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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B6

Date: JUN 06 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Elizabeth McCormack

Perry Rhew
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 law office. It seeks to employ the beneficiary permanently in the United States as a bilingual legal secretary. 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 denied the petition, finding that the petitioner did not have sufficient net income or net current assets to pay the beneficiary's wage.

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 September 30, 2008 denial, the single issue in this case is whether or not the petitioner has 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.

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 filed and accepted for processing by the DOL on February 7, 2000. The rate of pay or the proffered wage set forth by the DOL is $2,700.53 per month or $32,406.36 per year. The Form ETA 750 also indicates that the position requires two years work experience

in the job offered. The record shows that the DOL approved the Form ETA 750 on August 13, 2002.[1]

The record contains copies of the following relevant evidence to show that the petitioner has the ability to pay $2,700.53 per month or $32,406.36 per year beginning on February 7, 2000:

- [redacted] individual tax returns filed on Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for the years 2002 through 2004;
- [redacted] Forms 1120S, U.S. Income Tax Return for an S Corporation, for 2005-2007; and
- Forms 941 (Employer's Quarterly Federal Tax Return), Forms DE-6 (Quarterly Wage and Withholding Report), and Forms DE-88 (Report of Contributions) for 2000 (all four quarters), 2001 (first, second, and third quarter), and 2008 (first quarter).

The evidence in the record of proceeding shows that the petitioner, before 2005, was structured as a sole proprietorship, with [redacted] as the sole proprietor. The law office incorporated on October 18, 2005 as an S corporation and [redacted] is the sole shareholder

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[1] The AAO notes that the DOL originally approved the Form ETA 750 filed by the petitioner for a beneficiary named [redacted]. In March 2006, when it filed the petition the petitioner requested substitution of the beneficiary and submitted part B of the Form ETA 750 with the beneficiary's biographical information and work experience/training. The DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 C.F.R. §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to USCIS based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (codified at 20 C.F.R. § 656). The DOL's final rule became effective July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. An I-140 petition for a substituted beneficiary retains the same priority date as the original Form ETA 750 or ETA Form 9089. [redacted] Since the petition along with the approved Form ETA 750 and the request for substitution was filed and received by USCIS on March 10, 2006 (before the DOL's final rule became effective), the substitution for the present petition will be allowed, and the petition for the current beneficiary will retain the same priority date as the original Form ETA 750.

of the company. On the petition which [redacted] signed on December 1, 2005, the petitioner claimed to have initially established the business in 1979, to currently employ 3 workers, and to respectively have a gross annual income and net annual income of $500,000 and $100,000.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

As a threshold issue, the AAO notes that the petitioner no longer appears to be operating as a sole proprietorship. The petitioning entity is the Schedule C sole proprietorship, Law Offices of [redacted] with a federal tax identification number of [redacted] Although not identified as an issue by the director, the record does not establish that the corporate entity, [redacted] APC, with a federal tax identification number of [redacted], is a successor-in-interest to the sole proprietorship. A valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor.

Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of the business transfer until the beneficiary adjusts status to lawful permanent resident.

The record does not establish that [redacted] transferred his ownership rights in the sole proprietorship to the professional corporation, the terms of such transfer, or that the new business will be controlled and operated in substantially the same manner as it was before the ownership transfer. Nor does the record contain evidence that the job opportunity on the approved labor certification will remain the same as originally offered on the labor certification. Thus, as the petitioner is no longer operating as a sole proprietorship, and the corporation has not been established as a successor-in-interest to the sole proprietorship, the petition is moot. Where the petitioning business is no longer an active business, the petition and its appeal to this office have become moot, in which case, the appeal shall be dismissed as moot.[3]

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

[3] Where there is no active business, no legitimate job offer exists, and the request that a foreign

As the director did not discuss the successor-in-interest issue, the petitioner has not had the opportunity to address it on appeal. The AAO will not remand the decision to the director to adjudicate the issue, however, as the record does not establish that the petitioner and the professional corporation together have the ability to pay the proffered wage. The AAO will adjudicate the ability to pay issue as if the petitioner had established, which it has not, that the professional corporation is the successor-in-interest to the sole proprietor.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Assuming that the petitioner were to establish that the corporate entity is its successor-in-interest, the petitioner must establish both the sole proprietor's ability to pay the proffered wage from the priority date, and the successor's ability to pay the wage from the date of the business transfer until the beneficiary adjusts status to lawful permanent resident.

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, United States Citizenship and Immigration Services (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. The petitioner indicates on appeal that the beneficiary has never been employed by the petitioner and thus, has not received any wages. Hence, in order for the petitioner to meet its burden of proving by a preponderance of the evidence that it has the continuing ability to pay the proffered wage from the priority date, the

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worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

petitioner must be able to show that it can pay the full proffered wage of $32,406.36/year from the priority date (February 7, 2000).

When the petitioner does not establish that it employed or 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); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner, as noted earlier, was structured as a sole proprietorship from 2000-2004. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than $20,000 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

On May 23, 2006 and again on July 20, 2008 the director requested that the petitioner submit, among other things, copies of his individual tax returns. The director also on July 20, 2008 requested that [redacted] submit his personal monthly recurring household expenses during the qualifying period. The petitioner did not submit evidence of his personal household expenses and did not submit individual tax returns for 2000 and 2001.

Based on the evidence submitted, the AAO notes that [redacted] and his spouse filed joint tax returns and claimed four dependents between 2002 and 2004. A review of [redacted] tax returns reveals the following information about his adjusted gross income (AGI) and his ability to pay the beneficiary's wage, specifically in the years 2000 through 2004:

Tax Year	The Petitioner's Adjusted Gross Income (AGI)	The Annual Proffered Wage (PW)	Annual Household Expenses	AGI less Annual Household Expenses (Net Income)
2000	Unknown	$32,406.36	Unknown	Unknown
2001	Unknown	$32,406.36	Unknown	Unknown
2002	$61,680	$32,406.36	Unknown	Unknown
2003 (line 34, Form 1040)	$88,168	$32,406.36	Unknown	Unknown
2004 (line 36, Form 1040)	$99,306	$32,406.36	Unknown	Unknown

Without evidence of the petitioner's recurring monthly or annual household expenses, the AAO cannot determine whether the petitioner had sufficient income to pay the proffered wage of the beneficiary and to support himself, his wife, and his four dependents during the qualifying period, specifically between 2000 and 2004.

From 2005 thereon, the petitioner submitted the tax returns of [redacted] APC.

The record before the director closed on August 15, 2008 with the receipt by the director of the petitioner's submissions in response to the director's notice of intent to deny (NOID). As of that date, the corporation's 2008 federal income tax return was not yet due. Therefore, the corporation's income tax return for 2007 is the most recent return available. The corporation's tax returns demonstrate its net income for 2005-2007, as shown in the table below:

Tax Year	Net Income (Loss)[4]
2005	$25,213
2006	($12,067)
2007	($109,661)

[4] 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 23 (1997-2003) line 17e (2004-2005) line 18 (2006-2007) of Schedule K. *See* Instructions for Form 1120S, 2007, at http://www.irs.gov/pub/irs-prior/i1120s--2007.pdf (accessed on May 18, 2011) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). In the instant case, the net income from 2005 is found on page one, line 21 of the petitioner's Form 1120S; from 2006 and 2007, on schedule K, line 18.

Therefore, the corporation did not have sufficient net income to pay the beneficiary's proffered wage in any of those years.

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 petitioner's current assets and current liabilities.[5] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The corporations's tax returns demonstrate its end-of-year net current assets (liabilities) for the years 2001 through 2007, as shown in the table below.

Tax Year	Net Current Assets
2005	($1,337)
2006	($21,560)
2007	$928

Therefore, the corporation did not have sufficient net current assets to pay the proffered wage in any of the qualifying years, as shown above. Based on the net income and net current asset analysis above, the AAO concludes that together, the sole proprietor and the corporation do not have the continuing ability to pay the proffered wage from the priority date.

On appeal, the petitioner contends that USCIS should use the gross receipts or sales instead of net income to determine whether a business has the ability to pay the proffered wage.

The petitioner's contention is not persuasive, however. 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. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

The petitioner further asserts on appeal that the business has always been able to pay the wages of all of its employees. As evidence, the petitioner submits copies of the Forms 941 (Employer's Quarterly Federal Tax Return), Forms DE-6 (Quarterly Wage and Withholding Report), and

[5] 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.

Forms DE-88 (Report of Contributions) for 2000 (all four quarters), 2001 (first, second, and third quarter), and 2008 (first quarter).

The assertions that the petitioner has always been able to meet its payroll obligations do not establish that the petitioner has the funds to pay the beneficiary's proffered wage. Here, the petitioner does not assert that it wants to replace one or more of its employees with the beneficiary. If the petitioner intends to use the salary paid to another employee, to pay the beneficiary's wage, the petitioner has not documented the position, duty, and plan of termination of the worker who performed the duties of the proffered position. Nor has the petitioner provided the name of the employee that the petitioner may replace with the beneficiary, stated his or her wage, or verified his or employment status – whether he or she is full time or part time.

Finally, though not raised on appeal, 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 record includes no evidence of unusual circumstances that would explain the petitioner's inability to pay the proffered wage from 2000 to 2007. Unlike *Sonegawa*, the petitioner in this case has not submitted any evidence reflecting the company's reputation or historical growth since its inception in 1979. Nor has it included any evidence or detailed explanation of the business' milestone achievements. The record does not contain any newspapers or magazine articles, awards, or certifications indicating the business' accomplishments.

In examining a petitioner's ability to pay the proffered wage, the fundamental focus of the USCIS determination is whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *Matter of Great Wall, supra.* After a review of

the petitioner's tax returns and other evidence, the AAO is not persuaded that the petitioner has that ability.

Beyond the decision of the director, the AAO also finds that the beneficiary does not qualify to perform the duties of the position. The evidence submitted does not support the assertions that the beneficiary had the experience or training necessary to be qualified for the position offered as of the priority date.

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that, 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 – the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

To determine whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the beneficiary is, in fact, qualified for the certified job. 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*, *Madany v. Smith*, 696 F.2d, 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).

The position offered in this case is bilingual legal secretary. Under the job description, section 13 of the Form ETA 750, part A, the petitioner wrote:

> Will prepare legal papers and forms and correspondence. Will use typewriter, word processor, or personal computers. Will great [sic] and direct clients. Will interview and compile files. Will use Armenian language when speaking to Armenian clients and translating Armenian documents. Will obtain information from clients, handle telephone calls and assist lawyer.

The DOL classified this job offered as a legal secretary, consistent with the DOT (Dictionary of Occupational Title) job code 201.362-010.[6] Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two (2) years of work experience in the job offered.

To show that the beneficiary has at least two (2) years of work experience in the job offered before the priority date of February 7, 2000, the petitioner submitted a copy of the beneficiary's work book. The work book appears to have been issued by a government agency of the former

[6] The DOT job code can be accessed at this web address: http://www.occupationalinfo.org (last accessed on May 24, 2011).

USSR, and contains information concerning the beneficiary's history of employment between 1977 and 1993.

The AAO notes that the beneficiary, according to her work book, worked at a musical conservatory as a laboratory assistant from November 1977 to February 1993. This is consistent with the beneficiary's claim on the Form ETA 750, part B, which she signed on December 1, 2005, that she worked at a musical conservatory as a laboratory (administrative) assistant doing administrative and accounting works in the office, such as preparing budget, annual reports, and collection and helping with hiring new employees. These job duties are not the same as those listed on the labor certification for a bilingual secretary.

The beneficiary, according to her work book, was also a secretary-typist for about six (6) months from March 1977 to September 1977. Since this experience lasted only for six months, the beneficiary cannot gain the requisite experience from this job.

The beneficiary stated on part B of the Form ETA 750 that she worked as a secretary volunteer for the petitioner from 1998 to 2004. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires the petitioner to provide proof of the training or experience that the beneficiary has to qualify for the position offered.[7] No such proof is found in the record for any of the three jobs discussed above.

The AAO, therefore, finds that the beneficiary did not have the requisite work experience in the job offered before the priority date and does not qualify to perform the duties of the position. The petition is denied for this additional reason.

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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[7] The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) provides:

> 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.