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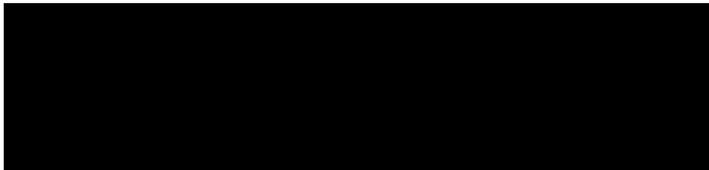
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



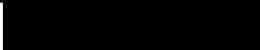
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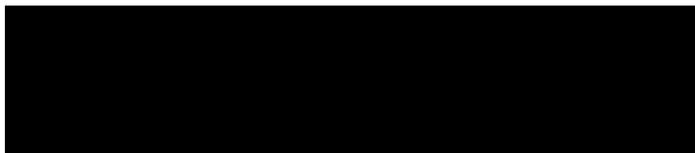
Petitioner:



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.

*RPW*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner Capital Construction Company & Va., Inc. is a residential and commercial building firm. It seeks to employ the beneficiary permanently in the United States as a drywall applicator. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. However, the director determined that the petitioner had failed to establish that it was a successor-in-interest to Prestige Roofing & Siding, the employer which filed the Form ETA 750 that accompanied the petition. As such, the petitioner had not established that it was entitled to use this Form ETA 750 to support its petition. The director further determined that, even if the petitioner could document that it was a successor-in-interest to the Form ETA 750 employer, it had not established its continuing ability to pay the proffered wage from the priority date onwards. The director also determined that the petitioner had not established that the beneficiary had acquired the necessary qualifying employment experience as of the priority date of the visa petition. The director denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and maintains that the Form ETA 750 employer changed its name to that of the petitioner, that the beneficiary had obtained the qualifying work experience, and that the petitioner had the continuing financial ability to pay the proffered wage.

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

A successor-in-interest must submit proof of the relevant change in ownership and of how the change in ownership occurred. It must also demonstrate that it assumed all of the rights, duties, obligations, and assets of the original employer and that it continues to operate the same type of business as the original employer. See *Matter of Dial Auto Repair Shop*, 19 I&N Dec. 481 (Comm. 1981). The regulation at 20 C.F.R. § 656.30(c)(2) provides that a labor certification involving a specific job offer is valid only for that specific job opportunity and for the area of intended employment.<sup>1</sup> 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).

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<sup>1</sup> If the employer/employee relationship changes, the validity of the approved labor certification may be affected. For instance, if the employer filing the preference petition cannot be considered a successor-in-interest to the employer in the labor certification, the job opportunity as described in the approved certification no longer exists. See *Matter of United Investment Group*, Int. Dec. 2990 (Comm. 1985). In *Matter of United Investment Group*, the original employer was a partnership, which had several changes in partners between the original filing of the labor certification application and the filing of the I-140. Although one partner had remained constant throughout the changes, it was found that the changes in partners represented a series of different employers, and that the validity of the labor certification had thus expired.

The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

(ii) *Other documentation*—

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

(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.

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

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 30, 2001.<sup>2</sup> The proffered wage is stated as \$16.76 per hour, which amounts to \$34,860.80 per year.

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<sup>2</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa

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 employer named on the ETA 750A is [REDACTED]. On the ETA 750B, signed by the beneficiary on April 22, 2001, the beneficiary lists two jobs that he has held. He claims that he worked for [REDACTED] Contracting of Long Island, New York as a full-time drywall applicator from January 1996 to March 1998. He also claims that he worked for the ETA 750 employer, Prestige Roofing & Siding as a full-time drywall applicator from March 1998 to the present (date of signature-4/22/01).

The Immigrant Petition for Alien Worker (I-140) was filed on September 26, 2005. Part 5 of the petition indicates that the I-140 petitioner, [REDACTED] was established in 2000, it claims gross annual income of \$3.5 million dollars, and it claims to currently employ eighteen workers. Counsel's transmittal letter, which accompanied the filing of the I-140, states that the company changed its name from "Prestige Roofing & Siding, Inc." to [REDACTED] Inc."

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must possess as of the priority date. In this matter, item 14 states that the alien must have a minimum of two years of experience in the job offered of drywall applicator.

With the petition, and in support of its ability to pay the proffered wage, the I-140 petitioner submitted a letter, dated September 13, 2005, and signed by its president, [REDACTED]. He states that the petitioner, [REDACTED], was established in 2000 and that it is able to pay the certified wage. He adds that its gross revenue exceeded 3.5 million dollars in 2003; that it employs over 125 people, and that its payroll exceeds \$600,000.

The director issued a request for evidence on October 24, 2005, instructing the petitioner to provide evidence showing that the beneficiary had obtained the requisite education, training, and experience required by the labor certification as of the priority date of April 30, 2001. The director advised the petitioner that if foreign documents are submitted, they must be completely translated and be accompanied by a certification that the translation is accurate and that the translator is competent to translate. The director also requested that the petitioner submit documentation establishing its continuing ability to pay the proffered wage. She instructed the petitioner to provide copies of its 2001, 2002, 2003, and 2004 federal income tax returns along with the complete schedules and attachments. The director further noted that "there is some conflicting information in Part five of your I-140. In section two of part five you have indicated the current number of employees as 18. This contradicts your claim of having more than 100 employees."

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abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

In support of the beneficiary's qualifying past work experience, the petitioner provided a letter from [REDACTED] General Director." The letter is on the letterhead of [REDACTED] of Guadalupe, Zac. (Mexico), dated November 10, 2005. The translation is not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).<sup>3</sup> The letter states that the beneficiary "worked for this company from April 5, 1998 to November 1989, fulfilling the position of drywall installer and in maintenance of government offices, hotels, hospitals and residential areas."

In support of the petitioner's financial ability to pay the proposed wage offer of \$34,860.80 per year, the petitioner provided copies of [REDACTED] Form 1120, U.S. Corporation Income Tax Return for 2002, 2003, and 2004. The return for 2001 was not provided. The tax returns reveal a different address for [REDACTED] than that indicated on the I-140. They also reflect that [REDACTED] was not incorporated until January 10, 2002. The returns further show that [REDACTED] files its tax returns on a calendar year basis. The returns contain the following information:

	2002	2003	2004
Gross Receipts or Sales	\$60,505	\$ 5,000	\$ 11,190
Salaries and Wages	not listed	not listed	not listed
Net Income <sup>4</sup>	-\$208,894	-\$ 42,583	-\$347,929
Current Assets (Schedule L)	not listed	not listed	not listed
Current Liabilities (Schedule L)	not listed	not listed	not listed
Net Current Assets	(As current asset and current liability information is not available, net current assets may not be determined.)		

Net current assets are the difference between the petitioner's current assets and current liabilities and represent a measure of a petitioner's liquidity during a given period.<sup>5</sup> Besides net income, and as an alternative method of reviewing a petitioner's ability to pay the proffered wage, CIS will examine a petitioner's net current assets as a possible readily available resource out of which a proffered wage may be paid. As reflected on a corporate tax return the company's year-end current assets and current liabilities are shown on Schedule L. Current assets are found on lines 1(d) through 6(d) and current liabilities are specified on lines 16(d) through 18(d). If the petitioner's year-end net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

<sup>3</sup> This regulation provides:

*Translations.* Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

<sup>4</sup> For purposes of this analysis, net income is defined as taxable income before net operating loss (NOL) and special deductions (line 28 of the Form 1120.)

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

The director denied the petition on February 10, 2006. In the denial, the director indicated that there was no evidence in the record that the employer listed on the Form ETA 750, [REDACTED], had changed its name to [REDACTED] or that [REDACTED] had otherwise become a successor-in-interest to [REDACTED]. Thus, [REDACTED] had not demonstrated that it should be permitted to file its Form I-140 accompanied by the Form ETA 750 in the record. Regarding the petitioner's failure to establish its continuing ability to pay the proffered wage, the director indicated that even if the petitioner could document that it was a successor-in-interest to the employer listed on the Form ETA 750 such that CIS might consider [REDACTED] financial information in the analysis of this matter, [REDACTED] tax returns for 2002, 2003 and 2004 did not show that that entity had the ability to pay the wage. The director also indicated that for 2001 no tax return for any entity had been provided, nor had any other financial documentation been submitted to demonstrate a continuing ability to pay the wage beginning at the April 30, 2001 priority date. She additionally observed that nothing in the 2003 return indicated that Capital Construction had gross revenue of 3.5 million dollars or a payroll of \$600,000, as suggested by the petitioner.

The director determined further that the employment verification letter from [REDACTED] did not specifically identify the beneficiary's duties during this employment and did not address how much of the experience was related to drywall application and how much experience was related to "maintenance." In concluding that the petitioner failed to establish that the beneficiary had obtained two years of qualifying experience as a dry wall applicator, the director also noted that the claimed employment at [REDACTED] was not listed on the ETA 750B.

On appeal, in support of the petitioner's ability to pay the proffered wage, counsel asserts that [REDACTED] II is a majority owner and principal of several companies such as [REDACTED] and [REDACTED]. He indicates that Internal Revenue Service (IRS) rules would regard these several companies as a controlled group to be treated as one entity. He indicates that CIS should consider the controlled group's solvency when analyzing the petitioner's ability to pay the wage. Counsel states that under this theory, his opinion is that [REDACTED] is financially sound and able to pay the proffered wage. He also considers various figures from the tax returns submitted into the record in isolation to assert that the petitioner has established the ability to pay the certified wage. In support of this assertion, counsel resubmits copies of Capital Construction's federal tax returns for 2002, 2003, and 2004. Counsel also provides a copy of a Form 1120, U.S. Corporation Income Tax Return for 2000 filed by a company called, "Prestige Homes, Inc.," and a "statement of common ownership" from [REDACTED], which states that [REDACTED] is the sole owner of [REDACTED]." and [REDACTED]. Also provided is a copy of the articles of organization dated January 27, 2000, for a company called [REDACTED] as well as a February 14, 2000, certificate of organization for [REDACTED] issued by the corporation commission in Virginia. Copies of two documents relating to [REDACTED]" are submitted. One is an April 4, 2001, Virginia corporation commission letter acknowledging that a filing for change of registered office/registered agent for [REDACTED] was received in that office, and the other document is a copy of a 2005 notice of contractor license renewal for [REDACTED].

<sup>6</sup> This office accepts for purposes of this analysis that [REDACTED] is the same as [REDACTED] the company listed as the petitioner in this matter.

This office would note that nothing was submitted on appeal, nor is there any evidence in the record to indicate that the petitioner in this matter is a successor-in-interest to the employer listed on the Form ETA 750. Any undocumented assertions that the employer listed on the Form ETA 750 changed its name to that of the petitioner are not sufficient to support a finding that the petitioner [REDACTED] may use the Prestige Siding & Roofing Form ETA 750 to accompany its petition. 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)). Moreover, subsequent to making the claim that [REDACTED] Roofing had changed its name to [REDACTED], the petitioner's owner submitted a notarized statement dated March 11, 2006 which attests that [REDACTED] and [REDACTED] are separate entities, and that [REDACTED] owns both entities. This apparent discrepancy in the record casts doubt on the authenticity of the claim that the Form ETA 750 employer and the petitioner are not distinct entities, and that the Form ETA 750 employer had merely changed its name to that of the petitioner. This discrepancy also casts doubt on the petitioner's remaining evidence in the record. As noted by the Board in *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988):

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

It is incumbent upon 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. *See Id.*

Further, any undocumented assertions that the petitioner's owner is also the owner of the entity listed as the employer on the Form ETA 750 are not sufficient to meet the burden of proof in these proceedings. Moreover, even if the petitioner's owner could document that it owns both [REDACTED] that would not be relevant to whether the petitioner, [REDACTED], may use the [REDACTED] Form ETA 750 to accompany its petition. Without competent, independent documentary evidence of a successor-in-interest relationship or competent, independent documentary evidence that the petitioner and the Form ETA 750 employer are the same entity, the petitioner [REDACTED] may not utilize the Form ETA 750 filed by [REDACTED] and CIS may not accept the petition.

It is also noted that even if the petitioner were able to document that it is a successor-in-interest to the Form ETA 750 employer, the petitioner has not demonstrated a continuing ability to pay the proffered wage. In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner may have employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage during a given period, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. To the extent that the petitioner paid wages less than the proffered salary, those amounts will be considered in calculating the petitioner's ability to pay the proffered wage. In this case, although the ETA 750B suggested that the ETA 750 employer "Prestige Roofing &

Siding" may have employed the beneficiary, no evidence of wages or compensation paid to him has been provided to the record.

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. If it equals or exceeds the proffered wage, the petitioner is deemed to have established its ability to pay the certified salary during the period covered by the 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. "[CIS] may reasonably rely on net taxable income as reported on the employer's return." *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1053 (S.D.N.Y. 1986) ((citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, supra*, and *Ubeda v. Palmer, supra*; see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532, 536 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985). In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend that 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. (Original emphasis.) *Chi-Feng* at 536.

If an examination of the petitioner's net income or wages paid to the beneficiary fail to successfully demonstrate an ability to pay the proposed wage offer, CIS will review a petitioner's net current assets.

In this case, however, even if [REDACTED] was able to provide documentation that it was the same company or the successor-in-interest to [REDACTED] the employer listed on the approved labor certification, [REDACTED] has not demonstrated a continuing ability to pay the proffered wage of \$34,860.80 from the April 30, 2001 priority date onwards. First, the [REDACTED] tax returns list no assets or liabilities on Schedule L in 2002, 2003, or 2004. Thus, CIS is not able to determine this entity's net current assets for those years. Second, [REDACTED] has not established a continuing ability to pay the proffered wage through its net income, which as set forth above was reported as -\$208,894 in 2002, -\$42,583 in 2003, and -\$347,929 in 2004. Third, the application for alien labor certification submitted with the petition was accepted by DOL on April 30, 2001. Yet, according to its tax returns, [REDACTED] was not incorporated until January 2002. In the underlying record, counsel suggested that a name change had

occurred, however no evidence of such change was ever provided as would be documented by the Virginia [REDACTED] and this argument was not renewed on appeal. Rather the theory advanced on appeal is that [REDACTED]'s majority ownership interest in various companies compels an examination of these companies' collective financial information in support of the petitioner's continuing ability to pay the certified wage of \$34,860.80 from the priority date onwards. Disparate information referring to different companies such as [REDACTED] (the I-140 petitioner) was submitted on appeal. No financial information for the designated ETA 750 employer, [REDACTED] has been provided for 2001 or any subsequent years. No financial information for any entity has been provided covering 2001, the year the priority date was established by the Form ETA 750. Thus, the petitioner has failed to demonstrate an ability to pay the wage from the April 30, 2001 priority date onwards.

Further, regarding the assertion that CIS should consider the financial information of various entities that the petitioner's owner apparently claims to own, this office notes that 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."

Thus, in this matter, even if there was documentary evidence in the record that the petitioner might utilize the Form ETA 750 filed by [REDACTED] siding to accompany its petition, and even if evidence in the record supported the assertion that [REDACTED] owned both the petitioner and various other corporations, CIS could not look to the financial information of an entity other than the petitioner when analyzing the petitioner's ability to pay the wage.

Regarding the verification of the beneficiary's qualifying prior employment, as noted by the director, the ETA 750B omits any mention of the beneficiary's qualifying past employment at the [REDACTED]. It is noted that the ETA 750 submitted by the petitioner and signed under penalty of perjury by the petitioner and the beneficiary instructs the signer on Part B to "List all jobs held during the past three years. Also list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9." The beneficiary signed the ETA 750B on April 22, 2001 and failed to claim the employment at the Constructora Santana as a job related to the occupation for which he is seeking certification.

The director's observation that the employment verification letter from [REDACTED] failed to clarify how much of the beneficiary's experience was gained in drywall installation or in maintenance is indirectly addressed on appeal where counsel has provided a copy of another letter in Spanish from Constructora Santana, signed by [REDACTED] the general director. It is also dated November 10, 2005, but is typed in different font and contains slightly different information, in that it is identical in every respect

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<sup>7</sup> Modern corporations are creations of statute, deriving their authority and existence from the state. *Harbison v. Strickland*, 900 So. 2d 385 (Ala 2004).

to the language of the first letter submitted except that it omits the language referring to the beneficiary's performance of duties "and in maintenance" ("y en areas de mantenimiento"). It is accompanied by a certified English translation. No explanation has been offered and it is not clear to this office why two letters from [REDACTED] would both appear to be dated November 10, 2005, both identical in language, except typed on different font, with the one provided on appeal suggesting that the beneficiary only performed drywalling duties and not maintenance. This apparent inconsistency in the record casts doubt on the petitioner's evidence. As noted previously, in *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), the Board states that 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. 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. *Id.* Taken together with the omission of this employment from the ETA 750B, this evidence cannot be found to be credible.<sup>8</sup>

The petitioner has not demonstrated that it is a successor-in-interest to the employer listed on the Form ETA 750 or that it is otherwise qualified to file the Form I-140 accompanied by the approved Form ETA 750 filed by Prestige Roofing & Siding. Even if it were the successor-in-interest to [REDACTED] the petitioner has not demonstrated its continuing ability to pay the proffered wage from the priority date onwards, nor has demonstrated that the beneficiary possessed the requisite qualifying work experience as of the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

This office notes that a petition which 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>8</sup> See also *Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)