



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 06 206 51040

Office: TEXAS SERVICE CENTER Date: **MAY 17 2007**

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

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

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, Texas Service Center, denied the employment-based immigrant visa petition. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a real estate investment and management company. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. 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 priority date of the visa petition and that the beneficiary met the education requirements of the labor certification at the time of priority date, February 21, 2001. Therefore, the director denied the petition.

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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's August 15, 2006 denial, the issues in this case are 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 and whether or not the beneficiary met the education requirements of the labor certification at the time of the priority date.

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.

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.

The first issue in this case is whether or not the petitioner has established its continuing ability to pay the proffered wage beginning on the priority date of February 21, 2001. The regulation at 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. 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 establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

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 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). The priority date in the instant petition is February 21, 2001. The proffered wage as stated on the Form ETA 750 is \$31,907.00 annually.

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 appeal¹. Relevant evidence submitted on appeal with respect to the ability to pay issue includes a brief from counsel, copies of the petitioner's previously submitted 2000² through 2004 Forms 1120, U.S. Corporation Income Tax Returns, a letter, dated August 30, 2006, from the petitioner's owner stating the lack of profits on the tax returns was due to his drawing dividends from the company, a letter, dated August 30, 2006, from the petitioner's owner stating that he could use the \$50,000 dividend to pay the salary of the beneficiary instead of taking it out, copies of the petitioner's owner's 2001 through 2004 Forms 1040, U.S. Individual Income Tax Returns, a buy out agreement between the petitioner's owners and M. Amjad, President of Redha Investments Inc, dated July 1, 2006, stating that the petitioner bought it and the petitioner's owner will be receiving assets and monthly rental income, and an income and expense statement from M. Amjad, dated July 20, 2006, regarding Redha's Financial Liability. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's 2000 through 2004 Forms 1120 reflect taxable incomes before net operating loss deduction and special deductions of \$4,677, -\$15,882, \$17,273, \$6,698, and \$27,000, respectively. The petitioner's 2000 through 2004 Forms 1120 also reflect net current assets of \$74,077, \$5,273, \$629, \$317, and \$101,975, respectively.

On appeal, the petitioner's owner alleges that the reason his corporate tax returns did not show a profit was because he was drawing dividends from the company account for all the work he was performing for the corporation. In addition, the petitioner states that if he had someone to take over his day-to-day involvement in the business' activities, he could easily grow the business and do more investments.

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

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).

² Please note that the year 2000 is prior to the priority date of February 21, 2001; and, therefore, the petitioner's tax returns for 2000 have little relevance when determining the petitioner's ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. Therefore, the petitioner's 2000 tax returns will not be considered except when determining the totality of the circumstances affecting the petitioning business if the evidence warrants such consideration.

⁴ According to *Barron's Dictionary of Accounting Terms* 117 (3rd 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.

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

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered prima facie proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on February 15, 2001, the beneficiary does not claim the petitioner as a past or present employer. It is noted, however, that the petitioner, in a letter dated January 15, 2001, claims to have employed the beneficiary since December 1999. Another letter, dated February 15, 2001, from [REDACTED] states that it employed the beneficiary from May 1999 until the present (2001). It is also noted that on Form G-325A, Biographic Information, dated July 5, 2006, the beneficiary claims to have been employed by three different gas stations as a cashier from September 2001 through the present. Other than the petitioner's statement, there is no evidence in the file that the petitioner employed the beneficiary as an accountant in 1999 and part of 2001. Therefore, the petitioner has not established that it employed the beneficiary in the pertinent years (2001 through 2004). Furthermore, the discrepancies in the beneficiary's reported employment experience are noted. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

* * *

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.

As an alternative means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd.*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc.*, the court held that CIS had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. 623 F.Supp at 1084. The court specifically rejected the argument that CIS should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *See also Elatos Restaurant Corp.*, 632 F. Supp. at 1054.

For a "C" corporation, CIS considers net income to be the figure shown on line 28 of the petitioner's Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on August 11, 2006 with the receipt by the director of the petitioner's submissions in response to the director's notice of intent to deny. The petitioner's tax returns demonstrate that its net incomes in 2000 through 2004 were \$4,677, -\$15,882, \$17,273, \$6,698, and \$27,000, respectively. The petitioner could not have paid the proffered wage of \$31,907 in any of the pertinent years (2001 through 2004) from its net income.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. 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.⁴ 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 a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner's 2000 through 2004 net current assets were \$74,077, \$5,273, \$629, \$317, and \$101,975, respectively. The petitioner could have paid the proffered wage of \$31,907 from its net current assets in 2004, but not in 2001 through 2003. Again, the 2000 tax return was before the priority date and will not be considered in determining the petitioner's ability to pay the proffered wage.

On appeal, the petitioner alleges that the reason his corporate tax returns did not show a profit was because he was drawing dividends from the company account for all the work he was performing for the corporation. In addition, the petitioner states that if he had someone to take over his day-to-day involvement in the business' activities, he could easily grow the business and do more investments. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In addition, against the projection of future earnings, *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) states:

I do not feel, nor do I believe the Congress intended, that the petitioner, who admittedly could not pay the offered wage at the time the petition was filed, should subsequently become eligible to have the petition approved under a new set of facts hinged upon probability and projections, even beyond the information presented on appeal.

On appeal, the petitioner submits copies of its owner's 2001 through 2004 Forms 1040 as evidence of the dividends he withdrew from the business and as evidence of the petitioner's ability to pay the proffered wage of \$31,907. It is noted, however, that the petitioner's adjusted gross incomes of \$98,386, \$50,522, \$86,859, and \$53,661, respectively, in 2001 through 2004 would have been diminished by \$65,912 in 2001, \$32,800 in 2002, \$24,000 in 2003, and \$47,830 in 2004 to support a family of four had those dividends been used to pay

the proffered wage of \$31,907 in those years. While we note the flexibility of owners to adjust dividend distributions, the record of proceeding does not support a finding that it is more likely than not that the petitioner's owner could support himself and his family with such a dramatic change in pay. Furthermore, the petitioner is organized as a corporation, and as such, CIS 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 a similar case, the court in *Sitar Restaurant 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."

Finally, if the petitioner does not have sufficient net income or net current assets to pay the proffered salary, CIS may consider the overall magnitude of the entity's business activities. Even when the petitioner shows insufficient net income or net current assets, CIS may consider the totality of the circumstances concerning a petitioner's financial performance. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). In *Matter of Sonogawa*, the Regional Commissioner considered an immigrant visa petition, which had been filed by a small "custom dress and boutique shop" on behalf of a clothes designer. The district director denied the petition after determining that the beneficiary's annual wage of \$6,240 was considerably in excess of the employer's net profit of \$280 for the year of filing. On appeal, the Regional Commissioner considered an array of factors beyond the petitioner's simple net profit, including news articles, financial data, the petitioner's reputation and clientele, the number of employees, future business plans, and explanations of the petitioner's temporary financial difficulties. Despite the petitioner's obviously inadequate net income, the Regional Commissioner looked beyond the petitioner's uncharacteristic business loss and found that the petitioner's expectations of continued business growth and increasing profits were reasonable. *Id.* at 615. Based on an evaluation of the totality of the petitioner's circumstances, the Regional Commissioner determined that the petitioner had established the ability to pay the beneficiary the stipulated wages.

As in *Matter of Sonogawa*, CIS may, at its discretion, consider evidence relevant to a petitioner's financial ability that falls outside of a petitioner's net income and net current assets. CIS may consider such factors as the number of years that the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that CIS deems to be relevant to the petitioner's ability to pay the proffered wage. In this case, however, the petitioner has provided tax returns for 2000 through 2004, only two of which establishes the petitioner's ability to pay the proffered wage of \$31,907. There is no evidence in the record of proceeding that the petitioner's circumstances parallel the business in *Sonogawa*. The petitioner's tax returns also are not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. It is further noted that the petitioner's 2000 through 2004 gross receipts fluctuate while compensation of officers and wages are nonexistent. In addition, there is no evidence of the petitioner's reputation throughout the industry.

The petitioner's 2001 tax return reflects a taxable income before net operating loss deduction and special deductions or net income of -\$15,882 and net current assets of \$5,273. The petitioner could not have paid the proffered wage of \$31,907 from either its net income or net current assets in 2001.

The petitioner's 2002 tax return reflects a taxable income before net operating loss deduction and special deductions or net income of \$17,273 and net current assets of \$629. The petitioner could not have paid the proffered wage of \$31,907 from either its net income or net current assets in 2002.

The petitioner's 2003 tax return reflects a taxable income before net operating loss deduction and special deductions or net income of \$6,698 and net current assets of \$317. The petitioner could not have paid the proffered wage of \$31,907 from either its net income or net current assets in 2003.

The petitioner's 2004 tax return reflects a taxable income before net operating loss deduction and special deductions or net income of \$27,000 and net current assets of \$101,975. The petitioner could have paid the proffered wage of \$31,907 from its net current assets in 2004.

For the reasons discussed above, the petitioner has not established its ability to pay the proffered wage of \$31,907 from the priority date of February 21, 2001 and continuing to the present.

The second issue in this case is whether or not the petitioner has established that the beneficiary met the education requirements at the time of filing the petition or February 21, 2001.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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 that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(l)(3) states, in pertinent part:

(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.

(C) *Professionals*. 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 February 21, 2001.

The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal. On appeal, counsel submits a previously submitted evaluation by SDR Educational Consultants, dated February 28, 2002, stating that "this equivalency is based on completion of the Bachelor of Arts degree from the University of Punjab, Pakistan, in 1994, and some six years of professional employment as an Accountant." It is noted that the evaluation states that the beneficiary's Bachelor of Arts degree is a two-year degree and that in the United States, the two-year degree is usually recommended for two years of transfer credit for purposes of admission to undergraduate studies. Counsel also resubmits a copy of the beneficiary's Bachelor of Arts degree from the University of the Punjab in Pakistan and copies of the beneficiary's transcripts.

On appeal, counsel claims that the beneficiary has fulfilled all the minimum requirements for the job position. Counsel further claims that he has been "submitting these degree equivalencies based on a combination of academic training and job experience for 30 years."

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
 - High School -
 - College X
- College Degree Required Bachelor
- Major Field of Study Accounting

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 reflects that there are no other special requirements for the proffered position.

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 represented that he attended the Punjab Commerce College, in Pakistan from August 1991

through May of 1992 or nine months. The beneficiary also stated that he attended the University of the Punjab, in Pakistan from September 1993 to June 1994 or nine months and was awarded a Bachelor of Commerce degree. According to the signed declaration of the beneficiary, the record indicates that the beneficiary attended college for eighteen months. However, it has been determined that the nine months the beneficiary attended the Punjab Commerce College represent the completion of twelve years of formal education which allowed the beneficiary to enroll in the bachelor degree program at the University of the Punjab and cannot be considered as time spent towards the beneficiary's attainment of his Bachelor of Arts Degree. Therefore, the record shows that the beneficiary only finished nine months of education with regard to the achievement of his current bachelor's degree.

The beneficiary also set forth his employment experience on Form ETA-750B. As signed by the beneficiary on December 15, 2001 under penalty of perjury, the beneficiary claims to have been employed by [REDACTED] as an accountant from May 1999 through the present (December 15, 2001) and as an accountant for [REDACTED] from January 1995 through April 1999. The beneficiary did not indicate any additional employment experience on the Form ETA-750B.

Regarding the beneficiary's qualifications for the experience requirements of the proffered position, the record includes a letter dated January 15, 2001 from the petitioning corporation signed by Nasir Chaudry, Managing Director, that states that the beneficiary was employed by the petitioner from December 1999 to the present (2001). This letter does not identify the specific duties of the beneficiary. The petitioner also has not provided any Forms W-2, Wage and Tax Statements, or Forms 1099-MISC, Miscellaneous Income, issued by the petitioner for the beneficiary as corroboration of its employment of the beneficiary. The record of proceeding also contains a letter, dated February 15, 2001, from [REDACTED] stating that it employed the beneficiary as an accountant from May 1999 until the present (February 15, 2001) or one year and nine months. It is noted that the job description given by [REDACTED] is almost identical, word for word, with the job description found on the ETA-750A. It is also noted that [REDACTED] position at [REDACTED] is not set forth in the letter so it is not clear that the letter was written by the beneficiary's former trainer or authorized employer representative as required by 8 C.F.R. § 204.5(g)(1). Finally, the record of proceeding includes a letter, dated April 10, 1999, from [REDACTED] of Afeef Textiles stating that it employed the beneficiary as an accounts analyst from January 1995 to March 1999. Again, the specific duties of this position were not disclosed which fails to conform to the regulatory requirements of 8 C.F.R. § 204.5(g)(1). Therefore, in summary, the AAO must conclude that the beneficiary does not meet the experience requirements of the labor certification due to the many discrepancies⁵ in the record of

⁵ Both the letters from [REDACTED] of the petitioner and [REDACTED] of [REDACTED] state that they employed the beneficiary from 1999 (Nasir Chaudry from December 1999 and Sohail Nusrat from May 1999). However, neither letter indicates whether or not the employment was full-time or part-time, and the AAO will not make assumptions in this regard. Therefore, there is a possible conflict between the two employments. Another discrepancy in the record of proceeding with regard to the beneficiary's experience is shown on the beneficiary's Form G-325 that was included with the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, filed in 2006. Again, this form was signed by the beneficiary on July 5, 2006, and the form clearly stated that severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact. The Form G-325 lists the beneficiary's employment as a cashier at three different gas stations from September 2001 through the present. The supplemental documentation filed with the Form I-140 in June 2006 does not include any indication that the petitioner is no longer employing the beneficiary or, if not, why and when it ended its employment of the beneficiary. If the petitioner still employs the beneficiary, it is

proceeding and due to the fact that the experience letters provided do not meet the regulatory requirements for required evidence.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree with a major in accounting. The Form ETA-750 as certified by the Department of Labor made no provision for anything less than a bachelor's degree in the instant case.

A bachelor's degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The combination of education and experience, a combination of degrees, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree may not be accepted in lieu of a four-year degree.

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. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In the instant case, the evaluation by SDR Educational Consultants, dated February 28, 2002, states that "this equivalency is based on completion of the Bachelor of Arts degree from the University Of Punjab, Pakistan, in 1994, and some six years of professional employment as an Accountant." It is noted that the evaluation states that the beneficiary's Bachelor of Arts degree is a two-year degree and that in the United States, the two-year degree is usually recommended for two years of transfer credit for purposes of admission to undergraduate studies. The beneficiary's two-year Bachelor of Arts degree does not meet the regulatory requirements at 8 C.F.R. § 204.5(l)(3)(ii)(C) nor does the Bachelor of Arts degree meet the requirements of the ETA-750 as certified by the Department of Labor which requires a Bachelor's degree in Accounting and no alternative thereto such as a combination of lesser degrees and/or work experience.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(C), to qualify as a professional, the petitioner must submit evidence showing that the alien beneficiary holds a United States baccalaureate degree or a foreign equivalent degree and evidence that the alien is a member of the professions. In this case, the bachelor's degree must be in accounting.

In the instant case, the beneficiary possesses a two-year Bachelor of Arts degree and the evidence is defective and fails to show that he has two years of experience. He does not have a Bachelor Degree in Accounting and two years of experience as required by the ETA-750. The petitioner's actual minimum

reasonable to assume that the petitioner could have provided a more up-to-date experience letter along with the requisite Forms W-2 or Forms 1099-MISC as corroboration of the employment. In addition, it is reasonable to assume that N.C.R. [REDACTED] could have provided those same forms as corroboration of its employment of the beneficiary.

requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor, but was not done so in this case. In addition, although counsel claims that he has been submitting “these degree equivalencies based on a combination of academic training and job experience for 30 years,” counsel submitted no evidence in support of that assertion.⁶ Regardless, even if true, CIS, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp.2d 800, 803 (E.D. La. 2000), *affd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied*; 485 U.S. 1008 (1988).

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses a four-year United States bachelor's degree in accounting, or foreign equivalent degree, or two years of qualifying employment experience as required by the terms of the labor certification and regulations.

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 sustained that burden.

ORDER: The appeal is dismissed.

⁶ 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). 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)).