U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: WAC-04-020-51416 Office: CALIFORNIA SERVICE CENTER Date: JUL 10 2008

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:

SELF-REPRESENTED

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 is a real estate management company and seeks to employ the beneficiary permanently in the United States as a contract administrator ("Contract Manager"). As required by statute, the petition was filed with Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor ("DOL"). As set forth in the director's September 13, 2005 decision, the director denied the petition on the basis that the petitioner had not established its ability to pay the beneficiary the proffered wage from the priority date continuing until the beneficiary obtains lawful permanent residence. Further, the petitioner failed to demonstrate that the beneficiary had the education required for the position as listed on 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 and timely filed, 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) 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." 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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 either be in the form of copies of annual reports, federal tax returns, or audited financial statements.

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[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).

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

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on May 27, 1997. The proffered wage as stated on the Form ETA 750 is $3,457.42 per month,[2] 40 hours per week, for an annual salary of $41,489.04 per year. The labor certification was approved on August 8, 2001, and the petitioner filed the I-140 on the beneficiary's behalf on October 29, 2003. On the I-140, the petitioner listed the following information: date established: September 30, 1986; gross annual income: "see attached;" the net annual income is not shown; and current number of employees: three.

On November 12, 2004, the director issued a Request for Evidence ("RFE") for the petitioner to provide evidence of its ability to pay the proffered wage, specifically for the years 2002 and 2003, and to provide evidence of the owner's personal assets and monthly expenses if the petitioner was a sole proprietor. The RFE additionally requested that the petitioner provide the original of the approved labor certification; evidence to establish that the beneficiary met the experience requirements listed on Form ETA 750; and to provide certified copies of the beneficiary's federal tax returns, as well as her Forms W-2. The petitioner responded.

On September 13, 2005, the director denied the petition on the basis that the petitioner failed to demonstrate its ability to pay the beneficiary the proffered wage from the time of the priority date until the beneficiary obtains permanent residence. Further, the director denied the petition as the petitioner failed to demonstrate that the beneficiary had the degree in the required field of accounting. The petitioner appealed and the matter is now before the AAO.

We will examine information contained in the record and then consider the petitioner's additional arguments on appeal. The petitioner must establish that its job offer to the beneficiary is a realistic one. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, Citizenship and Immigration Services ("CIS") requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages.

First, in determining the petitioner's ability to pay the proffered wage during a given period, 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. In the case at hand, on Form ETA 750B, signed by the beneficiary on May 8, 1997, the beneficiary represented that she has been employed with the petitioner from December 1995 to present (date of signature, May 8, 1997).

The petitioner submitted the following W-2 Forms as proof of wage payment:

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[2] The petitioner initially listed $2,000 per month, but DOL required that the petitioner increase the wage to $3,457.42 prior to filing. We note that the file contains a copy of Form ETA 750 and not the original.

Year	Entity	Tax I.D. Number	Wages Paid
			$42,240.00
			$38,331.10

The petitioner did not provide the beneficiary's Forms W-2 for any other year.

Wages paid, and financial information related to one company, cannot be used to satisfy the petitioner's need to demonstrate that it can 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). The assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

The petitioner must demonstrate the relationship between itself and [redacted] to determine whether the wages paid can be considered to show the petitioner's ability to pay the proffered wage.

The petitioner's president provided a letter, which stated that the petitioner and G[redacted]s were under the same ownership. The petitioner also provided a copy of a document from the State Compensation Insurance Fund related to California Worker's Compensation, which provided that [redacted]es also had a listed trade name of Delson Investments. The petitioner additionally submitted a copy of the Operating Agreement for [redacted]. We note, however, that the petitioner has a different tax identification number, [redacted] than [redacted] and is, therefore, a separate company.

However, the petitioner must demonstrate its ability to pay the proffered wage from May 1997 onward. Accordingly, the petitioner cannot demonstrate that it can pay the beneficiary the proffered wage based on prior wage payment alone. The petitioner must demonstrate that it can pay the full proffered wage from 1997 to 2003. In the absence of any evidence that the owner of both companies required a contract manager in 2002 and 2003 at [redacted] but no longer has that requirement, the wages paid by [redacted] cannot be used to show that the petitioner can pay the proffered wage.

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. The evidence indicates that the petitioner is a general partnership. Where a partnership's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 22 of page one of the petitioner's Form 1065. The instructions on the Form 1065 U.S. Income Tax Return of Partnership Income state on page one, "Caution: Include only trade or business income and expenses on lines

1a through 22 below." Where a partnership has income from sources other than from a trade or business, that income is reported on Schedule K.

Similarly, some deductions appear only on the Schedule K. The cost of business property elected to be treated an expense deduction under Section 179 of the Internal Revenue Code, rather than as a depreciation deduction, is carried over from line 12 of the Form 4562 to line 9 of the Schedule K. *See* Internal Revenue Service, Instructions for Form 4562 (2003), at 1, *available at* http://www.irs.gov/pub/irs-prior/i4562--2003.pdf.

Where the Schedule K has relevant entries for either additional income or additional deductions, net income is found on Schedule K, Form 1065, page 4, Analysis of Net Income (Loss), line 1. In the case at hand, the petitioner derives its net income from rental real estate activities, which is reported on Schedule K, Form 1065, page 4, line 2. For this reason, the petitioner's net income must be considered as the total of its income from various sources as shown on the Schedule K, minus certain deductions, which are itemized on the Schedule K. The results of these calculations are shown on Schedule K, line 2, as shown in the table below:

Tax year	Net income or (loss)
2003	$536,251
2002	-$1,290,571
2001	$451,639
2000	$14,728
1999	$350,582
1998	$154,167
1997	$464,674

Based on the foregoing, the petitioner can demonstrate its ability to pay the proffered wage for the instant beneficiary in the years 1997, 1998, 1999, 2001, and 2003, but is unable to demonstrate its ability to pay the beneficiary the proffered wage in the years 2000, or 2002. Further, CIS records reflect that the petitioner has filed for permanent residence for two other workers. The petitioner would need to demonstrate its ability to pay for all sponsored workers from their respective priority dates until permanent residence, which it would not be able to show in 2000 or 2002.

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 a partnership taxpayer's current assets less its current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A partnership's current assets are shown on Schedule L, lines 1 through 6. Its current liabilities are shown on lines 15 through 17. If a partnership'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. The net current assets are expected to be converted to cash as the proffered wage becomes due. Thus, the difference between current assets and current liabilities is the net current assets figure, which if greater than the proffered wage, evidences the petitioner's ability to pay.

Calculations based on the Schedule L's attached to the petitioner's tax returns yield the amounts for year-end net current assets as shown in the following table.

Tax year	Net current assets
2003	$1,008,184
2002	-$904,965
2001	-$688,856

2000	-$331,782
1999	$27,540
1998	$1,093,119
1997	$856,866

The petitioner cannot demonstrate its ability to pay the beneficiary the proffered wage based on its net current assets in the years 2000 or 2002. Similarly, the petitioner would need to be able to demonstrate its ability to pay all sponsored workers from the time of their respective priority dates onward.

The petitioner additionally submitted a letter from its accountant, which provided that based on the complexity of the Forms 1065, the net income should be derived from Schedule M-1, the Reconciliation of Income (Loss) per books. Schedule M reflects the following: 1997: $598,321; 1998: $197,126; 1999: $461,572; 2000: $5,483; and 2001: $435,072.

The IRS Form 1065 Instructions related to Schedule M-1 provide, "Line 2, Report on this line income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10 and 11 not recorded on the partnership's books this year." However, as provided above, Schedule K reports relevant income and deductions, and is, therefore, the appropriate source from which to obtain the petitioner's net income. *See* Internal Revenue Service, Instructions for Form 4562 (2003), at 1, *available at* http://www.irs.gov/pub/irs-prior/i4562--2003.pdf.

The accountant additionally provided unaudited annual statements of income and expense for each tax 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 submitted with the petition are not persuasive evidence. The statements are in a compilation format rather than audited. Statements produced pursuant to a compilation are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

On appeal, counsel argues that CIS is wrong in its determination that the petitioner cannot pay the proffered wage as it determined the petitioner's net income from its ordinary income on page 1 of the petitioner's tax return.

We agree that CIS's net income calculation was in error. Typically, net income would be derived from page 1, line 22 of the Form 1065, however, the petitioner's situation is different as it reflects additional real estate rental income on Schedule K. We have considered the petitioner's Schedule K income above as net income, which demonstrates that the petitioner is unable to pay the proffered wage in all of the years from the priority date onward.

More specifically, the petitioner contends that it can pay the proffered wage in 2000 as the partnership had reported net short term capital losses in the amount of $299,487 and a net section 1231 loss of $30,933, and that those short term losses were "written off as collectibles." Counsel contends, however, that those short term losses "are not true losses in the sense that they reflect the actual profitability of the company," but are permitted losses to minimize tax liability. Counsel explains that the $299,487 reflects debt that the petitioner was unable to collect, but had no effect on its net income.

Related to 2002, the other year in which the petitioner cannot establish its ability to pay, counsel states that the petitioner earned $719,320 in net income and rental activities, and that after including interest income and ordinary dividends and subtracting the petitioner's deductibles and nondeductibles, he petitioner's net income was $612,676. Further, the petitioner reported $1,328,048 in net section 1231 losses and $38,189 in written off collectibles. Counsel similarly contends that the losses and written off collectibles do not adversely affect the petitioner's profitability, but instead are permitted deductions to minimize tax liability.

In considering the petitioner's Schedule K net income, as well as its net current assets, CIS considers the petitioner's income offset against allowed deductions and current liabilities.[3]

Counsel further 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), which 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 CIS erred in its determination that the petitioner's net current assets would not reflect its ability to pay the proffered wage. Counsel suggests that in the year 2000 the petitioner had $5,909,493 in assets, and only $730,359 in liabilities, which would show sufficient net current assets through which it could pay the proffered wage.

Counsel has used the petitioner's total assets, rather than its net current assets to reach his calculation. The correct calculation as provided above is based on current assets compared against current liabilities in

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[3] Counsel's argument might be considered as similar to claims that depreciation should be considered, an argument, which has been rejected. Depreciation as a tax concept is a measure of the decline in the value of a business asset over time. *See* Internal Revenue Service, *Instructions for Form 4562, Depreciation and Amortization (Including Information on Listed Property)* (2004), at 1-2, *available at* http://www.irs.gov/pub/irs-pdf/i4562.pdf. Therefore, depreciation is a real cost of doing business.

The depreciation argument has previously been addressed by courts, and dismissed this argument accordingly. The court in *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989) noted:

> Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. *See Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

Therefore, the AAO is not persuaded that a petitioner can show its ability to pay the proffered wage through depreciation or other deductions to minimize tax liability.

accordance with the May 4 Yates Memo related to net current assets. A partnership's current assets are shown on Schedule L, lines 1 through 6. Its current liabilities are shown on lines 15 through 17. The petitioner's net current assets do not demonstrate its ability to pay the proffered wage in the years 2000, or 2002.

Based on the foregoing, the petitioner cannot establish its ability to pay the beneficiary the proffered wage in all the years from the priority date onward. Further, CIS records reflect that the petitioner has filed for at least two other workers. The petitioner cannot demonstrate its ability to pay for all the sponsored workers.

Additionally, the director provided that the petitioner failed to establish that the beneficiary met the educational requirements 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 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" position description provides:

> Will perform contract administration, analysis and evaluation of contract systems and procedures. Will establish and implement new designed contract procedures applicable to company for clients, agents, vendors and suppliers. Provide management report on risk exposures, analyze risks on company's contract. Other responsibilities will include recommending policies and credit administration.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Education:	Grade School: 0; High School: 0; College: 4 years; College degree: Bachelor of Science;
Major Field Study:	Accounting. Training: 6 months Type of training: Computer
Experience:	1 year and 6 months in the job offered, Contract Manager, or 5 years in the related occupation of Accountant.
Other special requirements:	1. Knowledge in contractual obligation. 2. Knowledge in Accounting and financial analysis. 3. CPA equivalent required.

4. Knowledge in business application in research for vendors & supplies, a broad range of business principles in application to purchasing, accounting, credit & collection.

In looking at the beneficiary's qualifications, on Form ETA 750B, signed by the beneficiary, the beneficiary listed her prior education as: (1) Sienna College, Manila, Philippines, Field of Study: "BSBA;" from June 1982 to March 1984, for which she received a diploma in Accounting; (2) Ateneo de Naga College, Naga City, Philippines, Field of Study: "BSBA;" from June 1980 to March 1982, for which she received credits which were transferred to Sienna College; (3) Phil. Assoc. of Govt. Budget Adm., Bicol, Philippines, Field of Study: In-house seminar; from October 1990 to October 1990, for which she earned a certificate in Budget Administration; (4) Commission on Audit, Quezon City, Philippines, Field of Study: In-house seminar; during April 1989, for which she earned a certificate in State Accounting Audit; and (5) Local Resource Management, Iloilo City, Philippines, Field of Study: In-house seminar; during November 1988, which was a workshop on Contracting Fund Management.

The beneficiary listed her relevant experience on the Form ETA 750B as: (1) the petitioner, from December 1995 to present (date of signature, May 8, 1997), position: Contract Administrator; (2) Aero Real Estate Development and Management, Los Angeles, CA, from December 1993 to September 1995, position: Accountant; and (3) National Economic and Development Authority Regional Office V, Legaspi City, Philippines, from February 1986 to November 1993, position: Regional/Chief Accountant.

The director noted that Form ETA 750 required a Bachelor of Science degree in Accounting, and that the petitioner only provided a letter to document that the beneficiary had over five years of experience in the field of accounting. The director further noted that the Form ETA 750 required that the individual have a bachelor's degree, and four years of college, and not a combination of education and experience.

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.

The petitioner documented that the beneficiary had the required 5 years of experience in the related occupation of Accounting, but did not provide any evidence that the beneficiary had the required bachelor's degree. The petitioner did not provide a copy of the beneficiary's degree, if any, transcripts, an educational evaluation, or other evidence to demonstrate that the beneficiary met the educational requirement.

On appeal, counsel argues that the beneficiary has a Bachelor of Science degree in Business Administration with a major in Accounting and that CIS is incorrect in asserting her bachelor's degree would be insufficient to show that she meets the standard of a Bachelor's degree in Accounting. Counsel explains that most universities do not specifically have majors in Accounting, but that schools similarly offer degrees in business or economics with minor studies in Accounting.

Counsel misreads the decision. CIS has found that the petitioner failed to document that the beneficiary had the required degree. The petitioner submitted no evidence in the form of a diploma, transcripts, evaluation, or otherwise to demonstrate that the beneficiary had the required education. 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)).

The petitioner did not provide any evidence that the beneficiary had a degree on appeal, and accordingly cannot overcome this basis for denial. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the foregoing, the petitioner has failed to demonstrate its ability to pay. Further, the petitioner has not documented that the beneficiary has the required education to meet the terms of the certified labor certification. 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.