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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

B6

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 01 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

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.

Thank you,

Kevan S. Rhew for

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 carpentry company. It seeks to employ the beneficiary permanently in the United States as a carpenter. 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 it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. 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 April 8, 2008 denial, the primary 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 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, Application for Alien Employment Certification, 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, Application for Alien Employment Certification, 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 April 30, 2001. The proffered wage as stated on the Form ETA 750 is $17.01 per hour, which equates to $35,380.80 per year. The Form ETA 750 states that

the position requires two years of experience in the job offered, and that other special requirements include "100% site work in College Station and surrounding areas."

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.[1]

The record before the AAO closed on October 25, 2010, with the receipt by the AAO of the petitioner's submissions, through counsel, in response to the RFE dated September 16, 2010. In response to the RFE, the petitioner submitted documentation establishing that the sole proprietor had filed an Internal Revenue Service (IRS) Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for 2009. Therefore, the sole proprietor's 2008 income tax return was the most recent return available as of the date of the petitioner's response.

The evidence in the record of proceedings shows that the petitioner is structured as a sole proprietorship. On the petition, the petitioner claimed to have been established in 1975 and to employ 51 workers. On the Form ETA 750B, signed by the beneficiary on September 10, 2004, the beneficiary claimed to have worked full-time as a carpenter for [redacted] from May 1997 to June 1999, and to have worked full-time for the petitioner as an intermediate carpenter from June 1999 to the date he signed the Form ETA 750B.

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

[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). On appeal, counsel submitted a brief and no new evidence. In response to a Request for Evidence (RFE) issued by the AAO on September 16, 2010, counsel submitted additional evidence which will be considered in the AAO's decision in this matter.

petitioner's ability to pay the proffered wage. In the instant case, the petitioner has established that it employed and paid the beneficiary as follows:

Year	Wages Paid ($)[2]	Difference Between Wages Paid and Proffered Wage ($)
2001	20,079.00	(15,301.80)
2002	23,458.00	(11,922.80)
2003	22,885.50	(12,425.30)
2004	24,004.75	(11,376.05)
2005	24,312.00	(11,068.80)
2006	24,732.00	(10,648.80)
2007	24,349.00	(11,031.80)
2008	17,559.00	(17,821.80)
2009	20,592.00	(14,788.80)

Therefore, for the years 2001 through 2009, the petitioner has not established that it paid the beneficiary an amount at least equal to the proffered wage. Thus, the petitioner must establish that it can pay the beneficiary the difference between the wages paid and the proffered wage in each relevant year.

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); *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). 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.

The petitioner is a sole proprietorship, 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

[2] From the beneficiary's IRS Forms W-2, Wage and Tax Statements, for the years 2001, 2002, 2003, 2004 and 2008, and IRS Forms 1099, Miscellaneous Income, for the years 2005, 2006, 2007, 2008 and 2009.

pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

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

In the instant case, the record reflects that the sole proprietor supports a family of two. The tax returns submitted by the sole proprietor reflect his adjusted gross income (AGI) as follows:[3]

Year	AGI
2001	23,095
2002	23,750
2003	18,971
2004	(222,173)
2005	(163,885)
2006	no return submitted
2007	(99,394)
2008	(115,653)

Although specifically requested in the AAO's RFE to provide an itemization of the sole proprietor's yearly household expenses for each relevant year, no documentation was provided by the petitioner in response to this request.[4]

The sole proprietor's adjusted gross income (losses) in 2004, 2005, 2007 and 2008 failed to cover the difference between the wages paid and the proffered wage. Therefore, in the years 2004, 2005, 2006, 2007 and 2008, the sole proprietor has failed to establish its ability to pay the beneficiary the proffered wage through its adjusted gross income. In 2001, 2002 and 2003, the sole proprietor's adjusted gross income covered the difference between the wages paid to the beneficiary and the

[3] From the sole proprietor's IRS Forms 1040 (line 33 for 2001, line 35 for 2002, line 34 for 2003, line 36 for 2004, and lines 37 for 2005, 2007 and 2008.

[4] The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

proffered wage by $7,793.20, $11,827.20, and $6,545.70, respectively. It is improbable that the sole proprietor could support himself and his spouse on $7,793.20, $11,827.20, and $6,545.70 in 2001, 2002 and 2003, respectively, which is what remains in each of those years after reducing his adjusted gross income by the difference between the wages paid to the beneficiary and the proffered wage.

On appeal, counsel asserts that the petitioner submitted the required tax returns for each of the requested years, bank statements from 2001 through 2006, and the beneficiary's IRS Forms W-2 for those same years. Counsel also asserts that the director failed to consider the petitioner's bank statements and other assets in rendering his final decision and concludes that the beneficiary's IRS Forms W-2, the petitioner's federal income tax returns, and the petitioner's bank statements clearly demonstrate that the petitioner had the ability to pay the beneficiary the proffered wage from 2001 to the date of filing the Form I-140 on July 12, 2007.

In response to the AAO's RFE, counsel acknowledges that the sole proprietor's federal tax returns for the pertinent years do not reflect the petitioner's continuing ability to pay the beneficiary the prevailing wage and that the documentation regarding wages paid to the beneficiary is not *prima facie* proof of the petitioner's ability to pay the beneficiary the prevailing wage. Counsel asserts, however, that because the petitioner is a sole proprietor, USCIS should consider the bank account statements submitted as additional evidence of the petitioner's secured financing and that the totality of the petitioner's financial circumstances should be considered as sufficient proof of the petitioner's ability to pay the beneficiary the proffered wage.

A review of the record reveals that the petitioner has provided personal checking account statements in the name of the sole proprietor and others[5] as follows:

FIRST AMERICAN BANK ($)

	YEAR				
	2001	2002	2003	2004	2005
MONTH					
JAN	4,734.01	1,030.90	1,575.95	836.68	12,576.28
FEB	1,259.87	2,590.70	10,325.86	2,682.58	4,333.73
MAR	546.33	585.48	8,695.31	270.63	504.98
APR	4,360.05	601.23	890.50	180.11	38,666.41
MAY	1,153.15	23,303.20	4,741.77	20,911.21	21,514.10
JUN	18,650.60	7,404.14	13,368.55	785.63	284.44
JULY	10,441.90	918.66	393.01	2,330.14	8,609.56
AUG	16,541.31	8,049.54	14,187.34	133.87	12,536.42
SEP	2,590.44	236.35	58.29	706.91	18,660.27
OCT	950.40	8,834.16	221.60	22, 558.93	12,536.42
NOV	11,225.53	15,032.27	9,160.31	6,251.89	
DEC	2,945.38	18,038.28	3,891.54	304.37	

[5] The personal bank account statements from Citibank and First American Bank show the sole proprietor and [redacted] as holders of the accounts.

CITIBANK ($)

	YEAR			
	2005	2006	2007	2008
MONTH				
JAN		19,877.99	17,803.44	672.06
FEB		3,472.12	296.37	18,114.66
MAR		3,391.91	388.61	22,817.81
APR		4,372.35	3,646.44	1,856.62
MAY		9,359.77	1,008.45	12,939.56
JUN		2,937.14	12,063.94	24,487.73
JULY		1,887.46	18,479.22	1,057.41
AUG		4,133.24	5,089.31	6,814.19
SEP		14,840.38	17,829.65	30,446.64
OCT		5,327.22	2,600.06	29,146.64
NOV	3,903.51		419.56	
DEC	455.32		17,071.81	

In the instant case, the petitioner has not established its ability to pay the difference between the proffered wage and the wages paid to the beneficiary in 2004, 2005, 2006, 2007 and 2008 based on its adjusted gross income (AGI). Therefore, the sole proprietor's 2004 personal checking account statements must show an average annual balance exceeding $11,376.05, which is the difference between the proffered wage and the wages paid to the beneficiary that year. Subsequent statements must show annual average balances which increase each year after 2004 by an amount exceeding the difference between the proffered wage and the wages paid to the beneficiary. The average annual balance in the year 2004 is $4,829.41. This balance is not sufficient to cover the difference between the proffered wage and the wages paid to the beneficiary in 2004. Thus, the sole proprietor's assets as reflected in his personal checking accounts do not establish the petitioner's continuing ability to pay the proffered wage.

Further, the funds in the petitioner's business checking accounts, dated October 2008 through December 2009, from Commerce National Bank represent the sole proprietor's business accounts. Therefore, these funds would likely have been shown on the Schedule C's of the sole proprietor's IRS Forms 1040 as gross receipts and expenses.[6] Although USCIS will not consider gross income without also considering the expenses that were incurred to generate that income, the overall magnitude of an entity's business activities should be considered when the entity's ability to pay is marginal or borderline. *See Matter of Sonegawa,* 12 I&N Dec. 612 (BIA 1967).

[6] However, as previously noted, incomplete copies of the sole proprietor's Forms 1040 were submitted in response the AAO's request for evidence, and the Schedule C's are therefore not contained in the record. No business checking accounts for the period May 2001 through September 2008 have been provided by the petitioner.

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 claims to have been in business since 1975 and to employ 51 workers. However, no evidence of salaries and wages paid and/or gross receipts was submitted for the years 2006, 2007 and 2008.[7] Therefore, the historical growth of the company has not been established. There is no documentation contained in the record of proceedings regarding the occurrence of any uncharacteristic business expenditures or losses or of the petitioner's reputation within its industry.

It is noted that the petitioner was advised in the AAO's RFE that USCIS electronic records showed that the petitioner had filed several other I-140 petitions which were pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent

[7] In the AAO's RFE, the petitioner was specifically requested to submit complete copies of the sole proprietor's IRS Forms 1040, for the years 2007, 2008, and 2009. In response, only pages one and two of the Forms 1040 were submitted for 2007 and 2008 (2009 being unavailable due to the sole proprietor's request for an extension to file in that year). Therefore, the sole proprietor's Schedule C's, Profit or Loss from Business, were not available to establish salaries and wages paid and/or gross receipts for 2007 and 2008. As previously noted, no federal tax returns for the year 2006 are contained in the record of proceedings.

residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2).

The petitioner was specifically requested in the RFE to provide a list of all preference visa petitions which it filed as of the priority date in 2001 and subsequently; the status of each petition; the proffered wage and job title of each beneficiary on each of the petitions; documentation of all wages actually paid to each of the beneficiaries since the priority date; and a list of all beneficiaries who have in the past or who currently work for your organization. The petitioner failed to respond to this request. 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).

Assessing the totality of the circumstances in this individual case, the petitioner has not established that it had the continuing ability to pay the proffered wage.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for the proffered position.[8] The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

In the instant case, the Application for Alien Employment Certification, Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of carpenter. In the instant case, the applicant must have two years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA 750B and signed his name on September 10, 2004, under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked full-time as a carpenter for [redacted] from May 1997 to June 1999; and that he worked full-time for the petitioner as a carpenter, intermediate, from June 1999 to the date he signed the Form ETA 750B.

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

On a Form G-325A, Biographic Information sheet, contained in the record of proceedings, signed by the beneficiary under penalty of perjury on August 11, 2007, the beneficiary indicated he had worked for the petitioner as a carpenter from May 1997 until the date he signed the Form G-325A. This information conflicts with the information listed on the Form ETA 750B by the beneficiary regarding his prior employment. Specifically, the beneficiary did not list his employment with [redacted] from May 1997 to June 1999 on the Form G-325A, and his dates of employment with the petitioner differ on the Forms G-325A and ETA 750B.

With the petition, the petitioner submitted a letter dated September 18, 2001, from [redacted] stating that the beneficiary was employed as a carpenter from May 1997 through June 1999. Because the work experience letter provided with the petition was inconsistent with the Form G-325A in the record, the AAO requested the petitioner in the RFE to provide independent, objective evidence of the beneficiary's former employment. The petitioner was advised that such evidence may include pay stubs, tax documents, financial statements or other evidence of payments made to the beneficiary by his previous employers during his periods of employment that precede the priority date. The AAO also noted that evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence is evidence that is contemporaneous with the event to be proven and existent at the time of the director's decision.

In response to the AAO's request, counsel resubmitted the September 18, 2001 letter from [redacted] and acknowledged the inconsistency between the beneficiary's stated credentials on the Forms G-325A and ETA 750B. Counsel asserted that "USCIS should find that the information on the original Form ETA 750B is true and correct under the penalty of perjury. The information, as provided on Form G-325A, was submitted incorrectly due to harmless error on our part."

Counsel's attempt to explain the inconsistency in the record regarding the beneficiary's employment credentials is not persuasive. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner failed to provide the requested independent, objective evidence of the beneficiary's prior employment.

The AAO concludes, based on the above discussion, that the petitioner has also failed to establish the beneficiary's qualifications for the proffered position. Therefore, the petition will also be denied for this 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.