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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 13 2009

SRC 07 126 51258

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a market research analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that its predecessor-in-interest had the ability to pay the beneficiary the proffered wage in 2004 and 2005. 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 August 28, 2007 denial, the primary issue in this case is whether or not the petitioner or its predecessor-in-interest had the ability to pay the proffered wage as of the 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 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 either 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 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL 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 on September 10, 2004. The proffered wage as stated on the Form ETA 750 is $16.00 per hour ($33,280.00 per year).

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, counsel submits a brief; IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for E.B. Developers, Inc. for 2005; and IRS Form W-2, Wage and Tax Statement, issued to the beneficiary by E B Developers Inc for 2005. Other relevant evidence in the record includes the petitioner's IRS Forms 1120S for 2004 and 2005; United States Citizenship and Immigration Services (USCIS) AFM Chapter 22 update memorandum, *AFM Update: Chapter 22: Employment-Based Petitions (AD03-01)*, dated September 12, 2006; a letter dated October 17, 2001, from Efren Hernandez III, Director, Business and Trade Services, legacy INS, to J. Douglas Donenfeld; an unpublished AAO decision dated January 27, 2004;[2] a copy of a Board of Alien Labor Certification Appeals (BALCA) decision dated May 20, 2004;[3] a letter from the petitioner's President dated May 20, 2007; a letter from the petitioner's CFO dated May 29, 2007; a letter from the petitioner's general counsel dated May 19, 2007; the petitioner's general contractor's license issued by the State of Florida; an Assignment of Lease from EB Developers, Inc. to the petitioner dated December 12, 2005; two subcontract agreements; and IRS Form 1120S for E.B. Developers, Inc. for 2004. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to currently employ 24 workers, to have a gross annual income of $4,200,000.00 and to have a net annual income of $116,269.00. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on June 30, 2004, the beneficiary did not claim to have worked for the petitioner, but he does claim to have worked for the petitioner's predecessor-in-interest from June 2003 to the date he signed the Form ETA 750B.

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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).

[2] While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS 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).

[3] Counsel does not state how DOL precedent is binding in these proceedings. As noted in footnote 2, while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS 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).

On appeal, counsel asserts that the "director's choice of dates for the successorship in interest was arbitrary." She notes that the letters from the petitioner's corporate officers stated that the transfer of those obligations took place gradually in 2005. She asserts that the director's "choice of the December 12, 2005 date based on the assignment of the lease could just have easily been any date in 2005." She states that the director should have used the beginning of the 2005 tax year as the date of the transfer, as "it is difficult, inaccurate and impractical to attempt to determine what percentage of its net income a company made during any on[sic] part of the year." Further, counsel asserts that the director improperly prorated the net income of EB Developers Inc. to the priority date. Counsel states that the director should have used the total net income for 2004, while prorating the proffered wage from the priority date to the end of the year.

We note that the director prorated the proffered wage for the portion of the year that occurred after the priority date. The AAO will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While the AAO will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

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 evaluating whether a job offer is realistic, USCIS 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).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS 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 has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2004 or subsequently. On appeal, counsel submits a Form W-2 purportedly issued to the beneficiary by EB Developers Inc. in 2005 indicating that the company paid the beneficiary $27,940.72 that year. However, the IRS Form 1120S for E.B.

Developers, Inc. for 2005 indicates that it paid no salaries, wages or costs of labor in 2005.[4] *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.

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. *Id.* Therefore, due to the inconsistency between the Form W-2 and the Form 1120S for 2005, the AAO will not accept the 2005 IRS Form W-2 for the beneficiary submitted on appeal as evidence of wages paid by EB Developers Inc.

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, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). 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). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts 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 USCIS, 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 USCIS should have considered income before expenses were paid rather than net income.

With respect to depreciation, the court in *River Street Donuts* noted:

> The AAO recognized that a depreciation deduction is a systematic allocation of

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[4] The petitioner did not submit the statements to the 2005 IRS Form 1120S and, therefore, the AAO is unable to determine if the beneficiary's wages are reflected on a statement to the return. 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 cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.
>
> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 116. "[USCIS] 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." *Chi-Feng Chang* at 537 (emphasis added).

In this case, the labor certification was issued to EB Developers, Inc. The I-140 petition was filed by Berdugo Homes Inc. EB Developers, Inc. and Berdugo Homes Inc. are separate companies with separate tax identification numbers. Counsel and the petitioner assert that the petitioner is a successor-in-interest to EB Developers, Inc.

For a valid successor-in-interest relationship to exist between the petitioning successor entity and the predecessor entity that filed the labor certification application, the petition must fully describe and document the transfer and assumption of the ownership of the predecessor entity by the petitioning successor entity. *See Matter of Dial Repair Shop,* 19 I&N Dec. 481 (Comm. 1981). As noted by the director in her decision, the petitioner has failed to provide evidence of the actual date that it became the successor-in-interest to the original employer. The record does not contain an assignment agreement, merger agreement, bill of sale or any other documentation evidencing the date that the transfer and assumption of the ownership of the predecessor entity by the petitioner occurred. Counsel asserts that the transfer happened gradually in 2005. The director utilized the date the lease for the business premises was assigned to the petitioner, as this was the only evidence provided by the petitioner stating an actual date of transfer. The petitioner submitted no new evidence of the date of the transfer on appeal. Instead, counsel submitted a brief stating that the director's choice of the December 12, 2005 date based on the assignment of the lease was arbitrary and that the director should have used the beginning of the 2005 tax year as the date of the transfer. Counsel provides no support for this assertion, other than her opinion that it is difficult, inaccurate and impractical to attempt to determine what percentage of its net income a company made during any one part of the year. 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

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. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190). In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1977); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Based on the limited evidence submitted by the petitioner regarding the transfer of assets from EB Developers, Inc. to Berdugo Homes Inc., the director's choice of December 12, 2005 as the date of the transfer was appropriate.

In order to maintain the original priority date, the petitioner must demonstrate that the predecessor entity had the ability to pay the proffered wage from the priority date in 2004 until the date of the change in ownership. Moreover, the petitioner must establish the financial ability of the successor enterprise to pay the certified wage from the date of the change in ownership. *See Matter of Dial Repair Shop,* 19 I&N Dec. 481.

The tax returns for EB Developers, Inc. demonstrate its net income for 2004 and 2005, as shown in the table below.

- In 2004, the Form 1120S stated net income[5] of $33,852.00.
- In 2005, the Form 1120S stated net income of -$64,864.00.

Therefore, for the year 2004, EB Developers, Inc. had sufficient net income to pay the proffered wage. For January 1, 2005 through December 12, 2005, EB Developers, Inc. did not establish that it had sufficient net income to pay the proffered wage.[6]

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the

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[5] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation 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, credits, deductions or other adjustments, net income is found on line 17e of Schedule K for 2004 and 2005. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed June 22, 2009) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because EB Developers, Inc. had additional income and deductions shown on its Schedule K for 2004, its net income is found on Schedule K of its tax return. The net income for EB Developers, Inc. for 2005 is shown on line 21 of page one of its IRS Form 1120S.

[6] The petitioner's net income for 2005 indicates that it had sufficient net income to pay the proffered wage from December 12, 2005 to December 31, 2005.

petitioner's current assets and current liabilities.[7] 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. In 2005, the Form 1120S for EB Developers, Inc. stated net current assets of $10,531.00. Therefore, for January 1, 2005 through December 12, 2005, EB Developers, Inc. did not establish that it had sufficient net current assets to pay the proffered wage.

Accordingly, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner's predecessor had not established that it had the continuing ability to pay the beneficiary the proffered wage from January 1, 2005 through December 12, 2005, through an examination of wages paid to the beneficiary, or its net income or net current assets.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612. The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner was incorporated in Florida in 1998 and claimed to employ 24 workers on the petition. EB Developers, Inc. was incorporated in Florida in 1993 and appears to

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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.

have had no employees in 2005, based on its 2005 income tax return which indicated it paid no salaries, wages or costs of labor that year. Neither the petitioner nor its predecessor has established the historical growth of its business, the occurrence of any uncharacteristic business expenditures or losses, its reputation within its industry, or whether the beneficiary is replacing a former employee or an outsourced service. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that the predecessor entity had the ability to pay the proffered wage from the priority date in 2004 until the date of the change in ownership on December 12, 2005, or that the petitioner had the ability to pay the proffered wage from the date of the change in ownership.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.[8] The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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 Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the proffered position. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	blank
	High School	blank
	College	4
	College Degree Required	BA
	Major Field of Study	business administration

The applicant must also have two years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A reflects the following special requirements: "The education +

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[8] 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 at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis).

experience requirement can alternatively be met by HS degree + 14 years of marketing and business management related experience." As set forth in the petitioner's letter dated January 23, 2007 submitted with the petition, the petitioner seeks to qualify the beneficiary based on the alternative requirement of a high school degree plus 14 years of marketing and business management related experience.[9] The petitioner failed to submit evidence demonstrating that the beneficiary has a high school degree. Therefore, the petitioner has not demonstrated that the beneficiary is qualified for the position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.[10] The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[9] The petitioner has not established that the beneficiary has a four-year bachelor of arts degree in business administration.

[10] When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.