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

U.S. Citizenship and Immigration Services

B6

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 07 2007
WAC-06-044-53750

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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center ("director"), denied the immigrant visa petition.[1] The petitioner appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner operates a non-profit sober living facility, and seeks to employ the beneficiary permanently in the United States as a health educator ("HIV/Aids Staff Educator Service Coordinator"). 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 5, 2006 decision, the petition was denied based on the petitioner's failure to demonstrate its ability to pay the proffered wage from the priority date of the labor certification until the beneficiary obtains permanent residence.

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

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain 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)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1153(b)(3)(A)(ii), 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."

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:

> *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

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

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

> that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on April 30, 2001. The proffered wage as stated on Form ETA 750 is $20 per hour for an annual salary of $41,600 per year based on a 40 hour work week. The labor certification was approved on April 12, 2005, and the petitioner filed the I-140 Petition on the beneficiary's behalf on November 23, 2005. The petitioner listed the following information: established: December 17, 1999; gross annual income: $1,184,967; net annual income: "confidential;" and current number of employees: 19.

On April 8, 2006, the director issued a Request for Evidence ("RFE") for the petitioner to provide an educational evaluation to demonstrate that the beneficiary met the educational requirements of the certified Form ETA 750. The RFE further requested that the petitioner provide evidence of its ability to pay the proffered wage in the form of the petitioner's federal tax returns for the years 2001, 2002, 2004, and 2005, as well as W-2 statements if the petitioner employed the beneficiary. The petitioner responded. On August 5, 2006, the director determined that the evidence submitted was insufficient to demonstrate the petitioner's ability to pay the proffered wage, and denied the petition. The petitioner appealed and the matter is now before the AAO.

We will initially examine the petitioner's ability to pay based on the evidence in the record, and then examine the petitioner's additional arguments raised on appeal. First, in determining the petitioner's ability to pay the proffered wage during a given period, Citizenship & Immigration Services ("CIS") will examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. On Form ETA 750B, signed by the beneficiary on April 24, 2001, the beneficiary did not list that she was employed with the petitioner.[3] The petitioner is, therefore, unable to establish its ability to pay the beneficiary the proffered wage based on prior wage payment.

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.

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[3] The petitioner provided a letter in connection with the beneficiary's I-485 Adjustment of Status application that it will employ the beneficiary in the position offered upon approval of the I-140 petition, and when the beneficiary is issued work authorization, or permanent residence.

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

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

Tax year	Net income or (loss)
2004	-$82,423
2003	$8,248
2002	-$39,949
2001	$559

The petitioner would not be able to demonstrate its ability to pay the beneficiary the proffered wage in any of the foregoing years.

Next, we will examine the petitioner's continuing ability to pay the required wage under a second test based on an examination of net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[4] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's net current assets were as follows:

Year	Net Current Assets
2004	-$98,953
2003	$17,832
2002	-$92,139
2001	$9,300

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

We additionally note that CIS records reflect that the petitioner has filed for a second beneficiary. The petitioner would need to demonstrate its ability to pay for both sponsored beneficiaries from the respective priority date for each until each obtains permanent residence. None of the foregoing evidence would establish that the petitioner could pay for the instant beneficiary, or for the instant beneficiary and a second sponsored beneficiary.

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[4]According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

On appeal, counsel provides that the petitioner can pay the proffered wage based on: 1. the petitioner's net current assets, which he provides were greater than the proffered wage; 2. a calculation of the petitioner's current ratio analysis; and 3. "budget allocations . . . predetermined and derived from the government institution [sic]."

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

First, counsel provides that the petitioner can pay the proffered wage based on its net current assets as elaborated in the May 4, 2004 William R. Yates, Associate Director for Operations, Determination of Ability to Pay under 8 CFR 204.5(g)(2), Memo (May 4 Yates Memo), and also based on "Minutes of ESC/AILA Liaison Teleconference, Nov. 16, 1994, reprinted in AILA Monthly Mailing 44, 46-47 (Jan. 1995)."[5]

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

Counsel asserts that the petitioner had positive net current assets in 2001, 2003, and 2005, which were sufficient to cover the beneficiary's salary in those years. Counsel calculates the net current assets as follows: 2001: $44,067; 2002: -$46,626; 2003: $46,892; 2004: -$76,595.[6] Counsel argues that the business experienced a normal business "slump" in 2002, and 2004, but that the "petitioner substantially complied with the required ability to pay the proffered wage."

We have calculated the net current assets as set forth above based on the formula set forth above. Counsel has taken the petitioner's total assets listed on Schedule L, rather than its current assets, lines 1 through 6, and has subtracted liabilities from lines 16 through 18. Therefore, counsel's net current asset calculations are in error.

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

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

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

[6] Counsel lists the petitioner's 2005 net income as $435,570.02 based on an unaudited profit and loss statement submitted for that year. 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 financial statements that counsel submitted with the petition are not persuasive evidence.

As set forth above, the net current assets would not demonstrate the petitioner's ability to pay the beneficiary's proffered wage in any of the respective years required. Further, the regulation at 8 C.F.R. § 204.5(g)(2) requires that the petitioner demonstrate its ability to pay the proffered wage, rather than demonstrate that it can "substantially comply" with the ability to pay the proffered wage.

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

Financial ratio analysis is the calculation and comparison of ratios that are derived from the information in a company's financial statements. The level and historical trends of these ratios can be used to make inferences about a company's financial condition, its operations, and attractiveness as an investment. In isolation, a financial ratio is a useless piece of information. In context, however, a financial ratio can give a financial analyst an excellent picture of a company's situation and the trends that are developing. A ratio gains utility by comparison to other data and standards, such as the performance of the industry in which a company competes. Ratio Analysis enables the business owner/manager to spot trends in a business and to compare its performance and condition with the average performance of similar businesses in the same industry. Important balance sheet ratios measure liquidity and solvency (a business's ability to pay its bills as they come due) and leverage (the extent to which the business is dependent on creditors' funding). Liquidity ratios indicate the ease of turning assets into cash and include the current ratio, quick ratio, and working capital.[7]

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

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

Lastly, counsel provides that the petitioner can pay the proffered wage "because its budget allocations are predetermined and derived from the government institution responsible for providing support to HIV/AIDS patients." Counsel provides that the petitioner determines its budget based on its prior year's budget allocations, and funds are allocated from "a government institution."

We note that counsel did not provide what institution issued the funds, state or federal, and the amounts issued to the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record

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

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)).

Counsel further provides that since the funds are allocated, "it can not be expected to foresee the need to pay for the salary of the beneficiary from 2001 to 2005 because there is no iota of assurance that she would be granted any employment authorization nor a permanent residence in those 2001-2005 period."

The regulation at 8 C.F.R. § 204.5(g)(2) requires that the petitioner show its ability to pay from the priority date onward. The petitioner must, therefore, demonstrate that it can pay the proffered wage from 2001 onward, rather than wait to have the salary "allocated" by anticipated funds that may be allotted. 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.

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

In evaluating the beneficiary's qualifications, 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 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 HIV/Aids Staff Educator Service Coordinator provides:

> Will develop, implement, monitor, and assess a complete plan of education information about HIV/AIDS for the company. Will do research and collect information and evaluate data obtained and will prepare narrative and statistical reports for dissemination to staff and clients. Will develop and administer in-service training programs for staff. May specialize in research activities concerned with HIV/AIDS.

Further, the job offered listed that the position required:

College: 4 years

Education:	Bachelor's degree
Major Field Study:	Biology, or Biotechnology
Experience:	1 year in the job offered, HIV/Aids Staff Educator Service Coordinator
Other special requirements:	None.

On the Form ETA 750B, signed by the beneficiary, the beneficiary listed her prior education as: (1) University of the Philippines; Field of Study: Zoology; from June 1983 to May 1987, for which she listed she received a bachelor of science in Zoology; (2) University of New South Wales; Field of Study: Biotechnology; from August 1989 to June 1990, for which she listed that she received a diploma in Biotechnology; (3) University of New South Wales; Field of Study: Biotechnology; from August 1990 to February 1991, for which she listed that she received a master of science degree in Biotechnology.

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(l)(2). The regulation at 8 C.F.R. § 204.5(l)(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).

To document the beneficiary's education, the petitioner submitted a copy of the beneficiary's degree in Zoology, and transcripts for studies from the University of the Philippines, and a copy of the beneficiary's graduate diploma in Biotechnology and a transcript for studies. We note that the petitioner did not submit any evidence that the beneficiary completed a master of science degree in Biotechnology as listed on Form ETA 750B, or any evidence of studies during that time period.

The director's RFE requested that the petitioner provide an evaluation to document that the beneficiary's foreign studies were the equivalent of the required education. In response to the RFE, the petitioner submitted an evaluation of the beneficiary's education in order to document that the beneficiary met the educational requirements of the labor certification:

- Evaluation: completed by the Educational Evaluators International, Inc., Providence, Rhode Island.
- The evaluation provided that the beneficiary completed studies at the University of the Philippines, at Los Banos, in Laguna, Philippines. She completed a four-year full-time program, and was awarded a bachelor's degree in Zoology.

- The evaluation also provided that the beneficiary completed studies from 1989 to 1990 at the University of New South Wales in Kensington, New South Wales, Australia. Based on completion of the one-year program, she earned the "graduate diploma in Biotechnology."
- The evaluator concludes that her studies are the U.S. equivalent of a "Bachelor's degree in Zoology . . . and one year of graduate level study in biotechnology."

The evaluation does not conclude that either degree singularly would be equivalent to a bachelor's degree in the required field of Biology, or Biotechnology. The petitioner did not list that Zoology was an accepted related field of study. The regulation at 8 C.F.R. § 204.5(l)(3)(ii) uses a singular description of foreign equivalent degree. Thus, in order to qualify as a third preference professional, 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 beneficiary was required to have a bachelor's degree on the Form ETA 750.

Further, the beneficiary did not have the experience required on the certified Form ETA 750B. On the Form ETA 750B, the beneficiary listed her relevant experience as: Immusol, Inc., Sorrento Valley, California, from January 1994 to July 1997, position: Clinical Research Associate.

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 letter:

> Letter from [redacted], Principle Scientist, Immusol, Inc., San Diego, CA, April 12, 2001;
> Position title: Clinical Research Associate;
> Dates of employment: 1994 to 1997;
> Description of duties: "her duties encompassed those tasks necessary to conduct the HIV gene therapy clinical trial that was carried out jointly by Immusol and UCSD."

The letter documents that the beneficiary had experience as a clinical research associate, and not in the position offered as a health or staff educator. The labor certification does not list that one-year of experience in a related occupation, such as a clinical research associate position, would be accepted to meet the requirements of the certified labor certification. The petitioner provided no other evidence to document any additional experience that the beneficiary may have had. The foregoing letter is insufficient to demonstrate that the beneficiary meets the requirements of the certified Form ETA 750.

Based on the foregoing, the petitioner has failed to establish that it has the ability to pay the beneficiary the required wage from the priority date until the time of adjustment. Further, the petitioner has failed to establish that the beneficiary met the requirements of the certified ETA 750. Accordingly, the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.