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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2008

WAC-04-250-53513

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, California Service Center ("director"), denied the preference visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner operates a landscaping business, and seeks to employ the beneficiary permanently in the United States as a landscaper gardener. The petition was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) on behalf of a different petitioner. As set forth in the director's July 9, 2005 decision, the director denied the petition based on the petitioner's failure to demonstrate that it was the successor-in-interest to the initial petitioner. Therefore, the petition was not supported by a valid labor certification.

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 skilled worker. 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 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 CFR § 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

---

[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).

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 for processing by the relevant office within the DOL employment system on January 9, 1996. The applicant listed on Form ETA 750 was Genis Maintenance, with an address of: [redacted] The proffered wage as stated on the Form ETA 750 is $8.50 per hour, $17,680 per year based on a 40 hour work week. The labor certification filed by Genis Maintenance was approved on February 29, 2000. Costa Verde Landscape filed an I-140 Petition for the beneficiary on September 10, 2004. The petitioner listed on Form I-140, Costa Verda Landscape, listed an address of: [redacted] as well as the following information: date established: January 1, 1997; gross annual income: $284,154.00; net annual income: $50,000.00; and current number of employees: 1.

On March 30, 2005, the director issued a Request for Evidence ("RFE") for the petitioner to provide the following information: evidence of the relationship between the employer listed on Form ETA 750, Genis Maintenance, and the petitioner listed on Form I-140, Costa Verde Landscape; and/or evidence that Costa Verde Landscape was the successor-in-interest to Genis Maintenance; evidence of the petitioner's ability to pay the proffered wage, including documentation of the owner's monthly expenses if the business was formed as a sole proprietorship; to submit copies of Quarterly Wage Reports; and to submit evidence that the beneficiary met the requirements of the certified labor certification. The petitioner responded.

On July 9, 2005, the director denied the petition on the basis that the petitioner failed to establish that it was the successor-in-interest to the original employer on the certified labor certification. Therefore, the I-140 petition was not supported by a valid labor certification. The petitioner appealed and the matter is now before the AAO.

In order to file an I-140 Petition for an employment based immigrant, the regulation at 8 CFR § 204.5(l)(3)(i) provides:

> Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for a Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Market Information Pilot Program.

Provisions related to the validity and invalidation of labor certifications, 20 C.F.R. § 656.30, provides: "A labor certification involving a specific job offer is valid only for the particular job opportunity, the alien for whom certification was granted, and for the area of intended employment stated on the Application for Alien Employment Certification."

In limited circumstances, a new petitioner can assert continued processing under the same labor certification, such as in the case of a successor-in-interest. The new petitioner would need to demonstrate that it has assumed all of the rights, duties, and obligations of the predecessor company, and has the ability to pay from the date of the acquisition. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

DOL approved the labor certification for the position offered by Genis Maintenance Service. Costa Verde Landscape, a different petitioner, then filed the I-140 petition on behalf of the beneficiary.

In response to the director's RFE for clarification of the relationship between Genis Maintenance and Costa Verde Landscape, the petitioner submitted a letter that provided: "[The beneficiary] was working for Genis Maintenance and left that company to come and work at our company, Costa Verde Landscape. [The beneficiary] works full time for our company and we have assumed the responsibility for sponsoring him."

Costa Verde Landscape did not provide any documentation that "it has assumed all of the rights, duties, and obligations of the predecessor company" pursuant to *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. at 481. The fact that the petitioner "assumed the responsibility" for sponsoring one employee is insufficient to show that Costa Verde Landscape assumed all of the rights, duties, and obligations of Genis Maintenance. Rather, as the petitioner stated, the beneficiary left one employer and moved to the second employer, Costa Verde Landscaping. In such instance, Costa Verde Landscape would be required to file a new labor certification on behalf of the beneficiary with DOL pursuant to 20 C.F.R. § 656.30. To submit new, but uncertified Forms ETA 750A and 750B with the Form I-140 is insufficient.

On appeal, counsel provides:

> The original petitioner, Genis Maintenance, filed a labor certification for the beneficiary . . . Form ETA 750 was certified and the I-140 and I-485 were then filed with the Department of Homeland Security, Citizenship and Immigration Services (CIS) . . . Thereafter, [the beneficiary] severed contact with Genis Maintenance, and began to work for Costa Verde Landscape. Costa Verde has assumed all duties and responsibilities of Genis Maintenance with regards to continuing with the labor certification process for the beneficiary. The job opportunity is preserved in the same area of intended employment.

Counsel does not provide the exact dates that the petitioner filed the I-140 and I-485 Adjustment of Status on the beneficiary's behalf, or the exact date that the beneficiary left his employment with Genis Maintenance. However, CIS records reflect that after DOL approved Form ETA 750 for the position offered by Genis Maintenance to the beneficiary on February 29, 2000, that Genis Maintenance then filed an I-140 Petition for the beneficiary on May 3, 2000. The I-140 petition that Genis Maintenance filed was denied on June 25, 2001. The beneficiary did not file a Form I-485 Adjustment of status application based on the I-140 petition that Genis Maintenance filed.

Subsequent to the denial of Genis Maintenance's I-140 Petition, Costa Verde then filed Form I-140 on behalf of the beneficiary on September 10, 2004 and submitted a copy of the labor certification certified on behalf of Genis Maintenance. Costa Verde also submitted a copy of Form ETA 750A, signed May 13, 2004, uncertified to reflect Costa Verde as the employer, and Form ETA 750B signed by the beneficiary on May 13, 2004.

Counsel asserts that DOL "will permit the substitution of a successor employers [sic] if it occurs before the final determination where the particular job opportunity is preserved in the same area of intended employment consistent with 20 C.F.R. 656.30(c)(2)." Counsel cites to a Board of Alien Labor Certification Appeals ("BALCA") case, the *Matter of American Chick Sexing Association and Accu Co.*, 89-INA-320 (BALCA March 12, 1990) in support. He continues, "whereas the substitution herein was made before a final determination, and the job opportunity was preserved, the beneficiary can not be penalized for no longer being employed by the original employer."

Counsel does not state how DOL's BALCA precedent is binding in these proceedings. 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, BALCA 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, "final determination" refers to DOL's adjudication and decision on the labor certification application, and not the decision on the employment based immigrant visa petition made by CIS. Counsel presented no evidence that Costa Verde tried to substitute itself as the applicant prior to DOL's certification of the labor certification. 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).

DOL made its final determination on the labor certification on February 29, 2000 when DOL approved Form ETA 750 for the position offered by Genis Maintenance to the beneficiary. Costa Verde may not subsequently "substitute" as the employer on Form ETA 750.[2]

Next, counsel provides that AC 21 (the American Competitiveness in the Twenty-First Century Act of 2000) should apply, and that, "in the present matter, the underlying applications were pending in excess of 180 days when the substitution was made."

The pertinent section of AC 21, Section 106(c)(1), amended section 204 of the Act, codified at section 204(j) of the Act, 8 U.S.C. § 1154(j) provides:

> Job Flexibility For Long Delayed Applicants For Adjustment Of Status To Permanent Residence. - A petition under subsection (a)(1)(D)[3] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

---

[2] Substitution of beneficiaries, rather than employers, was formerly permitted by the DOL. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The Kooritzky decision effectively led 20 CFR §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to Citizenship and Immigration Services ("CIS") based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (to be codified at 20 C.F.R. § 656). DOL's final rule became effective on July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications.

[3] Any United States employer desiring and intending to employ an alien "entitled" to immigrant classification under the Act "may file" a petition for classification. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F).

After enactment of the portability provisions of AC21, on July 31, 2002, CIS published an interim rule allowing for the concurrent filing of Form I-140 and Form I-485, whereby an employer may file an employment-based immigrant visa petition and an application for adjustment of status for the alien beneficiary at the same time without the need to wait for an approved I-140. *See* 8 C.F.R. § 245.2(a)(2)(B)(2004); *see also* 67 Fed. Reg. 49561 (July 31, 2002). The beneficiary in the instant matter had filed his Form I-485 on July 13, 2006, concurrently with the petitioner's filing of Form I-140.

AC 21 relates to a beneficiary changing employers based on a filed or approved I-140, and a pending I-485 Adjustment of Status application. Here, Costa Verde filed Form I-140 and Form I-485 on September 10, 2004 based on an underlying labor certification filed by a different employer. Portability would not apply where the initial Form I-140 filed is unsupported by a proper Form ETA 750. Further, the beneficiary did not switch employment from the I-140 petitioner, but instead remains employed with Costa Verde. AC 21 would not apply to the instant petition.

Based on the foregoing, the petitioner has failed to demonstrate that it is a valid successor-in-interest to the petitioner listed on Form ETA 750. Further, the petitioner has failed to file the petition with a valid labor certification.

While we do not accept that the petitioner has established that it is a valid successor-in-interest to the employer listed on Form ETA 750, or that the petitioner can be substituted under 20 C.F.R. § 656.30, or on any theory based on AC 21, we do note, although not raised in the director's denial, the petitioner is also unable to show its ability to pay the proffered wage, or that the beneficiary meets the qualifications of the certified labor certification.

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*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The 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)

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 May 13, 2004, the beneficiary listed that he has been employed with the petitioner, but did not list the date that he began his employment.

The petitioner did not provide any evidence of pay through W-2 statements, or copies of pay statements. However, the petitioner did submit copies of quarterly wage statements filed with the state of California. The beneficiary's name appears on one quarterly wage filing, which reflects that he was paid $4,160.00 for the first quarter of 2005. No other evidence of wage payment was submitted. The wages paid to the beneficiary would be insufficient to establish the petitioner's ability to pay the proffered wage. The petitioner would need to show that it could pay the full proffered wage from the time of the priority date, and that it could pay the difference between the proffered wage and the wages paid in 2005.

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).

The petitioner is a sole proprietor, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than $20,000 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor failed to submit his entire Form 1040, so that we cannot determine how many additional dependents that the sole proprietor must support in addition to himself. The portions of the tax returns submitted reflect the following information:

Year of tax filing	**Sole Proprietor's AGI (1040)**	**Petitioner's Gross Receipts (Schedule C)**	**Petitioner's Wages Paid (Schedule C)**	**Petitioner's Net Profit from business (Schedule C)**
2004	Not provided	$481,393	$29,400	$145,548
2003	Not provided	$284,154	$27,600	$43,530
2002	Not provided	$402,679	$25,680	$130,487
2001	Not provided	$363,026	$23,440	$102,334

As the sole proprietor failed to provide his full tax return for the years 2001 through 2004, we cannot determine the sole proprietor's adjusted gross income (AGI), and whether he could support himself and his family (if applicable) after subtracting the proffered wage due to the beneficiary. Further, the director's RFE requested documentation of the owner's monthly expenses if the business was formed as a sole proprietorship. The petitioner failed to provide any information related to his monthly household expenses so that we are also unable to calculate whether the sole proprietor could support himself and his family and pay

the proffered wage. Therefore, the documentation that the petitioner submitted is insufficient to demonstrate that it can pay the proffered wage.[4]

Regarding the beneficiary's qualifications, 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 Genis Maintenance "job offer" description for a landscape gardener provides:

> Plant & design maintenance of garden and lawns. Familiar with trees, shrubbery and the use of different fertilizers and weed killers. Prepare and grade terrain, apply fertilizer, seed and sod lawns. Transplant shrubs and plants. Perform landscaping operations and maintain grounds and landscape of private and business residences. Plan lawns and plants and cultivate them. Locate and plant shrubs, trees, and flowers selected by property owner or those recommended for particular landscape effect. Mow and trim lawns and shrubs by using hand and power mower. Clean grounds by using rakes, brooms and hoses. Spray trees and shrubs, and apply supplemental liquid and dry nutrients to lawns and trees.

Further, the job offer listed that the position required:

Education:	8 years grade school
Experience:	2 years in the job offered, Landscape Gardener
Other special requirements:	Resume Required.

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

[4] Further, a valid petitioner would need to demonstrate its ability to pay the proffered wage from the time of the priority date, which in the instant matter is January 9, 1996. However, as noted above, the I-140 petitioner has not demonstrated that it is the successor-in-interest to the employer listed on Form ETA 750, and therefore, has not properly filed Form I-140 with a valid labor certification.

> 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 uncertified Form ETA 750B lists the beneficiary's prior experience as: (1) Costa Verde Landscape, San Clemente, California, from: no start date listed, "to the present" (date of signature, May 13, 2004), Landscape Gardener; and (2) Genis Maintenance Service, San Clement, California, no start date or end date listed, Landscape Gardener.

The beneficiary did not list any further experience. The copy of the ETA 750B submitted is deficient because it is uncertified, and it fails to list the beneficiary's exact dates of employment with either employer. Further, it is not the document submitted to DOL and certified with the Genis Maintenance ETA 750A job offer.

Further, the letter of experience that the petitioner provided to document the beneficiary's experience is also deficient:

> Letter from Gardening Services [redacted] Tetelcingo, Morelos, Mexico, dated March 16, 2000;
> Title: Gardener;
> Dates of employment: February 1992 to May 1994;
> Job duties: maintenance of garden; prepare land to plant; design and installation of new gardens; design and installation of irrigation systems; use fertilizers and herbicides; selection of seeds; trees and plans transplantation; use of machines related to gardening.

The letter fails to provide whether the beneficiary was employed on a full-time or a part-time basis to determine whether the beneficiary had the full two years of required experience. Further, the beneficiary did not list his employment with Gardening Services of [redacted] on Form ETA 750B. *See Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), where the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B lessens the credibility of the evidence and facts asserted. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Based on the foregoing, the petitioner has failed to establish that is the valid successor-in-interest to the original employer on the certified Form ETA 750, and that the petition is supported by a valid Form ETA 750. Further, the petitioner failed to establish that it has the ability to pay the beneficiary the required wage from the priority date until the time of adjustment. The petitioner has also 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.