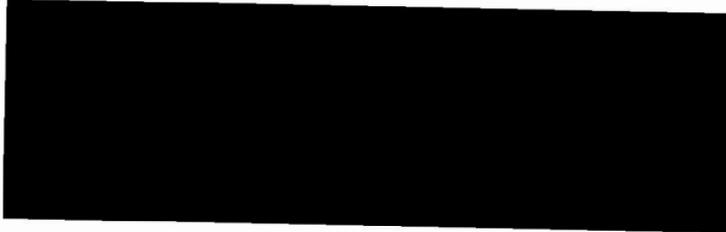


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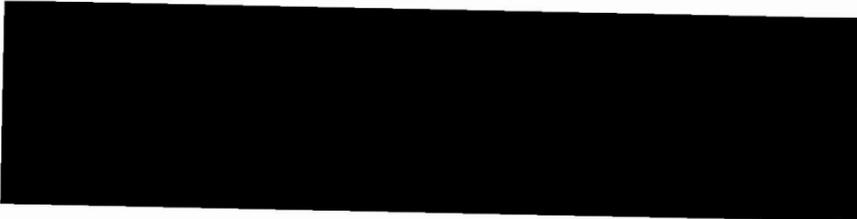
Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is a retirement hotel. It seeks to employ the beneficiary permanently in the United States as a restaurant cook (Korean chef). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's January 24, 2007 denial, the director determined that the evidence did not establish that the petitioner has the ability to pay the proffered wage at the time of priority date was established and continuing to the present. 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.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The record shows that Golden Manor Inc. filed a Form ETA 750 on behalf of the instant beneficiary on February 13, 2003 and the Form ETA 750 was certified on August 10, 2005 to Golden Manor, Inc. The proffered wage as stated on the Form ETA 750 is \$13.00 per hour (\$27,040 per year). The Form ETA 750 states that the position requires 6 years of high school education and two years of experience in the job offered. On the Form ETA 750B, signed by the beneficiary on January 27, 2003, the beneficiary did not claim to have worked for the petitioner. On the petition, the petitioner claimed to have been established in 1999, to have a gross annual income in excess of \$675,000, and to currently employ 10 workers. However, the petitioner did not provide information about its net annual income on the petition.

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>. Counsel did not submit a brief or evidence to support the appeal<sup>2</sup>. Relevant evidence in the record includes a letter dated February 8, 2004 from [REDACTED] of J.M.P.M. Residential Care Facility Consultants, Superior Court of California, County of Los Angeles Settlement Agreement at Time of Trial between [REDACTED] on January 13, 2005, Articles of Incorporation of Retirement Hotel Associates, Inc., Articles of Incorporation for Golden Manor Form 2553 Election by a Small Business Corporation filed by Golden Manor, Inc., the corporate tax returns of Golden Manor Inc. for 2003 and 2004, the corporate tax returns of Golden State Retirement Hotel Inc. for 2005, financial statements for Golden Manor as of September 30, 2005 with a letter from a CPA, financial statements for Retirement Hotel Associates, Inc. as of June 30, 2006 with a letter from a CPA, and Form 941 Employer's Quarterly Federal Tax Return and Form DE-6 Quarterly Wage and Withholding Report for Retirement Hotel Associates Inc. d/b/a Golden State Retirement Hotel for the second quarter of 2005. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

On appeal, counsel asserts that the director did not consider all the assets of the petitioner in calculating its ability to pay the proffered wage.

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).

The petitioner filed the instant petition on June 14, 2006 under the name of Retirement Hotel Associates, Inc. dba Golden State Retirement (previously known as Golden Manor Inc.). In the submission letter, counsel asserted that "although the name of the petitioner has changed since submitting the Foreign Labor Certification (ETA 750 forms) from Golden Manor, Inc. to Retirement Hotel Associates, Inc. dba Golden State Retirement Hotel, the Employer Identification Number (EIN), physical address, telephone number, job offer and business continue to be identical to the information provided with the original ETA submission."

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<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).

<sup>2</sup> On the Form I-290B filed on February 21, 2007, counsel indicated that she would be submitting a separate brief and/or evidence to the AAO within 30 days. However, on September 18, 2007 in response to the AAO's fax requesting a brief and/or additional evidence, counsel verified that she did not file a brief or evidence in support of this appeal as she indicated on Form I-290B.

However, the record contains no evidence that petitioner qualifies as a successor-in-interest to Golden Manor, Inc. The evidence in the record shows that Golden Manor, Inc. was incorporated on April 13, 2001, was elected as a small business corporation on August 11, 2003 effective on January 1, 2004 and had an EIN 95-4862050. The petitioner, Retirement Hotel Associates, Inc. was incorporated on March 1, 1999 and has an EIN 95-4731710. Both the petitioner and Golden Manor, Inc. are structured as California corporations. The record does not contain any evidence showing either of them is a part of or the trade name of the other. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

Counsel asserted that the submitted documents established that the petitioner has assumed all financial responsibility and obligations formerly acquired as Golden Manor, Inc. Maria Morris states in her letter dated February 8, 2004 that:

[T]he residential care facility for the elderly located at 4340 Lockwood Ave., Los Angeles, CA 90029 was initially licenses to Retirement Hotel and Associates, Inc., with the fictitious business name, Golden State Retirement Hotel. During the beginning of the divorce [REDACTED] was ordered by the court to take full control of Golden State Retirement Hotel/Retirement Hotel and Associates, Inc. ... [T]he name of the business was changed to Golden Manor, Inc. Upon the final financial settlement of the divorce on January 17, 2005, the court granted [REDACTED] ownership of Golden Manor, Inc. Consequently, Mr. Gilbert Hong changed the name of the business to the former Name, Golden State Retirement Hotel. Although there has[sic] been changes in the name of the business (Golden State Retirement Hotel, Golden Manor, Inc.) it is the same business operation as a residential care facility at 4340 Lockwood Ave., Los Angeles, California.

However, the record does not contain any documentary evidence to support [REDACTED] assertions in the letter, such as the court's order in the beginning of the divorce granting [REDACTED] full control of Golden State Retirement Hotel/Retirement Hotel and Associates, Inc., the filing documents for changing the business name from Golden State Retirement Hotel/Retirement Hotel and Associates, Inc. to Golden Manor, Inc., and from Golden Manor, Inc. to Golden State Retirement Hotel/Retirement Hotel and Associates, Inc. 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)). Contrary to Maria Morris' assertion, Superior Court of California, County of Los Angeles Settlement Agreement at Time of Trial between Gil San Hong and Sally Hong on January 13, 2005 submitted in the record has granted [REDACTED] the exclusive control, use and possession of Golden State Retirement Hotel and its dba, but doe not contain any provisions concerning Gold Manor, Inc. and/or its assets transfer. Further, California Business Portal, the Secretary of State's official corporation research site, does not contain any records for the name changes between Golden State Retirement Hotel/Retirement Hotel and Associates, Inc. and Golden Manor, Inc. as described by the Maria Morris letter.

The AAO finds that the petitioner in the instant case, Retirement Hotel Associates, Inc. d/b/a Golden State Retirement Hotel, has not submitted persuasive evidence that indicates that the petitioner qualifies as a successor-in-interest to Golden Manor, Inc. This status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that the petitioner is doing business at the same location as the predecessor does not establish that the petitioner is a successor-in-interest. The record does not contain such evidence. The petitioner failed to establish that successor-in-interest relationship exists between the petitioner and Golden Manor, Inc. and further failed to submit a labor certification certified to it for the instant petition. Therefore, the petition must be denied.

In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Even if the petitioner had established that it were the successor-in-interest to Golden Manor, Inc., the petitioner would have to establish that the predecessor had the ability to pay the proffered wage from the priority date in 2003 to the time when the alleged successor-in-interest relationship had occurred and that the petitioner had the ability to pay the proffered wage from the time of successor-in-interest to the present. In the instant petition, the petitioner submit the corporate tax returns of Golden Manor Inc. for 2003 and 2004, the corporate tax returns of Golden State Retirement Hotel Inc. for 2005, financial statements for [REDACTED] as of September 30, 2005 with a letter from a CPA, financial statements for Retirement Hotel Associates, Inc. as of June 30, 2006 with a letter from a CPA, and Form 941 Employer's Quarterly Federal Tax Return and Form DE-6 Quarterly Wage and Withholding Report for Retirement Hotel Associates Inc. d/b/a Golden State Retirement Hotel for the second quarter of 2005. The AAO will consider the petitioner's financial documents as if it is established as a successor-in-interest to Golden Manor, Inc. in determining the petitioner's ability to pay in the instant case.

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 beneficiary did not claim to have worked for the petitioner and the petitioner did not submit W-2 forms, 1099 forms or other documents showing the petitioner paid the beneficiary during the relevant years. The record contains a copy of the petitioner's Form 941 and Form DE-6 for the second quarter of 2005. However, these forms do not show the petitioner paid the beneficiary any amount of compensation. The petitioner failed to establish its ability to pay through the examination of wages actually paid to the beneficiary. The petitioner is obligated to demonstrate that it could pay the full proffered wage of \$27,040 per year from the year of the priority date and continuing to the present with its net income or its net current assets.

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 total income and wage expense is misplaced. Showing that the petitioner's total income 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. Reliance on the petitioner's depreciation in determining its ability to pay the proffered wage is misplaced. The court in *K.C.P. Food Co., Inc. v. Sava* 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 Chang* at 537.

The record contains copies of Form 1120, U.S. Corporation Income Tax Return, of the predecessor, Golden Manor, Inc., for 2003 and 2004, and of the successor-in-interest, Golden State Retirement Hotel Inc., for 2005. According to the tax returns, they are structured as C corporations and their fiscal years are based on a calendar year. The tax returns for 2003 through 2005 demonstrate the following financial information concerning the predecessor and the successor-in-interest's ability to pay the proffered wage of \$27,040 per year from the year of the priority date:

- In 2003, the Form 1120 stated a net income<sup>3</sup> of \$12,556.
- In 2004, the Form 1120 stated a net income of \$41,985.
- In 2005, the Form 1120 stated a net income of \$(21,688).

While the predecessor had sufficient net income to pay the proffered wage in 2004, it did not have sufficient net income to pay the proffered wage for 2003, the year of the priority date. Therefore, the predecessor failed to establish its ability to pay the proffered wage in 2003. The petitioner did not have sufficient net income to pay the proffered wage in 2005 even if it were established to be qualified as a successor-in-interest to Golden Manor, Inc.

If the net income a 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. In response to the director's request for evidence (RFE) dated September 1, 2006, counsel asserted that the letter from a CPA attested that the predecessor and the successor-in-interest had more than sufficient assets (\$99,811 in 2003 and \$143,038 in 2005) to establish ability to pay the proffered wage. The tax returns for 2003 and 2005 show that the figures counsel referred as net assets were in fact the companies' total assets. We reject, however, the idea the petitioner's total assets should have been considered in the determination of the ability to pay the proffered wage. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to

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<sup>3</sup> Taxable income before net operating loss deduction and special deductions as reported on Line 28 of the Form 1120.

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>4</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 predecessor's net current assets during 2003 were \$5,792.
- The petitioner's net current assets during 2005 were \$4,695.

Therefore, for the year 2003, the predecessor did not have sufficient net current assets to pay the proffered wage and for the year 2005, the petitioner did not have sufficient net current assets to pay the proffered wage even if it were established to be qualified as a successor-in-interest to Golden Manor, Inc.

Therefore, from the date the Form ETA 750 was accepted for processing by DOL except for 2004, even if the successor-in-interest status were established, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, the net income or net current assets of the predecessor or the successor-in-interest.

Counsel submitted the financial statements for Golden Manor as of September 30, 2005 and for Retirement Hotel Associates, Inc. as of June 30, 2006 to establish the petitioner's ability to pay the proffered wage. However, these financial statements are not audited. Counsel's reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Counsel's assertion that CIS uses "net current assets" as an alternative method in determining the petitioner's ability to pay the proffered wage instead of total assets. As previously discussed, counsel's reliance on the petitioner's total assets in determining the ability to pay is misplaced. Counsel's assertion does not comply with the guidance set forth in Yates' May 4, 2004 memo.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the predecessor and the petitioner that demonstrates that the predecessor could not pay the

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<sup>4</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.

proffered wage for 2003, the year the Form ETA 750 was accepted for processing by DOL, and that the petitioner even if its successor-in-interest status were established could not pay the proffered wage for 2005.

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

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

14.	Education	
	Grade School	Blank
	High School	6 years
	College	Blank
	Experience	
	Job Offered	2 years
	Related Occupation	Blank

The duties of the proffered job are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A states "must have checkable references" as a special requirement.

The beneficiary set forth her credentials on Form ETA-750B and signed her name on January 27, 2003 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, Names and Addresses of Schools, Colleges and Universities Attended, the beneficiary did not provide any information about her education background. Further, the record does not contain any documents to demonstrate that the beneficiary had 6 years of high school prior to the priority date. Therefore, the petitioner failed to establish that the beneficiary met the educational requirements set forth by the Form ETA 750.

On Part 15, eliciting information of the beneficiary's work experience, she represented that she has been unemployed since December 2001. Prior to that, she represented that [REDACTED] Restaurant in Wool San, South Korea employed her as a full time Korean chef from August 1998 to November 2001. She did not provide any additional information concerning her employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) 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.

The only evidence submitted in the record pertinent to the beneficiary's requisite two years of experience in the job offered as required by the above regulation is a letter dated January 23, 2006 from [REDACTED]. This letter stated concerning the beneficiary's work experience in pertinent part that:

[The beneficiary] and I worked together at [REDACTED] Restaurant located at [REDACTED]. [REDACTED] was employed as a Manager from April 1997 until May 2003. The restaurant closed down in May 2003.

[The beneficiary] was employed by [REDACTED] as a Cook, Korean Style Food from August 1998 to November 2001. [The beneficiary]'s employment was on a full time basis consisting of a minimum of 40 hours per week. [The beneficiary]'s responsibilities as a Cook was planning our menu, cooking Korean style dishes, dinners, and desserts such as Galbi, Bulgogi[sic], Rise[sic], Pa Jun, Kimchi according to recipes. She also prepared meats, sauces, vegetables, and other foods prior to cooking and estimated food consumption and requisitioned supplies.

The letter verifies that the beneficiary was employed as a full time Korean cook from August 1998 to November 2001, for more than two years; and the letter contains a specific description of the duties performed by the beneficiary as required by the regulations. However, this letter cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case. The regulations request that evidence relating to qualifying experience be from a current or former employer. Although the experience letter in the instant case includes the name, address and title of the writer, the writer was not the beneficiary's employer, but a co-worker. The regulations allow other documentation relating to the alien's experience be considered only if the required letter from a former employer is proven to be unavailable. The letter indicates that the business closed down in May 2003, however, the letter was not submitted with any documentary evidence of the business closing, such as a business closing registration from local authority. 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)).

Therefore, the petitioner did not establish with regulatory-prescribed evidence that the beneficiary met the educational and experience requirements for the proffered position prior to the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.