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NOV 29 2007

File: [REDACTED] Office: TEXAS SERVICE CENTER Date:
WAC-06-054-50783

In re: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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 (“director”), denied the immigrant visa petition.¹ The petitioner appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner operates a board and care facility, and seeks to employ the beneficiary permanently in the United States as a cook, institutions and cafeteria (“Cook”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director’s July 19, 2006 decision, the petition was denied based on the petitioner’s failure to demonstrate its ability to pay the proffered wage from the priority date of the labor certification until the beneficiary obtains permanent residence.

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).²

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.

The petitioner has filed to obtain an immigrant visa and classify the beneficiary as an “other,” or unskilled worker. Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.³

The petitioner must establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner’s filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d). Therefore, the petitioner must establish that the job offer

¹ The petitioner initially filed its petition with the California Service Center. The petition was transferred to the Texas Service Center for decision in accordance with new procedures related to bi-specialization.

² 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).

³ The petitioner initially filed Form ETA 750, which listed the position requirements as two years of training or experience. As initially filed, Form ETA 750 would have classified the position for a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2), and 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. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b). However, the petitioner reduced the experience required for the position to one year prior to certification. DOL approved the correction prior to certification. Accordingly, the petition will be considered under the “other worker” category.

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).

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.

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on April 27, 2001. The proffered wage as stated on Form ETA 750 is \$11.80 per hour for an annual salary of \$24,544 per year based on a 40 hour work week.⁴ The labor certification was approved on June 24, 2005, and the petitioner filed the I-140 Petition on the beneficiary's behalf on December 6, 2005. The petitioner listed the following information: established: 1987; gross annual income: \$240,404.00; net annual income: not listed; and current number of employees: 5.

On April 17, 2006, the director issued a Request for Evidence ("RFE") for the petitioner to provide evidence of its ability to pay the proffered wage from April 27, 2001 onward, and that such evidence must be in the form of the petitioner's federal tax returns, annual reports, or audited financial statements. Additionally, the RFE provided that the petitioner may also submit Forms 941, quarterly tax statements, as well as to submit the beneficiary's Forms W-2, if the petitioner employed the beneficiary. The petitioner responded. On July 19, 2006, the director determined that the evidence submitted was insufficient to demonstrate the petitioner's ability to pay the proffered wage, and denied the petition. The petitioner appealed and the matter is now before the AAO.

We will initially examine the petitioner's ability to pay based on the evidence in the record, and then examine the petitioner's additional arguments raised on appeal. First, in determining the petitioner's ability to pay the proffered wage during a given period, Citizenship & Immigration Services ("CIS") will 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. On Form ETA 750B, signed by the beneficiary on April 23, 2001, the beneficiary did not list that he was employed with the petitioner.⁵ The petitioner is, therefore, unable to establish its ability to pay the beneficiary the proffered wage based on prior wage payment.

⁴ The petitioner initially listed a wage of \$8.00 per hour, however, the Department of Labor ("DOL") required that the petitioner increase the proffered wage to \$11.80 prior to certification.

⁵ In response to the RFE, the petitioner did not provide any Forms W-2 for the beneficiary as counsel stated that the petitioner had not employed the beneficiary during the 2001 to 2005 time period. We note, however, that on Form G-325A filed with the beneficiary's I-485 Adjustment of Status application, the beneficiary listed that was employed with the petitioner as a cook from April 2001 to the present (date of signature). The beneficiary signed this form on March 16, 2006. Further, Form G-325 lists the beneficiary's place of

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. 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). In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

The petitioner is structured as a C corporation. For a C corporation, CIS considers net income to be the figure shown on line 28, taxable income before net operating loss deduction and special deductions, of Form 1120 U.S. Corporation Income Tax Return, or the equivalent figure on line 24 of the Form 1120-A U.S. Corporation Short Form Tax Return. The tax returns submitted state amounts for taxable income on line 28 as shown below:

<u>Tax year</u>	<u>Net income or (loss)</u>
2005	\$61,675
2004	-\$9,835
2003	\$13,761
2002	\$24,364
2001	-\$10,416

The petitioner would be able to demonstrate its ability to pay the beneficiary the proffered wage in only 2005, but not in 2001, 2002, 2003, or 2004, although we note that the petitioner's net income is only \$180 below the proffered wage in 2002.⁶

residence from April 2001 to the present (date of signature) as: [REDACTED] The petitioner's listed address is [REDACTED], so that it appears that the beneficiary resides on the petitioner's premises. Based on the foregoing, it is unclear why counsel stated that the petitioner had not employed the beneficiary.

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). 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. *Id.* at 591-592.

⁶ We additionally note the following information from the petitioner's federal tax returns:

Next, we will examine the petitioner's continuing ability to pay the required wage under a second test based on an examination of net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ 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 were as follows:

<u>Year</u>	<u>Net Current Assets</u>
2005	-\$227,027
2004	-\$189,816
2002	-\$181,041
2002	-\$205,053
2001	-\$215,618

Based on the foregoing, the petitioner cannot demonstrate its ability to pay the beneficiary the proffered wage through its net current assets in any year.

The petitioner additionally submitted bank statements for its business checking account for each month of the years 2002, 2003, 2004, and 2005, and for the first six months of 2006.⁸ The statements show significant variation in the amount that the petitioner had in its account from a low negative balance of -\$994.22 (as of May 31, 2004)⁹ to a high balance of \$15,229.39 (as of June 30, 2006).

First, we note that bank statements are not among the three types of evidence listed in 8 C.F.R. § 204.5(g)(2) as required to establish a petitioner's ability to pay a proffered wage. This regulation allows for consideration of additional material such as bank accounts "in appropriate cases." As the petitioner has not established that the bank balances represent funds in addition to cash assets listed on Schedule L, already considered in

<u>Tax year</u>	<u>Gross Receipts</u>	<u>Salaries Paid</u>
2005	\$311,000	\$16,800
2004	\$287,140	\$16,800
2003	\$180,550	\$16,600
2002	\$182,160	\$9,792
2001	\$180,750	\$18,300

⁷According 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.

⁸ The petitioner initially submitted its business bank statements for the year 2005, and the first six months of 2006. On appeal, the petitioner submitted business bank statements for the years 2002, 2003, and 2004.

⁹ We additionally note that the petitioner's bank statements exhibit that the petitioner had frequent negative month end balances, including for four month end statements in 2002; five month end statements in 2003; six month end statements in 2004, one month end statement in 2005, and two month end statements in 2006. The statements additionally exhibit that the petitioner frequently incurred charges for nonsufficient funds and overdraft charges. For example, the petitioner's August 2003 statement exhibits twelve overdraft charges, and five nonsufficient funds charges for that month.

calculating the petitioner's net current assets, the bank statements would not demonstrate the petitioner's ability to pay the proffered wage. Further, as a fundamental point, the petitioner's tax returns are a better reflection of the company's financial picture, since tax returns address the question of liabilities. Bank statements do not reflect whether the petitioner has any outstanding liabilities. Based on the statements provided, we would not conclude that the statements exhibit the petitioner's ability to pay the beneficiary the proffered wage.

The petitioner additionally submitted personal bank statements for the petitioner's owner for the years 2001, 2002, 2003, 2004, and 2005, and the first five months of 2005.¹⁰ The petitioner is structured as a C Corporation. 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." Therefore, the owner's bank statements, assets, or profits from other corporations would not be relevant to the petitioner's ability to pay the proffered wage.

On appeal, counsel provides that the petitioner can pay the proffered wage based on: 1. the petitioner's net current assets, which he provides were greater than the proffered wage; 2. a calculation of the petitioner's current ratio analysis; 3. "the monthly ending balances of its corporate bank account are more than sufficient to cover the proffered wage of [the] beneficiary;" and 4. based on the owner's monthly ending bank statement balances.

We will address each of counsel's arguments in turn.

First, counsel provides that the petitioner can pay the proffered wage based on its net current assets as elaborated in the May 4, 2004 [REDACTED] Associate Director for Operations, Determination of Ability to Pay under 8 CFR 204.5(g)(2), Memo (May 4 [REDACTED]), and also based on "Minutes of ESC/AILA Liaison Teleconference, Nov. 16, 1994, reprinted in AILA Monthly Mailing 44, 46-47 (Jan. 1995)."¹¹

¹⁰ The petitioner initially submitted the owner's personal bank statements for 2005. On appeal, the petitioner submitted the owner's personal bank statements for the years 2001, 2002, 2003, and 2004, as well as for the first five months of 2006.

¹¹ Counsel provides that the ESC/AILA Liaison Teleconference outlined five points, one of which he highlighted as relevant to the instant petition, that if:

The taxable income is negative even though the beneficiary is not yet employed by the petitioner, ESC [Vermont Service Center] will generally assume that the petitioner can handle that additional salary, if according to its tax return, it has a favorable enough ratio of total assets to total current liabilities.

First, counsel does not provide a published citation to support this proposition. While 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS), formerly the Service or INS, are binding on all CIS employees in the administration of the Act, unpublished decisions, and AILA liaison minutes are not binding precedents. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Further, the section of the AILA liaison minutes that counsel cites to are essentially similar to CIS's formulation for net current assets, which are considered above.

Counsel cites to the May 4, 2004 [REDACTED] Associate Director for Operations, Determination of Ability to Pay under 8 CFR 204.5(g)(2), Memo (May 4 Yates Memo), and provides that the May 4 [REDACTED] Memo instructs that CIS should give reasons for a petition's denial. Further, the May 4 [REDACTED] Memo provides that CIS should examine the petitioner's: (1) net income; (2) net current assets; or (3) the petitioner's employment of the beneficiary in its determination of whether the petitioner can pay the proffered wage.

Counsel asserts that the petitioner had positive net current assets in 2001, 2003, and 2005, which were sufficient to cover the beneficiary's salary in those years. Counsel calculates the net current assets as follows: 2001: \$437,860; 2002: \$409,847; 2003: \$398,180; 2004: \$431,428; and 2005: 475,110.

We have calculated the net current assets as set forth above based on the formula set forth above. Counsel has taken the petitioner's total assets listed on Schedule L, rather than its current assets, lines 1 through 6, and has subtracted liabilities from lines 16 through 18. Therefore, counsel's net current asset calculations are in error. As set forth above, the net current assets would not demonstrate the petitioner's ability to pay the beneficiary's proffered wage in any of the respective years required.

Next, counsel asserts that the petitioner can pay the proffered wage based on "the accounting principle of current ratio analysis." Counsel provides that this concept is commonly used to determine the short-term debt paying ability of a company, and is ascertained through dividing the petitioner's current assets by its current liabilities. Counsel then states that current assets include cash and other current assets, and then calculates the current assets ratio using the petitioner's total assets.

Financial ratio analysis is the calculation and comparison of ratios that are derived from the information in a company's financial statements. The level and historical trends of these ratios can be used to make inferences about a company's financial condition, its operations, and attractiveness as an investment. In isolation, a financial ratio is a useless piece of information. In context, however, a financial ratio can give a financial analyst an excellent picture of a company's situation and the trends that are developing. A ratio gains utility by comparison to other data and standards, such as the performance of the industry in which a company competes. Ratio Analysis enables the business owner/manager to spot trends in a business and to compare its performance and condition with the average performance of similar businesses in the same industry. Important balance sheet ratios measure liquidity and solvency (a business's ability to pay its bills as they come due) and leverage (the extent to which the business is dependent on creditors' funding). Liquidity ratios indicate the ease of turning assets into cash and include the current ratio, quick ratio, and working capital.¹²

While counsel argues that the current ratio shows the petitioner has the ability to pay the proffered wage, he provides no evidence of any industry standard that would allow a comparison with the petitioner's current ratio. In addition, he has not provided any authority or precedent decisions to support the use of current ratios in determining the petitioner's ability to pay the proffered wage. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

¹² See *Financial Ratio Analysis*, <http://www.finpipe.com/equity/finratan.htm> (accessed March 21, 2006); *Financial Management, Financial Ratio Analysis*, <http://www.zeromillion.com/business/financial/financial-ratio.html> (accessed March 21, 2006); *Industry Financial Ratios, Financial Ratio Analysis*, http://www.ventureline.com/FinAnal_indAnalysis.asp (accessed March 21, 2006).

Further, as noted above, total assets are different than current assets. Therefore, we disagree with counsel's calculation. Further, the [REDACTED] sets forth the relevant test of the petitioner's net current assets, which is the formula outlined and utilized above.

Counsel next argues that the petitioner's bank account statements would demonstrate its ability to pay the proffered wage. In support, he cites to several non-precedent decisions: *In Re, AAU EAC-94-145-52233* (VSC 1995); and 1995 WL 1796474; *In Re, AAU EAC-94-065-50851* (VSC 1995).¹³ Counsel asserts that in these cases the Associate Commissioner determined that the petitioners could pay the respective proffered wages as the "monthly bank account balances exceeded the monthly salary."

Further, counsel asserts that in EAC-94-165-52322, which we note is similarly a non-precedent case, that the Associate Commissioner "granted the employment based petition despite loss shown on tax return [sic] because employer has sufficient cash to pay the proffered salary as evidenced by certificate of deposit receipts and monthly business accounts and statements."

As noted above, in the review of the petitioner's bank statements, the statements exhibited that the petitioner's month end balances were frequently negative. It is unclear how negative balances would exhibit the petitioner's ability to pay the beneficiary the proffered wage.

Counsel next misquotes 8 C.F.R. § 204.5(g)(2) and states that: "in appropriate cases, additional evidence such as profit/loss statements, bank account records, or personal records,¹⁴ may be submitted by the petitioner or requested by the Service." [Emphasis in quotation].

Based on the foregoing, counsel asserts that the petitioner's owner's bank account statements would show that the petitioner has the ability to pay the proffered wage.

Citizenship and Immigration Services ("CIS") will consider personal assets in the case of a sole proprietorship, where, unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. However, the petitioner's business is structured as a corporation. 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). Therefore, the petitioner's owner's assets cannot be used to show the petitioner's ability to pay the proffered wage.

Further, we note that based on the petitioner's tax returns submitted, the petitioner has not paid any one, or all of its employees together, a salary that is close to the beneficiary's proffered wage.

Accordingly, the petitioner has failed to establish its ability to pay the proffered wage.

¹³ As noted above, while 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

¹⁴ The regulation at 8 C.F.R. § 204.5(g)(2) properly reads: "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 the Service." [Emphasis added].

Further, although not raised in the director's denial, the petitioner has failed to show that the beneficiary meets the requirements of the certified ETA 750. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the alien 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). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

On the Form ETA 750A, the "job offer" description for a cook provides:

Will prepare and cook family-style meals for clients and employees of the facility. Will cook food and dishes in quantities according to menu and number of people. May order supplies and keep records and accounts. May direct activities of one or more workers who assist in preparing and serving meals.

Further, the job offered listed that the position required:

Education:	not required
Major Field Study:	
Experience:	1 year ¹⁵ in the job offered, cook
Other special requirements:	None.

On the Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior experience as: Pinausukan Restaurant, Philippines, March 1996 to February 1999, cook.

A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which provides:

(ii) *Other documentation*—

¹⁵ The petitioner initially listed that the position required two years of prior experience, however, we note that the "two" is crossed out on the Form ETA 750, and instead "one year" is written in with the initials "EDD [Employment Development Department, the California State Workforce Agency]/ CQU" written next to the change, so that it appears EDD made the change in connection with the petitioner's knowledge prior to certification.

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

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

To document the beneficiary's experience, the petitioner submitted the following letter:

Letter from [REDACTED] Pinausukan Seafood House [no address, or location listed], December 5, 1999;
Position title: cook;
Dates of employment: March 1996 to February 1999;
Description of duties: not listed.

The letter provided is deficient in that it fails to list the prior employer's address, fails to list the beneficiary's description of job duties, fails to list the exact month and day of employment, and whether the experience gained was on a full-time or part-time basis. These factors would be important in verifying employment, and in order to determine the exact length of the beneficiary's experience and whether he meets the one-year of required prior experience.¹⁶

Based on the foregoing, the petitioner has failed to establish that it has the ability to pay the beneficiary the required wage from the priority date until the time of adjustment. Further, the petitioner has failed to establish that the beneficiary met the requirements of the certified ETA 750. Accordingly, 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.

¹⁶ Further, we note that the beneficiary's visa, issued on October 25, 1999, contained within the record of proceeding is annotated that the beneficiary intended to come to the U.S. to "conduct research for the Philippine Congress." While it is possible that the beneficiary left his position as a cook to work for another employer, such as the Philippine Congress, the visa annotation raises questions as to the beneficiary's exact work experience prior to his U.S. arrival and whether he was employed as a researcher or as a cook. 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). 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. *Id.* at 591-592.