



U.S. Citizenship
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Services

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File: [Redacted]
LIN-04-012-50157

Office: NEBRASKA SERVICE CENTER

Date: FEB 28 2008

In re: Petitioner: [Redacted]
Beneficiary: [Redacted]

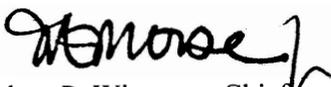
Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

The petitioner is an ethnic newspaper, and seeks to employ the beneficiary permanently in the United States as a reporter. 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 August 16, 2005 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. Further, based on discrepancies in the evidence, the director found that the petitioner failed to establish that the beneficiary met the qualifications of the certified Form ETA 750.

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).¹

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 permanent residence and classify the beneficiary as a professional 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 that a third preference category professional is a “qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.” *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b).

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 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:

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 July 8, 1999. The proffered wage as stated on Form ETA 750 is \$59,000 per year² based on a 40-hour work week. The labor certification was approved on May 4, 2000, and the petitioner filed the I-140 Petition on the beneficiary's behalf on October 15, 2003.³ The petitioner listed the following information: established: 1994; gross annual income: not listed; net annual income: not listed; and current number of employees: not listed.

On April 18, 2005, the director issued a Request for Evidence ("RFE") for the petitioner to provide additional evidence of the petitioner's ability to pay the proffered wage from 1999 through 2004. The RFE additionally requested that the petitioner provide evidence that the beneficiary met the degree and work experience requirements as listed on the certified Form ETA 750. The petitioner responded. On August 16, 2005, the director determined that the evidence submitted was insufficient to demonstrate the petitioner's ability to pay the proffered wage, and denied the petition. Further, as the evidence related to the beneficiary's education and work experience conflicted with other information contained within the record, the director also found that the petitioner failed to demonstrate that the beneficiary met the qualifications of the certified labor certification. 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 June 25, 1999, the beneficiary listed that he has been employed with the petitioner from March 1999 to the present (date of signature). The petitioner provided the following evidence of wages paid to the beneficiary:

<u>Year</u>	<u>W-2 Wages Paid</u>
2002	\$18,000
2001	\$18,000
2000	\$18,000
1999	\$12,000

² The petitioner initially listed a wage of \$2,100 per month, however, DOL required that the wage be increased to \$59,000 prior to certification.

³ The petitioner previously filed an I-140 Petition on the beneficiary's behalf based on the same Form ETA 750 job offer. That petition was denied as the director found that the petitioner failed to establish its ability to pay the proffered wage.

The petitioner also provided copies of checks issued to the beneficiary on a monthly basis in the amount of \$1,204.85 per month dated from May 28, 1999 for each month through July 1, 2003. As the petitioner has supplied W-2 Forms for the beneficiary, the W-2 Forms would supersede the evidentiary value of the checks issued for the years 1999 through 2002. While the checks do not contain evidence to exhibit they were cashed, the W-2 Forms would verify payment to the beneficiary. The checks issued would evidence payment to the beneficiary in the amount of \$8,433.95 through July 1, 2003.⁴

While the W-2 statements would show partial payment of the proffered wage, the wages paid are less than the proffered wage of \$59,000. The petitioner must show that it can pay the difference between the proffered wage and the wages paid for the years 1999 to 2003, and that it can pay the full proffered wage in the year 2004.

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 incorporated as an S corporation as of January 1, 2002, but was initially structured as a C corporation. The data recited from the petitioner's tax returns below from 2002 through 2004, would reflect its structure as an S corporation. Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S, U.S. Income Tax Return for an S Corporation, state on page one, "Caution, include only trade or business income and expenses on lines 1a through 21." Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120 states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on lines 1 through 6 of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. See Internal Revenue Service, Instructions for Form 1120S, 2003, at <http://www.irs.gov/pub/irs-03/i1120s.pdf>, Instructions for Form 1120S, 2002, at <http://www.irs.gov/pub/irs-02/i1120s.pdf>, (accessed February 15, 2005).

⁴ Although, we note again the checks do not contain evidence that they were cashed.

<u>Tax year</u>	<u>Net income or (loss)</u>
2004	\$88,848
2003	\$61,019
2002	\$29,085

The petitioner's 1999 through 2001 tax returns would reflect its structure 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>
2001	-\$28,975
2000	\$8,139
1999	-\$7,024

The petitioner's net income would be sufficient to pay the beneficiary's proffered wage in 2003, and 2004, but not for the years 1999, 2000, 2001, or 2002, even if the wages paid to the beneficiary were added to the petitioner's net income.

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A corporation's current assets are shown on Schedule L, lines 1 through 6. Its current liabilities are shown on lines 16 through 18 on the Forms 1120 and 1120S. If a corporation's 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, and evidences the petitioner's ability to pay. The net current assets would be converted to cash as the proffered wage becomes due.

<u>Tax year</u>	<u>Net current assets</u>
2004	\$17,481
2003	\$15,936
2002	\$25,772
2001	-\$1,414
2000	-\$4,412
1999	-\$7,469

Based on the petitioner's net current assets, it would not be able to demonstrate its ability to pay the proffered wage in any of the foregoing years even if the wages paid to the beneficiary were added to the petitioner's net current assets.

The petitioner additionally submitted an affidavit from the petitioner's owner that he is the sole owner of the business, which was first established as a radio station, and later began to publish a Korean language newspaper in 1998. He provides that through the beneficiary's employment, and through necessary capital that he supplied, the business was able to meet and exceed its five-year plan. Further, the owner provides that he has substantial personal wealth, "assets in excess of Six Million Dollars (\$6,000,000.00)." He continues that he has "personal wealth to provide and pay the proffered wage."

The owner submitted his individual tax returns for the years 1999, 2000, and 2001 in support. First, while the tax returns would exhibit his annual income for these years, it does not exhibit that he has over \$6 Million dollars in assets. The tax returns do reflect that he owns several businesses, however, the earnings from each business do not appear to be substantial.⁵ The owner did not provide evidence of his actual assets. 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)).

Further, the petitioner is structured as an S corporation (and previously as a C corporation), and therefore, personal assets of a shareholder would not be considered. In the case of a corporation, CIS may not “pierce the corporate veil” and look to the assets of the owner to satisfy the petitioner’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, 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. Therefore, while the petitioner’s owner may have substantial individual assets, those assets are not relevant in the case at hand. Assets of the shareholders (or of other enterprises or corporations) cannot be considered in determining the petitioner’s ability to pay the proffered wage.

The record also contains the petitioner’s unaudited financial statement, a balance sheet dated June 30, 2003. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited statements submitted are not persuasive evidence.

On appeal, counsel provides that the petitioner has employed the beneficiary for over five years in H-1B status, and has paid the beneficiary in accordance with the labor condition application.⁶ Further, counsel asserts that the “wage is prospective in nature,” and that the basis of the job offer and adjustment is prospective employment. He cites to the William R. Yates, Associate Director for Operations, USCIS, Memo dated May 12, 2005 in support.

While the petitioner is not required to employ the beneficiary in the position, and is not required to pay the proffered wage until the beneficiary adjusts to lawful permanent residence status, 8 C.F.R. § 204.5(g)(2) requires that the petitioner show that it can pay the proffered wage from the time of the priority date until the beneficiary obtains permanent residence. Further, we note that the wage requirements for an H-1B petition may be different than the wage requirements for the permanent labor certification. 8 C.F.R. § 204.5(g)(2) relates to petitions for immigrant visa petitions. As the matter before us is the petitioner’s appeal of an immigrant visa petition, whether the petitioner has paid the beneficiary the wage related to his H-1B petition is irrelevant, unless those wages paid demonstrate that

⁵ For instance, the petitioner’s tax return exhibited W-2 earnings in 2000 of \$7,500 for the Twin Owls Motor Lodge, Inc., one of the other businesses that the petitioner’s owner owned.

⁶ A petitioner must file a labor condition application in connection with an H-1B petition. The labor condition application sets forth the petitioner’s wage obligation based on DOL regulations. See 20 C.F.R. § 655.731.

the petitioner can pay the proffered wage related to the immigrant visa petition filed on behalf of the beneficiary. In the instant petition, the petitioner's wages paid to the beneficiary do not demonstrate the petitioner's ability to pay the proffered wage.

Counsel also provides that the beneficiary proposed a five-year plan in 2002, and that under his "able leadership," the petitioner has exceeded the projected plan and increased both the petitioner's gross and net incomes.

While the petitioner's tax returns do reflect an increase in its net income, the petitioner must still show that it can pay the proffered wage from the time of the priority date onward, here from 1999, until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

Counsel provides that the petitioner, as set forth in his affidavit, has substantial personal funds, and that he is the sole owner responsible for payment of the proffered wage. Further, counsel asserts that the Yates Memo provides that it is unrealistic in today's economy that a petitioner would be able to show its ability to pay based on one document.

As noted above, the petitioner is formed as an S corporation, and was previously incorporated as a C corporation, and as such it is a separate entity and the personal assets of the petitioner's owner cannot be used to demonstrate the petitioner's ability to pay the proffered wage. *See Matter of M*, 8 I&N Dec. at 24. Additionally, the owner's statement provides that as the petitioner's owner, he is responsible for payment of the proffered wage. The statement does not provide that the individual owner will personally pay the beneficiary from his own private income. Further, the owner did not provide documentation to show that he had \$6 million in assets, or significant means to support himself if he paid the beneficiary's wage personally from his own funds. *See Matter of Soffici*, 22 I&N Dec. at 165.

We additionally note that through consideration of wages paid to the beneficiary, and through consideration of the petitioner's tax returns, that our analysis and consideration has included more than a "single financial document."

Counsel provides that the totality of the petitioner's circumstances should be considered and cites to *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967) in support. Further, counsel asserts that based on *Matter of Sonogawa* an employer can show its ability to pay based on a "reasonable expectation of future financial profit."

Matter of Sonogawa, 12 I&N Dec. 612 (BIA 1967), relates to petitions filed during uncharacteristically unprofitable or difficult years, but must be viewed in comparison to a petitioner's prior profitable or successful years. The petitioning entity in *Sonogawa* had been in business for over eleven years, and during that time period had routinely earned a gross annual income of approximately \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations. The petitioner provided evidence to show that as a result of the move, that the petitioner had sustained significant expenses in one year related to the relocation, including an increase in rent, as the company paid rent on both the old and new locations for five months. The petitioner also sustained large moving costs. Further, the petitioner was unable to do regular business for a period of time. All of the foregoing factors accounted for the petitioner's decrease in ability to pay the required wages. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. The articles provided helped to establish the petitioner's reputation, and potential future growth, particularly when viewed against the company's prior performance.

Counsel, here, has not provided any evidence to show any large one-time incident impacting the business' finances, or other factor, which previously impacted its ability to pay the proffered wage, and that the prior difficulties may be resolved based on future profits. Additionally, by reviewing the petitioner's net income, as well as the petitioner's net current assets, the petitioner's financial status has been fairly considered.

While the petitioner's business has increased, the petitioner is unable to show its ability to pay over an extended time period. In the year 2001, for example, the petitioner's total gross receipts listed on its tax return were only \$61,293, or \$2,293 more than the beneficiary's full proffered wage. While the petitioner is not required to pay the beneficiary the proffered wage until he obtains permanent residence status, the petitioner has only paid the beneficiary about one-third of the proffered wage in the years that it has employed the beneficiary. In examining the totality of the circumstances, we would not conclude that the petitioner can demonstrate its continued ability to pay the beneficiary the proffered wage from 1999 continuing until the beneficiary obtains permanent residence.

Additionally, counsel provides that consideration must be given to the beneficiary's ability to generate income. Counsel cites *Masonry Masters, Inc. v. Thornburgh*, 875 F.2d 898 (D.C. Cir. 1989), in support of this assertion. Although part of this decision mentions the ability of the beneficiary to generate income, the holding is based on other grounds and is primarily a criticism of CIS for failure to specify a formula used in determining the proffered wage.⁷

As the petitioner already employs the beneficiary on a full-time basis in H-1B status, and can only show its ability to pay for two out of six years, it is unclear how the beneficiary's employment as a permanent resident on a full-time basis will generate additional income. The petitioner sets forth projected circulation increases based on the Korean population of the area. However, projections are speculation. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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

The second issue is whether the petitioner established that the beneficiary met the qualifications of the certified labor certification.

In evaluating the beneficiary's qualifications, Citizenship and Immigration Services ("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

⁷ CIS now has a specified formula used to determine a petitioner's ability to pay the proffered wage as set forth above: consideration of wages paid to the beneficiary, the petitioner's net income, or alternatively, the petitioner's net current assets.

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 reporter provides:

Gather informations [sic] and prepare stories that inform public about local, Stte [sic], National, and international events. Investigate leads and news tips, look at documents, observe on-the-scene, and interview people. Organize material, determine their focus or emphasis write the stories. Sometimes, review the news items from other sources and stories, and determine newsworthiness and validity of the articles. As an ethnic newspaper, the stories from motherland, Korea, may be subscribed and written.

Further, the job offered listed that the position required:

Education:	B.A. (4 years)
Major Field Study:	Any
Experience:	2 years in the job offered;
Other special requirements:	Korean language.

On the Form ETA 750B, the beneficiary listed his education as: Hanyang University, Seoul, Korea, January 1965 to February 1969, Bachelor of Arts in Textile Engineering.

The regulations define professional under the third preference category as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." *See* 8 C.F.R. § 204.5(1)(2). The regulation at 8 C.F.R. § 204.5(1)(3)(ii) specifies for professional classification that:

(C) *Professionals*. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). In order to qualify as a third preference professional based on 8 C.F.R. § 204.5(1)(3)(ii), the regulatory language's plain meaning is that the beneficiary must produce one degree, which is evaluated as the foreign equivalent of a U.S. baccalaureate degree.

The petitioner submitted a document and translation that provided the beneficiary "graduated from the Department of Mass Communication, College of Political Science & Economics, Korean University,"

along with a copy of a translated transcript. The transcript lists his date of admission as March 1, 1963 and that he graduated on February 27, 1967.

As noted in the director's decision, the beneficiary listed on Form ETA 750B that he attended Hanyang University, Seoul, Korea, January 1965 to February 1969, for which he received a Bachelor of Arts in Textile Engineering.

The disparity in what the beneficiary listed on Form ETA 750B and the documentation provided presents conflicting information and raises an issue of credibility. 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.

Additionally, with the first I-140 petition that the petitioner filed on behalf of the beneficiary, the record contains a degree issued to the beneficiary by Hanyang University, Seoul, Korea, which listed that the beneficiary graduated with a Bachelor of Science degree in Textile Engineering, from the Department of Textile Engineering, in the University's College of Engineering. The record additionally contains a transcript of the beneficiary's courses.

We note that the petitioner did not provide an evaluation for either degree to show that the beneficiary's studies were equivalent to a U.S. Bachelor's degree.

On appeal, the petitioner submitted an Affidavit from the beneficiary to explain the conflict in the degrees. The beneficiary provides that he attended two universities, Hanyang University at night, and Korea University during the day. He provides that he completed a degree in Mass Communications in 1967 based on the day school program, and that he later completed the degree in Textile Engineering in 1967. He further provides that:

I did not submit records of second school . . . initially because my qualification of education . . . was sufficient without second records. When [CIS] asked for additional evidence, I then decided to submit additional documents regarding my second school . . . in order to bolster my qualifications.

The RFE requested the petitioner to provide evidence that the beneficiary met the qualifications of the certified labor certification as the instant filing did not contain any evidence of the beneficiary's degree or education, or work experience. There was no documentation related to a "first school," other than what the beneficiary listed on Form ETA 750. The record related to the petitioner's initial I-140 filing did contain evidence that the beneficiary completed studies at Hanyang University, which he appears to refer to in his affidavit as the "first school."

We find that affidavit insufficient to meet the standard of independent objective evidence, sufficient to resolve the inconsistencies in the documents. Official records from each school verifying the beneficiary's claims in addition to the affidavit might have proved more compelling. The petitioner additionally failed to provide an evaluation for either degree to document that the foreign degree was equivalent to a U.S. degree. In light of the conflict in the evidence, the evidence submitted on appeal is insufficient to overcome the discrepancies related to the beneficiary's studies.

Additionally, the director noted that there was a discrepancy in the evidence regarding the position that the beneficiary listed on Form ETA 750B and the letter submitted to document that the beneficiary had the required two years of prior experience as a reporter.

The beneficiary listed his relevant experience on Form ETA 750 as: (1) the petitioner, [redacted] from March 1999 to present (date of signature, June 27, 1999), position: Reporter; (2) Kyungnam Daily News, Changwon City, Kyungnam Province, Korea, from March 1983 to June 1997, position: Reporter.

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

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

Letter from Hancock Economic Journal [no name listed], Seoul, Korea, dated October 12, 1998, which provided;

"This is to certify that the person named above [the beneficiary] was employed by our organization from March 1, 1983 through June 30, 1997 in full time charges of Reporter, Assistant Editor and Senior Editor."

Letter from [redacted], Chief Editor, Hancock Economic Journal, Seoul, Korea, dated October 12, 1998, which provided;

"It is my pleasure to recommend [the beneficiary] who had been on the staff of our organization as Reporter and Editor for the past 14 years."

As noted in the director's decision, the beneficiary did not represent on Form ETA 750B that he was employed with the Hancock Economic Journal, but instead had listed that he was employed with Kyungnam Daily News. *See Matter of Ho*, 19 I&N Dec. at 591.

Additionally, with the first I-140 petition that the petitioner filed on the beneficiary's behalf, the petitioner submitted the following letters:

Certificate of Employment from Kyungnam Daily News [no name listed], Changwon City, Kyungnam Province, Korea, dated October 28, 1998, which provided;

“This is to certify that the above person [the beneficiary] who majored in Textile Engineering⁸ and entered the Section of Textile & Apparel, Economic Division of our organization, was employed by us from March 1, 1983 through June 30, 1997 in full time charge of Reporter, Assistant Editor and Senior Editor.”

Letter from [REDACTED], Chief Editor, Kyungnam Daily News, Changwon City, Kyungnam Province, Korea, dated October 28, 1998, which provided;

“It is my great pleasure to recommend [the beneficiary] who had been on the staff of our organization as Reporter and Editor for the past 14 years.

...

[The beneficiary], who majored in Textile Engineering in the University and joined the Section of Textile & Apparel, Economic Division of our organization, rendered great services to the assigned tasks with his distinguished knowledge and sincere attitude.”

On appeal, the beneficiary provides in his affidavit that, “I held employment with two newspapers, Kyungnam Daily News (Main Office: Changwon, Korea; Branch Office: Seoul, Korea) and Hancock Economic Journal (Subsidiary company of Kyungnam Daily News: Seoul, Korea). Both newspapers were owned by one owner.” Further, the beneficiary continues, “I worked for both newspapers from 1983 to 1997. I mainly worked at Kyungnam Daily News. Certain articles were forwarded to Hancock Economic Journal to be published in its newspaper. It was a joint enterprise sharing resources and products.” He states that he did not provide the evidence related to his “second employment” until CIS had requested additional evidence.

The director requested that the petitioner provide evidence of the beneficiary’s prior work experience as the record for the second petition did not contain any letter showing that the beneficiary had the required two years of experience prior to working for the petitioner. The petitioner had submitted the experience letter related to his work at Kyungnam Daily News with the first I-140 petition filed, but not the second. Therefore, there was no need to provide evidence of employment with the second employer, but rather for the petitioner to submit evidence to show that the beneficiary had the required two years of prior experience as a reporter.

As the beneficiary’s education and prior experience are in question, submission of an Affidavit from the beneficiary alone is insufficient to overcome the doubts raised by the conflicts in the evidence. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner failed to submit independent evidence to resolve the inconsistencies, such as, for example a letter from the prior employer explaining the relationship between the two companies, or confirmation from one source at the former employer that the beneficiary did work for both newspapers, or evidence of pay records from both organizations. The petitioner, however, failed to provide any evidence beyond the beneficiary’s affidavit, which we find to be insufficient to overcome the doubts raised. 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

⁸ We additionally note that the letters confirm the beneficiary’s education in Textile Engineering, but do not reference any studies in Mass Communications.

competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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