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U.S. Citizenship and Immigration Services

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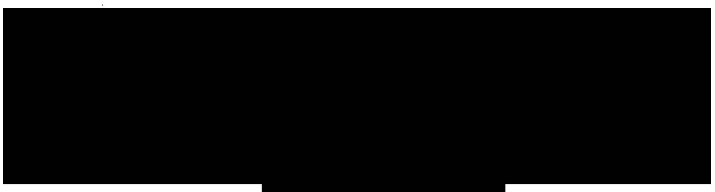

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AUG 21 2008

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 07 211 53702

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a dental laboratory.[1] It seeks to employ the beneficiary permanently in the United States as a dental technician. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it was actually the petitioner that filed the ETA 750 Form or that it had the continuing ability to pay the beneficiary the proffered wage beginning on the 2002 priority date of the visa petition. The director also determined that the petitioner had not established that the beneficiary was qualified to perform the duties of the proffered position, based on the letter of work verification from the Egyptian Ministry of Health, Medical Licenses Department, submitted to the record. 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 March 20, 2008 denial, the primary issues in this case are whether or not the petitioner is the entity that filed the Form ETA 750 and has the ability to pay the proffered wage as of the 2002 priority date and continuing until the beneficiary obtains lawful permanent residence, and whether the beneficiary has the qualifications to perform the duties of the position, based on his previous work experience. The AAO will first examine the issue of the petitioner's identity and ability to pay the proffered wage, and then examine the beneficiary's qualifications.

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

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department

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[1] The record reflects that the petitioner that submitted the instant I-140 petition had previously submitted another I-140 petition for the beneficiary that was denied based on abandonment on December 6, 2006.

of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on April 2, 2002. The proffered wage as stated on the Form ETA 750 is $40 an hour or $83,200 per year. The Form ETA 750 states that the position requires two years of work experience in the job offered or two years of experience in the related field of dental technician or ceramicist.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

On appeal, counsel submits a copy of the 2002 From 1120S, U.S. Income tax Return for an S Corporation, for Dental Laboratory, Inc., the entity that filed the I-140 petition, and a Form 1120, for tax year 2002 filed by Dental Health Facility Leasing Corporation located at the same address as the Dental Laboratory, Inc. Counsel also submits a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return for tax year 2002.

With the initial petition, the petitioner that filed the I-140 petition submitted its Forms 1120S, for tax years 2005 and 2006. These two documents indicate an Employer Identification Number (EIN) of . The petitioner also submitted Forms 1120S, for another business entity, Dental Health Facility Leasing Corporation, EIN for tax years 2005 and 2006. The petitioner also submitted a copy of a Certificate of Incorporation for Dental Laboratory, Inc. dated December 17, 1985, and for Dental Health Facility Leasing Corporation dated January 14, 1997.

In response to the director's Notice of Intent to Deny (NOID) the petition dated December 11, 2007, the petitioner submitted an amended I-140 petition that on Part 5 indicated two dates of establishment, two gross annual incomes and two net annual income figures, respectively, for both Paulino Dental Laboratory Inc., and Paulino Dental Health Facility Leasing Inc.[3] The petitioner also submitted its federal tax returns for tax years 2003, 2004, and 2006 and tax returns for Dental Facility Leasing Corporation for tax years 2003, 2004, and 2005. The petitioner also resubmitted a copy of a certificate of incorporation for New York Dental Health Facility Leasing Corporation, located at 88-10 162nd Street, Jamaica, New York, that states the business was incorporated on January 14, 1997. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner that filed the I-140 petition is structured as an S corporation. On the petition as originally filed, the petitioner did not list its date of establishment,

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[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 AAO states that these figures are for the two businesses identified above, as the dates of establishment on the amended I-140 petition correspond to the dates of incorporation listed on the incorporation documents previously submitted to the record.

current number of employees or gross income or net income. On the Form ETA 750B, which is not signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since May 2001 to the present.[4]

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the employer must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, Citizenship and Immigration Services (CIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

The record as presently constituted, does not support the petitioner's job offer being a realistic one. The AAO notes, that as correctly stated by the director, the petitioner that filed the ETA Form 750 with the Department of Labor is not the same employer that filed the instant I-140 petition. In the partially completed I-140 submitted in response to the director's NOID, the petitioner writes in the incorporation dates, the gross annual and net annual incomes of both [redacted] Dental Laboratory Inc., and [redacted] Dental Health Facility Leasing Inc. However, the petitioner has not provided any evidentiary documentation or explanation as to why both businesses' financial information is listed on the corrected I-140 petition. As the director stated, both petitioners appear to be separate business entities, with distinct EIN numbers, and separate tax returns.[5] Counsel cites no legal authority, and we know of none, that would allow two employers to jointly petiti8on. Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi,* 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

The record contains no further evidence that would establish one business as an affiliate of the other, or a successor in interest. *See Matter of Dial Auto Repair Shop, Inc.,* 19 I&N Dec. 481 (Comm. 1986). With regard to using the assets of one business owned by the same person who owns another business, to pay the expenses of another business, including wages, the AAO 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."

Further, the petitioner provides no further clarification of the relationship between [redacted] Dental Laboratory, Inc., [redacted] Dental Health Care Leasing, and New York Dental Health Facility Leasing Corporation. If the petitioner is doing business as this latter business, the petitioner needs to submit further evidence to support any such relationship. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the

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[4] The original ETA 750 document, submitted in response to the director's NOID, does not contain the beneficiary's signature and date of signature on Part B.

[5] The AAO notes that based on the tax returns submitted to the record, the two businesses share the same physical space. The documents of incorporation also contain the dates of incorporation noted on the corrected I-140 petition.

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."

Further, as noted correctly by the director in his NOID and decision, the beneficiary did not sign the ETA Form 750 submitted to the record. The petitioner provided no explanation for why the beneficiary has not signed the ETA Form 750. Thus, the record contains both conflicting and missing information that prevents the petitioner establishing whether it has the ability to pay the proffered wage, and also calls into question the validity of the information contained on the ETA Form 750 submitted to the record. Again, *Matter of Ho*, 19 I&N Dec. at 591 states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." While the record is not clear why the DOL accepted and certified the Form ETA 750 without the beneficiary's signature, CIS does not have to accept the Form ETA 750 without the beneficiary's signature.

The issue of determining the petitioner's ability to pay the proffered wage during a given period is a moot point if the I-140 petition was not filed by the same entity or a successor-in-interest to the employer that filed the ETA 750. A labor certification involving a specific job offer is valid only for that job offer. 20 C.F.R. § 656.30(c)(2). Thus, the petition is denied.

However, for illustrative purposes in these proceedings, the AAO will examine the tax returns of the petitioner who filed the I-140 petition.

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 has not established that it employed and paid the beneficiary during the relevant period of time. Thus the petitioner has to establish its ability to pay the entire proffered wage of $83,400 in tax years 2002 to 2006.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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. 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 the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. *See Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng,* 719 F. Supp. at 537.

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $83,400 per year from the priority date:

- In 2002, the Form 1120S stated a net income[6] of $4,972.
- In 2003, the Form 1120S stated a net income of $1,368.
- In 2004, the Form 1120S stated a net income of $5,100.
- In 2005, the Form 1120S stated a net income of $2,562.
- In 2006, the Form 1120S stated a net income of $25,104.

Therefore, for the years 2002 to 2006, the petitioner did not have sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.[7] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current

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[6]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 IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003), line 17e (2004-2005) and line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, 2006, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed March 22, 2007) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had deductions in tax years 2002,2003, and 2004, the petitioner's net income is found on Schedule K of its tax return. With regard to tax years 2005 and 2006, the petitioner did not have any relevant entries for additional income, credits, deductions or other adjustments, therefore the petitioner's net income is found online 28 of Form 1120S.

[7]According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items

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 2002 were $150,277.
- The petitioner's net current assets during 2003 were $134,398.
- The petitioner's net current assets during 2004 were $115,866.
- The petitioner's net current assets during 2005 were $211,295.
- The petitioner's net current assets during 2006 were $227,973.

Therefore, for the years 2002 to 2006, the petitioner that filed the I-140 petition did have sufficient net current assets to pay the proffered wage. However, as previously stated, the petitioner who filed the I-140 petition is not the same petitioner that filed the Form ETA 750, and the petitioner has not clarified the actual identity of the petitioner. Thus, the petitioner has not established its ability to pay the proffered wage to the beneficiary as of the 2002 priority date through 2006.

With regard to the second issue raised by the director in his denial, namely, the beneficiary's qualifications, 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 at 8 C.F.R. § 204.5(l)(3) 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 (l)(2) also states that relevant post-secondary education may be considered as training for the purposes of the skilled worker provision.

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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.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House,* 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 1, 2002.

As previously stated, the AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

On appeal, counsel submits a document entitled "Experience Certificate," written by [redacted],[8] The writer states that the beneficiary had worked in teeth manufacturing from January 5, 1989 to December 30, 1995, and states the following: " [the beneficiary] has joined working at the lab in the above mentioned period and has carried out the Lab works, such as Porcelain, Nickel Chrome, Wax, Crown British, Acrylic, complete dentures as well as the fixed and mobile installations."

With the initial I-140 petition, the petitioner submitted a letter of work experience for the beneficiary dated **May 25, 2007 written by** [redacted], the owner of the petitioner that submitted the I-140 petition. In the letter, [redacted] states that the beneficiary is a current employee of [redacted] Dental health Facility and is in charge of the production of porcelain crown, porcelain bridge and removable denture. [redacted] states that in the future the beneficiary will continue working on these products, including making metal frames, processing and curing acrylic, firing, and grinding porcelain. [redacted] also stated that beneficiary would also be in charge of adjusting, fitting and repairing the products.

The petitioner also submitted a translated letter from the General Director, Medical Licenses Department, Ministry of Health, Egypt dated May 29, 1994. In this letter, it is stated that on October 24, 1991, the beneficiary was registered as a denture manufacturer by experience. The letter also states that the beneficiary successfully passed the examination of denture manufacturers by experience that was held on October 7, 1991 at the Health Technical Institute at Imbaba, Third session, at [redacted]t, near the El-Twinkie School in Cairo. In response to the director's NOID, the petitioner resubmitted the Ministry of Health document in color, with what appears to be an accompanying page. This page is translated as follows:

> Ministry of Health
> The General Department for the Remedial Non Governmental Organizations
> A license from the ministry of health for manufacturing tooth lab
> Serial No. [redacted]
> Name of the licensee: [redacted] **Nationality: Egyptian**
> His occupation and location of residence: Artificial tooth manufacturer
> [redacted], El-Zawia El- Hamra, Cairo
> Place of work, its No, and the name of its owner:
> [redacted]., El -Zawia El-Hamra, Cairo. [redacted]
> Type of license and lab name: Artificial Tooth Lab, A[redacted].

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[8] Based on the address for this laboratory and previously identified address of the Health Technical Institute in Cairo, on Shobra Street, the AAO surmises that the laboratory is also located in Cairo.

The document lists the laboratory's physical boundaries and is dated March 30, 1994 and apparently signed by the Under Secretary ministry of Health on April 2, 1994. The record does not contain any further evidence with regard to the beneficiary's qualifications.

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	(blank)
	High School	(blank)
	College	(blank)
	College Degree Required	(blank)
	Major Field of Study	(blank)

The applicant must also have two years of training in the field of dental technician, and two years of work experience in the proffered position, or in the related occupation of dental technician or ceramist. The job duties, delineated at Item 13 of the Form ETA 750A state the following: "Perform all-around work on Porcelain crowns and bridges in the laboratory dept." Item 15 of Form ETA 750A states no other special requirements.

The beneficiary set forth his credentials on Form ETA-750B, however, he did not sign his name under the declaration that the contents of the form are true and correct under the penalty of perjury.[9] On Part 11, eliciting information about schools, colleges and universities attended, including trade or vocational training, the beneficiary included no information. Under Section 12, additional qualifications and skills alien possesses and proficiency in the use of tools, machines or equipment which would help establish if alien meets requirements for Occupation as a dental technician, the form states "years experience as a dental technician (manufacturer). In Section 13, the document states that the beneficiary has a denture manufacturer license. With regard to work experience, the beneficiary, in Section 15, states that he worked for Dental Laboratory as a dental technician from May 2001 to the present.[10] The beneficiary further stated that he was self-employed at Alzyawya, Alhmra, Egypt, as a dental manufacturer (Technician) from January 1991 to April 2001, working fulltime.

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[9] As previously stated, the AAO views the lack of the beneficiary's signature as a factor in denying the instant petition.

[10] Usually the term "to the present" signifies to the date the beneficiary signed the Form ETA, Part B. However, since the Form ETA 750, Part B was not signed by the beneficiary, the period of time during which the beneficiary worked for the petitioner cannot be further clarified.

In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes two years of training as a dental technician and two years of work experience in the proffered position or in the related occupation of as a dental technician or ceramist

With regard to the requisite two years of training, as noted by the director, the letter from the Egyptian Ministry of Health does not establish any specific training period as a dental technician, but rather suggests that the beneficiary received a dental manufacturing license from the Technical Health Institute based on his experience in the field. Thus the record does not establish any requisite two-year period of training as a dental technician prior to the 2002 priority date.

With regard to the beneficiary's previous employment as a dental technician prior to the 2002 priority date, the AAO notes that 's letter submitted with the initial I-140 petition does not describe any specific period of time working for the petitioner, nor does the letter clarify whether the beneficiary worked fulltime for the petitioner. Thus, 's letter, based on lack of detail, is given only limited weight in determining the beneficiary's previous work experience in the proffered job or in the related occupation of dental technician or ceramist.

Further, the letter from contradicts the beneficiary's information contained on the ETA Form 750. In his letter, states the beneficiary worked at his lab from January 5, 1980 to December 30, 1995, while the beneficiary claimed he was self-employed in another location from January 1991 to April 2001.[11] Thus, the record contains contradictory evidence. As previously stated, *Matter of Ho*, 19 I&N Dec. at 591-592 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." Thus, ' letter is given only limited weight in these proceedings. Thus, the petitioner has not provided sufficient evidence to establish the requisite two years of prior work experience in the proffered position or as a dental technician or ceramicist, prior to the 2002 priority date.

In summary, the petitioner has not established that it is the employer identified on the ETA Form 750, and thus, cannot rely on that certification. Further, the beneficiary's qualifications to perform the duties of the proffered position cannot be established, based on contradictory evidence that lacks detail.

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. The appeal is dismissed. The petition is denied.

ORDER: The appeal is dismissed.

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[11] The accompanying page to the Ministry of Health's license certificate submitted in response to the director's NOID further suggests that the beneficiary was self-employed in Egypt.