technology, with no dates for particular year or semester of studies and signed by the head of the Department of Engineering. The website for this Institute of Technology indicates it is a part of the Bangalore University educational system; however the beneficiary's diploma provides no such information. See

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). ACCRAO, according to its website, [www.aacrao.org](http://www.aacrao.org), is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the

registration page for EDGE, <http://accraoedge.accrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.”

EDGE provides a great deal of information about the educational system in India. It discusses all the various degrees obtained through the Indian educational system, as well as provides samples of credentials of the same documents, in many instances. For a Bachelor of Engineering transcript, EDGE provides a PDF file that shows a document entitled “Results-Cum-Detailed Marks Card” signed by an individual identified as the controller of examinations, among other persons signing the document.. This document bears no resemblance to the undated transcript signed by the head of the Engineering Department, M.S. R. Institute of Technology, that the petitioner submitted to the record. Thus, the relationship between the transcript provided to the record and the beneficiary’s actual degree and studies is not clearly established in the record. Thus, the petitioner has not established that the beneficiary has a bachelor degree in engineering with a specialty in electrical engineering.

Thus, while the AAO will withdraw the director’s decision with regard to the petitioner’s ability to pay the proffered wage, the AAO will remand the matter to the director for further consideration of the beneficiary’s qualifications to perform the duties of the proffered position.

In view of the foregoing, the previous decision of the director with regard to the petitioner’s ability to pay the proffered wage will be withdrawn. The petition is remanded to the director for consideration of the beneficiary’s qualifications as discussed previously. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The director’s decision dated August 23, 2006 is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision, which is to be certified to the AAO for review.