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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 11 2008

LIN 06 208 51743

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.

Kevin S. Perkins for

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a motel. It seeks to employ the beneficiary permanently in the United States as a motel manager. As required by statute, the petition is accompanied by a Form ETA 9089 Application for Permanent Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the 2006 priority date of the visa petition and continuing until the beneficiary obtained lawful permanent residence. The director denied the petition accordingly.

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

As set forth in the director's July 4, 2007 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the 2006 priority date and continuing until the beneficiary obtains lawful permanent residence.

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 9089, Application for Permanent 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 9089 Application for Permanent Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 9089 was accepted on March 30, 2006. The proffered wage as stated on the Form ETA 9089 is $18.09 an hour, or $37,627.20 per year. The Form ETA 9089 in Section H states that the position requires a high school degree, and twenty-four months (two years) of work experience in the proffered job.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial

decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1] On appeal, the petitioner submits a letter written by [redacted], CPA, [redacted] & Co., CPAs, Santa Monica, California, dated July 18, 2007. In his letter, [redacted] states that his accounting firm prepared the Forms 1065, U.S. Return of Partnership Income, for Ocean Avenue Management, L.L.C., (Ocean Avenue Management) and notes that Ocean Avenue Management owns and operates Santa Monica Beach Travelodge. [redacted] states that Ocean Avenue Management's income is rental real estate income, and that the business has no ordinary income. [redacted] states that in tax year 2005, Ocean Avenue Management had $495,191 in net rental real estate income, that is reflected in Form 8825 of the 2005 Partnership Income Tax Return. [redacted] also noted that the partnership accrued $6,800 in state taxes for tax year 2005 and this sum, as an ordinary expense, can only be deducted against ordinary income, as opposed to rental income. For this reason, [redacted] stated, Ocean Avenue Management reported an ordinary business loss of $6,800 in 2005, reflecting a deduction of $6,800 from ordinary income. [redacted] then states the partnership's ability to pay the proffered wage of $37,627.20 is reflected in its net rental real estate income of $495,191 which substantially exceeds the proffered wage. [redacted] comments that the partnership's financial stability is demonstrated by the fact the business has over $7,310,779 in the partners' capital accounts. Mr. Wong concludes that, based on this information, the petitioner has the ability to pay the proffered wage.

Counsel also submits an excerpt of an Internet article taken off the website reallifeaccounting.com. The article is entitled "Accounting of Non-Accountants' Blog" and comments on equity accounts for sole proprietorships and partnerships. Finally counsel submits a definition of the word "capital accounts" from the Internet website www.thefreedictionary.com. The definition states that a capital account is "an account stating the amount of funds and assets invested in a business by the owners or stockholders, including retained earnings." The petitioner also resubmits federal income tax returns, Forms 1065, U.S. Return of Partnership Income, for tax years 2004 and 2005. With the initial I-140 petition, the petitioner submitted an earlier letter from the [redacted] & Company accounting firm. In the letter dated June 20, 2006, [redacted], C.P.A. stated that its tax client, Ocean Ave. Management, reports the income and expenses of Santa Monica Beach Travelodge in its federal tax returns. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The AAO notes that although both counsel and Ocean Avenue Management's accountant state that Travelodge Motel is the rental property of Ocean Avenue Management, the record contains no further evidentiary documentation of the actual ownership and business operation of this motel by Ocean Avenue Management or of Ocean Management's intent to employ the beneficiary. Counsel's assertions 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). The fact that the Form 8825 identifies Ocean Avenue Management's rental property as being in Santa Monica, California, does not establish that the petitioner on the I-140 petition namely, Travelodge Motel, is the same Santa Monica rental property. Even if Ocean Avenue Management owns the property located at 1525 Ocean Avenue, Santa Monica, California, the tax returns do not clearly establish that Ocean Avenue Management operates the day-to-day business operations of the Travelodge Motel or employs its

[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).

workers. The AAO notes that the state of California website site on California corporations identifies Ocean Avenue Management as an active corporation with ID number [redacted] as of May 20, 2008. *See* http://kepler.ss.ca.gov/corpdata (available as of May 28, 2008). The AAO does not question the existence of Ocean Avenue Management but rather its claimed ownership of the I-140 petitioner and its intent to employ the beneficiary as a motel manager.[2] Nevertheless, the AAO notes that the tax returns submitted to the record and the I-140 petition filed with Citizenship and Immigration Services (CIS) show the same IRS tax number, namely, [redacted]. For illustrative purposes, the AAO will consider the tax returns submitted by the petitioner under the name of Ocean Avenue Management to be those of the petitioner identified on the I-140 petition.

The record shows that during the 2004 and 2005 tax years, based on Ocean Avenue Management's tax returns, the petitioner was a limited liability company taxed as a partnership.[3] On the I-140 petition, the petitioner claimed to have been established in 2004, to have gross annual income of $1.6 million dollars, a net annual income of $928,641, and to currently employ eleven[4] workers. On the Form ETA 9089, signed by the beneficiary on April 28, 2006, the beneficiary did not claim to have worked for the petitioner.

On appeal, counsel asserts that the petitioner's net rental income of $928,641 for tax year 2004 and $495,191 for tax year 2005 substantially exceeds the proffered wage. Counsel refers to the director's denial of the instant petition based on the ordinary business loss of $6,800 on the 2005 Form 1065. Counsel notes that the petitioner's accountant explained that there is no ordinary income to report under the accounting procedures followed by the petitioner, and that the income from rental real estate identified on the federal tax form substantially exceeds the proffered wage. Counsel notes that the rental income was not reported as ordinary income and that since the petitioner had no ordinary income, the $6,800 in state taxes was reported as an ordinary business loss.

Counsel also asserts that the director erroneously claimed that the petitioner's liabilities outweighed its assets. Counsel refers to Schedules K, L and Forms 8825 submitted to the record. Counsel notes that the petitioner's total assets are $7,310,779, which is equivalent to the partners' capital accounts. Counsel states that capital accounts are not a liability but represent the owner's equity in a business. Counsel further notes that the petitioner's financial stability and its ability to pay the proffered wage is reflected in the partners' capital accounts that showed the two partners invested over seven million dollars in Ocean Avenue Management.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the 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). In

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[2] Ocean Avenue Management has not established its intent to employ the beneficiary pursuant to 8 C.F.R. 204.5(c). The regulation at 8 C.F.R. § 204.5(c) states in pertinent part, "Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act." The instant petition has been field under section 203(b)(3) of the Act.

[3] For purposes of these proceedings, the petitioner is considered limited liability company with two partners.

[4] The AAO notes that the Ocean Avenue Management tax returns do not clearly establish that it employs eleven employees engaged in the operation of the Travelodge Santa Monica Beach Motel.

evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

The AAO notes that counsel on appeal states that the petitioner's total assets are reflected in the two partners' capital accounts. Although an explanation of double-entry accounting is beyond the scope of today's decision, partner's capital accounts are an offsetting credit to some asset and are not, in themselves, assets. They are not an account out of which the petitioner can withdraw funds to pay wages. They are not a fund available to pay the proffered wage.

In determining the petitioner's ability to pay the proffered wage during a given period under either status, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner did not submit any evidence that it employed the beneficiary during the relevant period of time in question. Therefore, the petitioner has not established that it employed and paid the beneficiary the full proffered wage as of the 2006 priority date and to the present. The petitioner thus has to establish it has the ability to pay the entire proffered wage as of the 2006 priority date and until the beneficiary obtains lawful permanent residence.

With in the initial petition and in response to the director's request for further evidence, the petitioner submitted two Forms 1065, U.S. Return for Partnerships, for tax years 2004 and 2005. The AAO notes that the priority date for the instant petition, based on the date the petitioner's ETA Form 9089 was accepted by the Department of Labor (DOL) is March 30, 2006. Thus, neither tax return submitted to the record is dispositive in these proceedings. On appeal, counsel does not submit the 2006 tax return for Ocean Avenue Management or provide any explanation for why this return was not available at the time the petitioner's appeal was submitted.[5] The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide copies of its 2006 tax return on appeal. The 2006 tax return would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage as of the priority date year. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Nevertheless, the AAO will examine the two tax returns already submitted to the record to further explain the analysis of the petitioner's ability to 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, contrary to counsel's and the petitioner's accountant's assertions, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532

[5] The record is not clear as to the status of the petitioner's more relevant 2006 tax return at the time counsel submitted his brief, namely, July 27, 2007.

(N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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

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

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

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay while taxed as a domestic limited liability company:

- In 2004, the Form 1065 stated net income of $926,041.[6]
- In 2005, the Form 1065 stated net income of $487,821.

Therefore, for tax years 2004 and 2005, the petitioner had sufficient net income to pay the entire proffered wage of $37,627.20. However, the petition has not established its ability to pay the proffered wage in the 2006 priority year.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS

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[6] For a 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 the petitioner's Form 1065, U.S. Partnership Income Tax Return. However, where a partnership has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income or additional credits, deductions or other adjustments, net income is found on page 4 of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K. *See* Instructions for Form 1065, at http://www.irs.gov/pub/irs-pdf/i1065.pdf (Accessed November 5, 2007). In the instant case, the petitioner's Schedule K has relevant entries for additional income and deductions and, therefore, its net income is found on line 1 of the Analysis of Net Income (Loss) of Schedule K.

will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.[7] A partnership's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 15 through 17. If the total of a multi-member limited liability company's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 2004 were $38,461.
- The petitioner's net current assets during 2005 were $14,203.

Therefore, the petitioner did have sufficient net current assets to pay the proffered wage in tax year 2004; however, the petitioner did not have sufficient net current assets to pay the proffered wage in tax year 2005. As stated previously, neither of the tax returns submitted to the record are dispositive of the petitioner's ability to pay the proffered wage in 2006.

Therefore, assuming Ocean Avenue Management is the petitioner in the instant matter, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the 2006 priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 9089 was accepted for processing by the Department of Labor. The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, nor does it establish that Ocean Avenue Management L.L.C. is the intending employer in the instant matter.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. 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).

Section 203(b)(3)(A)(i) of 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

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[7]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.

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 petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 9089, Application for Permanent 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). As stated previously, the Form ETA 9089 in the instant petition was accepted on March 30, 2006.

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *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).

In the instant case, the Application for Permanent Employment Certification, Form ETA-9089, items H-4 through H-6, set forth the minimum education, training, and experience that an applicant must have for the position of motel manager. Items H-4 through H-6 indicate that the position requires the minimum educational level of high school with 24 months of work experience in the proffered position. Thus, the applicant must have graduated from high school, and have two years of experience in the job offered, the duties of which are delineated in an attachment to the Form ETA 9089, and since this is a public record, will not be recited in this decision.

The beneficiary set forth his credentials on Form ETA-9089, Sections J and K, and signed his name under penalty of perjury, that the contents of Sections J and K are true and correct. On section K, eliciting information of the beneficiary's work experience, he represented that he had worked from February 1, 1998 to July 31, 2001 at Travel Lodge, 7051 Sunset Boulevard, Hollywood, California, as a motel manager. He does not provide any additional information concerning his employment background on that form.

With the initial petition, the petitioner submitted an undated letter of work experience from Travelodge, Hollywood, California, written by [redacted], owner. In the letter, the letter writer states that the beneficiary worked with Travelodge from February 1, 1998 to July 31, 2001 as manager. The letter writer stated that the beneficiary left this employment for personal reasons.

The record of proceeding also contains a Form G-325, Biographic Information sheet submitted to the record. This document states that with regard to beneficiary's employment for the last five years, he had been self-employed working in the export business from January 1998 to the date he signed the G-325 A, namely, January 26, 2004. An additional I-140 petition is contained in the record for the beneficiary's application for an employment-based visa under section 203(b)(1)(C) as a multi-national executive or manager. This earlier I-140 petition was received by legacy INS on July 31, 1998.[8] In Part B of the ETA 750 submitted to the record, again under penalty of perjury, the beneficiary established that he worked as the manager of international operations for Future-Tech

[8] The record indicates this petition was denied by the director, California Service Center, on September 18, 1999, based on abandonment, as the petitioner had failed to respond to the director's request for further evidence dated June 7, 1999.

International, 20705 South Western Avenue, Torrance, California, from March 1997 to July 8, 1998, the date the beneficiary signed Part B, of the ETA Form 750.

Thus, the record contains discrepancies that raise questions as to whether the beneficiary worked at Travelodge, Hollywood, California, from February 1, 1998 to July 31, 2001. Other documents in the record indicate he was either working at Future-Tech International during the period of February 1998 to July 3, 1998, or that he was self-employed, working in the export field, from January 1998 through January 2004. This latter period of time covers the entire employment period with Travelodge, Hollywood, California listed by the beneficiary as his requisite two years of work experience as a motel manager. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) further states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." Based on the record, the petitioner has not clearly established that the beneficiary has the two years of requisite work experience as a motel manager. The AAO also notes that the record contains no evidentiary documentation of the beneficiary's graduation from high school, which is the minimum educational level stipulated by the ETA Form 9089.

Thus, the petitioner, based on discrepancies in the record, and the lack of documentation as to the beneficiary's high school graduation, has not established that the beneficiary is qualified to perform the duties of the proffered position.

In addition, as previously discussed and also beyond the decision of the director, Ocean Avenue Management has not established its intent to employ the beneficiary pursuant to 8 C.F.R. § 204.5(c) .

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.