

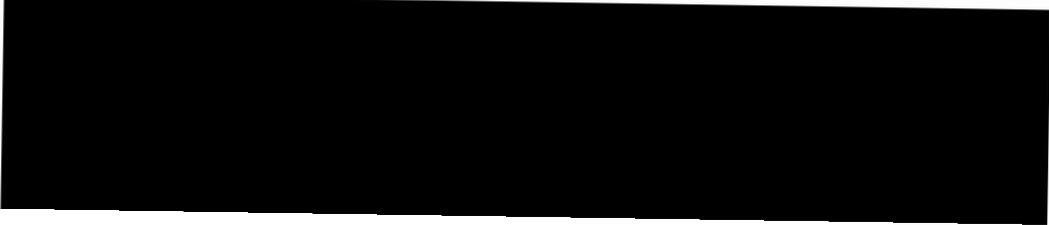
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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SRC-04-119-51582

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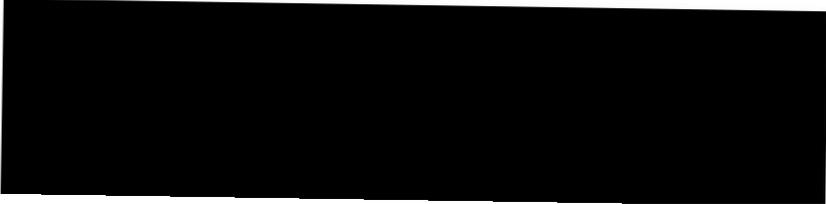
Petitioner:

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, Texas Service Center, after reopening the case upon two subsequent motions to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail jeweler. It seeks to employ the beneficiary permanently in the United States as a retail store manager (manager). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification or Form ETA 750), approved by the Department of Labor (DOL). The director determined that the petitioner had not established its continuing ability to pay the beneficiary the proffered wage for 2005 and did not establish that Gold Valley Rocky Mount Inc is the successor-in-interest to the petitioner. 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 decisions on January 30, 2007, April 11, 2007 and June 6, 2007, the issues in this case are whether the successor-in-interest relationship between Gold Valley Rocky Mount Inc and the petitioner has been established and whether the petitioner demonstrated that it and its successor-in-interest had demonstrated 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.

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

... Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program ...

The instant case is not an application for Schedule A designation, nor an application that the alien qualifies for one of the shortage occupations in the DOL's Labor Market Information Pilot Program. Therefore, the petitioner must submit an individual labor certification from DOL for the proffered position.

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 DOL. *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 the petitioner, Aly Diamond Corporation d/b/a Gems N Gold, filed a Form ETA 750 on behalf of the instant beneficiary on October 7, 2003 and the Form ETA 750 was certified on January 23, 2004 to Aly Diamond Corporation. The proffered wage as stated on the Form ETA 750 is \$17,784 per year. On March 22, 2004, the petitioner filed the instant petition with its trade name, Gems N Gold. Therefore, the petitioner in the instant case is Aly Diamond Corporation d/b/a Gems N Gold. On the petition, the petitioner claimed to have been established in 1999, to have a gross annual income of \$336,213, to have a net annual income of \$21,232, and to currently employ 6 workers. In the motion to reopen filed on March 1, 2007 (the first MTR), counsel claimed that the ownership of Gems N Gold was changed on August 24, 2005 from Ali Diamond Corporation to Gold Valley Rocky Mount Inc and requested substituting the petitioner with Gold Valley Rocky Mount Inc.

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 appeal¹. On appeal counsel submits a brief and copies of documents submitted previously. Other relevant evidence in the record includes a bill of sale, articles of amendment of Gold Valley Rocky Mount, NC, Inc. a letter dated February 28, 2007 from [REDACTED] the president of Gold Valley Rocky Mount, Inc. [REDACTED], the beneficiary's W-2 forms for 2004 and 2005, Form 1120S corporate tax returns of Aly Diamond Corporation for 2003 through 2005, a letter from Anwar Ali Mohammad of Gems 'N' Gold dated November 7, 2006 (Mohammad's November 7, 2006 letter), and Form 1120 corporate tax return of Gold Valley Rocky Mount, NC, Inc. for 2005. The record does not contain any other evidence relevant to the successor-in-interest relationship between the petitioner and Gold Valley Rocky Mount, Inc. and the petitioner's ability to pay the wage.

On appeal, counsel asserts that submitted evidence established the successor-in-interest relationship between the two companies and the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

However, the record contains no evidence that Gold Valley Rocky Mount, Inc. qualifies as a successor-in-interest to the petitioner. The North Carolina Department of Secretary of State official website indicates that the petitioning entity, Aly Diamond Corporation, was incorporated on April 29, 1999 as a domestic corporation in North Carolina and is in current-active status; and Gold Valley Rocky Mount, NC, Inc. was

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).

incorporated on August 24, 2005 as a domestic corporation in North Carolina and is in current-active status². Aly Diamond Corporation is identified with its federal employer identification number 56-2139133 while Gold Valley Rocky Mount, NC, Inc. has the federal employer identification number 20-3377060. The record shows that both the petitioner and Gold Valley Rocky Mount, NC, Inc. are structured as North Carolina corporations. 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 petitioner sold the business to Gold Valley Rocky Mount, NC, Inc. and therefore, Gold Valley Rocky Mount, NC, Inc. is the successor-in-interest to the petitioner. This status requires documentary evidence that the successor company has assumed all of the rights, duties, and obligations of the petitioner. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Counsel submitted a bill of sale and the [REDACTED] February 28, 2007 letter as such documentary evidence. The bill of sale states in pertinent part that:

This agreement is made on August 15, 2005 between seller [REDACTED] of Aly Diamond Inc. dba: Gold Valley, [REDACTED] Rockt[sic] Mount, NC 27804 and buyer: [REDACTED]

Anwar Ali Mohammed has been sold the jewelry store, Gold Valley Rocky Mount at Golden East Crossing Mall, NC 28807 to Roshan Bano Permani price as under:

... ..

Counsel initially submitted the bill of sale with the petitioner's second MTR on May 11 2007. The bill of sale is a fax copy which contains fax transmittal information showing that this document was faxed three times: the first time was on June 24, 2004 at 10:42 to 1717761234; the second time was on April 29, 2006 at 22:44 with 7137761234 and Gold N Fashion; and the third time was on May 10, 2007 at 02:07 with [REDACTED] and Gold N Fashion. Counsel did not submit the original copy or certified copy of the original bill of sale, nor did counsel submit any other legal documents for the purchase and acquisition, such as sale and purchase agreement between the two corporations to support the contents of the bill of sale. According to the bill of sale, the agreement was made on August 15, 2005, however, counsel did not explain how a document created in 2005 could be faxed in 2004. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The bill of sale was made between [REDACTED] and [REDACTED] and indicated that the seller, [REDACTED] sold a jewelry store to the buyer [REDACTED] on August 15, 2005. There is no part evidencing any transaction or acquisition of a jewelry store between the two corporations, Aly Diamond Corporation and Gold Valley Rocky Mount, NC, Inc. In addition, as previously noted, the North Carolina Department of Secretary of State official website indicates that the alleged successor-in-interest to the petitioner, Gold Valley Rocky Mount, NC, Inc. was incorporated on August 24, 2005³.

² See <http://www.secretary.state.nc.us/Corporations/Csearch.aspx> (accessed on November 8, 2007)

³ See <http://www.secretary.state.nc.us/Corporations/Csearch.aspx> (accessed on November 8, 2007)

Counsel did not explain how a non-existing corporation makes a purchase agreement and acquires a jewelry store from someone else, and how Gold Valley Rocky Mount, NC, Inc. purchased a jewelry store from the petitioner 10 days before its establishment.

Further, the bill of sale indicates that [REDACTED] sold the jewelry store, Gold Valley Rocky Mount at Golden East Crossing Mall, NC 28807 to [REDACTED]. In the instant case, the employer who filed the relevant labor certification application and was certified to the labor certification is Aly Diamond Corporation d/b/a Gems N Gold located at [REDACTED] Greenville, NC 27858, and the employer filed the labor certification on behalf of the instant beneficiary in the position of manager at the same location. The instant petition was filed by Gems N Gold located at 714 Southeast Greenville Road, Greenville, NC 27858 for the beneficiary to work as a full-time manager at a jewelry store located at [REDACTED].

The record does not contain any evidence showing that the petitioner ran or is running a jewelry store as Gold Valley Rocky Mount at 153 Golden East Crossing Mall. The document showing that [REDACTED] purchased a jewelry store named Gold Valley Rocky Mount at Golden East Crossing Mall from [REDACTED] cannot evidence that Gold Valley Rocky Mount, NC, Inc. has assumed all of the rights, duties, and obligations of the petitioner, Aly Diamond Corporation. Because of these defeats, the bill of sale submitted in the record may be given less evidentiary weight in the proceedings. Therefore, the petitioner failed to establish that the successor-in-interest relationship exists between the petitioner and Gold Valley Rocky Mount, NC, Inc. with the bill of sale.

[REDACTED] states that Gold Valley Rocky Mount Inc took over and bought out the operations of [REDACTED] Corporation at 153 Golden East Crossing Mall, Rocky Mount NC in 2005. However [REDACTED] did not submit any documentary evidence to support his assertion. 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)). Instead the record contains evidence which provides contrary information to the [REDACTED]. Counsel submitted a copy of paychecks issued by the petitioner on September 30, 2005 to the beneficiary as compensation for September 2005. [REDACTED] also asserts in his February 28, 2007 letter that "we have taken over and now assume all of the responsibilities of any and all immigration filings by [REDACTED] Corporation. Accordingly, we have agreed to employ and to offer to employ [the beneficiary] pursuant to the terms and conditions of the I-140 Petition for Immigrant Alien Workers as filed by our predecessor." Gold Valley Rocky Mount, NC, Inc. registered its office at 153 Golden East Crossing Mall in Rocky Mount, NC and its principal office at [REDACTED] Houston, TX 77036. See <http://www.secretary.state.nc.us/Corporations/Csearch.aspx> (accessed on November 8, 2007). The petitioner offered the beneficiary a retail store manager position in a jewelry store named Gems N Gold at [REDACTED] Greensville, NC on the Form ETA 750 and Form I-140. The Boghni's February 28, 2007 letter did not explain how Gold Valley Rocky Mount, NC, Inc. could employ or offer to employ the beneficiary employment in a store it does not own or run. It appears unlikely that Gold Valley Rocky Mount, NC, Inc. can be the successor-in-interest to the petitioner and assume all of the responsibilities of this petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "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." The record does not contain any independent objective evidence to resolve the inconsistency mentioned above.

The AAO finds that the petitioner has not submitted persuasive evidence that indicates that Gold Valley Rocky Mount, NC Inc. is the successor-in-interest to the petitioner. This portion of the director's decision is

affirmed. The AAO will review and consider the petitioner's financial documents solely to determine the petitioner's continuing ability to pay the proffered wage from the priority date in 2003 to the present.

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 submitted the beneficiary's W-2 forms for 2004 and 2005. The submitted W-2 forms show that the petitioner paid the beneficiary \$9,000 in 2004 and \$13,500 in 2005. The petitioner did not submit any W-2 forms, 1099 forms or other documents showing that the petitioner paid any amount of compensation to the beneficiary in 2003. Therefore, the petitioner did not demonstrate that it paid the full proffered wage in 2003 and onwards. The petitioner is obligated to demonstrate that it could pay the full proffered wage of \$17,784 in 2003 and the differences of \$8,784 in 2004 and \$4,284 in 2005 between wages actually paid to the beneficiary and the proffered wage.

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 contrary to the petitioner's assertions. 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.)

The record contains copies of the petitioner's Form 1120S U.S. Income Tax Return for an S Corporation for 2003 through 2005. According to the tax returns, the petitioner is structured as an S corporation and its fiscal year is based on a calendar year. The tax returns for 2003 through 2005 demonstrate the following financial

information concerning the petitioner's ability to pay the proffered wage of \$17,784 per year from the year of the priority date:

- In 2003, the Form 1120S stated a net income⁴ of \$40,417.
- In 2004, the Form 1120S stated a net income of \$(44,500).
- In 2005, the Form 1120S stated a net income of \$427.

As an alternative method to determine the petitioner's ability to pay the proffered wage, 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.⁵ 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 \$294,611.
- The petitioner's net current assets during 2004 were \$280,469.
- The petitioner's net current assets during 2005 were \$0.

Therefore, for the years 2003 and 2004, the petitioner had sufficient net current assets to pay the proffered wage. However, neither the petitioner's net income nor its net current assets in 2005 were sufficient to pay the instant beneficiary the difference of \$4,284 between wages actually paid to the beneficiary and the proffered wage that year.

In addition, if the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant

⁴ Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S U.S. Income Tax Return for an S Corporation state on page one, "Caution: Include only trade or business income and expenses on lines 1a through 21."

Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120S states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on line 23 or 17e of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. See Instructions for Form 1120S (2003), available at <http://www.irs.gov/pub/irs-prior/i1120s--2003.pdf>; Instructions for Form 1120S (2002), available at <http://www.irs.gov/pub/irs-prior/i1120s--2002.pdf>.

⁵ 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 accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been approved or pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its approved and pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2).

CIS records show that the petitioner under the names of Aly Diamond Corporation, Gems N Gold and Gold Valley filed eight I-140 immigrant petitions including the instant petition⁶. The petitioner was obligated to establish its ability to pay the proffered wage for at least seven of them in 2005. The petitioner failed to demonstrate that it had sufficient net income or net current assets to pay the proffered wage to the instant beneficiary in 2005. Furthermore, the petitioner even failed to establish its ability to pay the proffered wages to the six approved beneficiaries with its 2005 net income or net current assets.

Therefore, the petitioner failed to submit persuasive evidence to establish that Gold Valley Rocky Mount, NC. Inc. is the successor-in-interest to the petitioner. The petitioner had not established that it had the ability to pay the beneficiary the proffered wage in 2005 through an examination of wages paid to the beneficiary, its net income or its net current assets. Counsel's assertions on appeal cannot overcome the director's grounds of denial.

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 demonstrated that the beneficiary possessed the requisite two years of experience prior to the priority date with regulatory-prescribed evidence. 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

⁶ Although the eight petitions were filed by an entity with different names, all of them used the same federal employer identification number 56-2139133 and with the same owner [REDACTED] as the instant petitioner's owner. Therefore, they should be considered as petitions filed by the petitioner. The seven other petitions are as follows: (1) EAC-03-054-53562 was filed by Gems N Gold on November 5, 2002 with the priority date of April 30, 2001 and approved on September 17, 2003, and the beneficiary obtained lawful permanent residence on May 24, 2005; (2) SRC-03-068-55062 was filed by Gems N Gold on December 4, 2002 with the priority date of April 30, 2001 and approved on September 4, 2003, and the beneficiary obtained lawful permanent residence on May 25, 2005; (3) SRC-03-174-51271 was filed by Gems N Gold on June 6, 2003 with the priority date of April 30, 2001 and approved on May 20, 2004, and the beneficiary's adjustment of status application was transferred to a CIS local office on August 10, 2005; (4) SRC-02-093-54456 was filed by Gold Valley on January 29, 2002 with the priority date of April 25, 2001 and approved on August 20, 2002, and the beneficiary obtained lawful permanent residence on April 26, 2005; (5) SRC-03-042-51826 was filed by Gold Valley on November 26, 2002 with the priority date of April 30, 2001 and approved on August 19, 2003, and the beneficiary obtained lawful permanent residence on June 18, 2005; (6) SRC-03-067-53478 was filed by Gold Valley on January 3, 2003 with the priority date of April 30, 2001 and approved with the AAO's order on June 8, 2005, and the beneficiary obtained lawful permanent residence on June 29, 2005; (7) LIN-07-060-52444 was filed by Aly Diamond Corporation on December 22, 2006 and is pending with CIS.

(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 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.

The Form ETA 750 requires two years of experience in the job offered or two years of managerial experience in a related occupation. The instant I-140 petition was submitted on March 22, 2004 with an experience letter from Chicago Distributor Inc. as evidence pertinent to the beneficiary's qualifications as required by the above regulation. This experience letter is on letterhead of Chicago Distributor Inc. with its address and was dated February 10, 2003 and signed by [REDACTED] as the president of the company⁷. This letter stated concerning the beneficiary's work experience in pertinent part that:

[The beneficiary] was working with us from in the capacity of a store Manager[sic] in 1993-1996.

As a manager of our store, his duties include (but are not limited to) making weekly schedules for all the subordinates, handling their payroll, making daily Bank Deposits, taking store inventory, corresponding with the vendors, controlling inventory and supervising individuals.

The letter is from the president of the company, and thus it is a letter from a former employer. The letter included a specific description of the duties the beneficiary performed as required by the regulation. The letter also confirmed that the beneficiary was employed as a store manager in 1993-1996. However, this experience letter from Chicago Distributors Inc. did not indicate the starting and ending months and did not verify the beneficiary's full-time employment. Therefore, it is not clear whether the beneficiary worked as a store manager for at least two full-time years and further was qualified for the proffered position. Thus, this experience letter cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case. The record of proceeding does not contain any documentary evidence, such as the beneficiary's paystubs or other payment records from Chicago Distributors Inc., the company's personnel records, or payroll records, to support the contents of the experience letter, nor is there any other evidence in the record to verify the beneficiary's qualifications. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience for the proffered position as required by the ETA 750 with regulatory-prescribed evidence.

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.

⁷ This office accessed the Illinois official corporation database at <http://www.ilsos.gov/corporatellc/CorporateLlcController> on November 8, 2007. The site indicates that Chicago Distributors Inc. was incorporated on September 28, 1992 and [REDACTED] was the president of the company, however, the corporation was dissolved. The site does not provide further information on when and why the corporation was dissolved. Therefore, it is not clear whether the experience letter was issued before the corporation was dissolved.

ORDER: The appeal is dismissed.