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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: NOV 16 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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), revoked the approval of the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a special event equipment rental business. It seeks to permanently employ the beneficiary in the United States as a Manager, Distribution. 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 priority date of the petition is January 5, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

After initially approving the petition on October 22, 2002, the director issued a Notice of Intent to Revoke the approval of the petition (NOIR) on August 29, 2008.[1] The NOIR instructed the petitioner to resolve inconsistencies in the record regarding the beneficiary's claimed qualifying employment experience abroad. The director revoked the approval of the petition on March 3, 2009. The Notice of Revocation (NOR) concludes that the petitioner failed to resolve the inconsistencies in the record relating to the beneficiary's claimed experience, and that the petitioner therefore failed to establish that the beneficiary had obtained the two years of experience in the offered position as required by the terms of the labor certification.

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.

At issue in this case is whether or not the petitioner has established that the beneficiary had obtained the two years of experience in the offered position. The AAO will also consider whether [redacted] is a successor-in-interest to the original petitioner, [redacted]

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this 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.

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[1] Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, permits the director to revoke the approval of a petition "at any time, for what he deems to be good and sufficient cause."

[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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).

The petitioner must demonstrate that, on the January 5, 2001 priority date, the beneficiary had the qualifications stated on its labor certification application, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

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

To determine whether a beneficiary is eligible for an employment-based immigrant visa, United States Citizenship and Immigration Services (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'r 1986). *See also, Madany 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).

The minimum education, training, experience and skills required to perform the duties of the offered position is set forth at Part A of the labor certification. In the instant case, the labor certification states that the position of Manager, Distribution requires two years of experience in the job offered.

The beneficiary set forth his credentials on Part B of the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's work experience, he represented that he was employed as a Distribution Manager from January 1987 to June 1989 for a company named Aspene in Brazil. The beneficiary did not provide any additional information concerning his employment background on the labor certification.

The record of proceeding also contains a Form G-325, Biographic Information, submitted in connection with the beneficiary's application to adjust status to lawful permanent resident. The form was signed by the beneficiary on September 10, 2002. Under the section of the form eliciting information about the beneficiary's last occupation abroad, the beneficiary did not include any employment experience. In addition, under the section eliciting information about the beneficiary's employment in the last five years, the beneficiary represented that he was employed by [redacted] as a "Manager Distribution" from 1997 until the present, and as a "Cleaner" for [redacted] from 1998 until the present.

[3] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations 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).

Therefore, none of the beneficiary's claimed employment on Form G-325 was listed on the labor certification, and vice versa.[4]

As evidence of the beneficiary's claimed employment on the labor certification, the record contains a translation and a copy of a January 30, 2001 letter from [redacted] stating:

> [The beneficiary], holder of CI number 881.895 – SSP/PB, was our employee from 01.01.1987 to [30.06.]1989, exercising the function of an equipment distribution manager. He was an excellent employee. Therefore, there is nothing in our records that could dispro[ve] his moral or commercial conduct.

The letter contains a stamp in the upper right hand corner indicating that the company was registered with the [redacted] under the number 24.070.823/0001-51.

The NOIR states that the CNPJ is a database for all businesses in Brazil, and that each company has a unique CNPJ number. The NOIR also states that, according to CNPJ, the business was formed on August 8, 1988, and therefore that the beneficiary could not have been employed with the company since January 1987. The NOIR concludes that the petitioner appeared to have submitted a false employment letter.

Counsel's response to the NOIR claims that [redacted] commenced operations on January 1, 1987, operating unofficially until it incorporated on July 7, 1988 and received CNPJ registration on August 8, 1988. In support of this claim, counsel submits:

- Translated declaration of [redacted] dated September 19, 2008. The declaration states that the company "began activities" on January 1, 1987, and later "formalize[d] its status" by registering with the Board of Trade of Pernambuco State on July 7, 1988, which was "issued" on August 8, 1988. The declaration also confirmed the employment of the beneficiary as a "Manager of the Distribution of Equipment that is: Warehouse Manager" from January 1, 1987 to June 30, 1989.

- Translated Document of Constitution of Commercial Business for [redacted] dated July 7, 1988. The Document of Constitution states that "[t]he official start date of the Business will be when this contract is registered by the Commercial Registry of the State of Pernanbuco, on that date the company will be open for an undetermined time."

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[4] It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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.* at 591.

Counsel's response also states:

> Due to the informal manner in which [the claimed employer] operated prior to its registration with the state and federal authorities in Brazil and the fact that 20 years have since passed, the company is not able to provide additional documentation of [the beneficiary's] employment with the company.

The NOR states that the Document of Constitution is dated only a month before the official registration of the company and does nothing to establish that the claimed employer was operating as early as January 1987. The NOR also states that the declaration of Sandoval Napomuceno "can only be afforded little weight when examining its claims as the identity of the writer cannot be independently verified by this office." The director revoked the approval of the petition accordingly.

On appeal, counsel claims the director failed to state sufficient cause for its decision to revoke the petition and based its decision on a flawed examination of the record. Specifically, counsel argues that the information from the CNPJ database was not a sufficient basis to revoke the petition's approval. Counsel's brief cites *Zahedi v. INS*, 222 F.3d 1157, 1165 (9th Cir. 2000) for the proposition that adverse credibility determinations in administrative adjudications must be based on specific, cogent reasons. Counsel also cites *Mukamusoni v. Ashcroft*, 390 F.3d 110, 119 (1st Cir. 2004) stating that deference is not due where findings and conclusion are based on inferences or presumptions that are not reasonably grounded in the record.

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a NOIR is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record, pointing out a possible misrepresentation concerning the beneficiary's employment, that would warrant a denial if unexplained and unrebutted, and thus was properly issued for good and sufficient cause.[5]

On appeal, counsel also submits two excerpted articles about Brazil's informal economy. The first article, *Reigning in Brazil's Informal Economy*,[6] states that Brazil has a substantial informal economy of "gray-market companies." The article defines "gray-market companies" as businesses that "operate outside the law – partially or wholly – by avoiding taxes, ignoring product quality and safety regulations, infringing on copyrights, and *sometimes even failing to register as legal entities*"

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[5] Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary, Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. at 590.

[6] Capp, Joe, et al, *McKinsey Quarterly* (2005).

(emphasis added). The article claims burdensome regulations, high taxes, and weak enforcement contribute to the size of Brazil's informal economy.

The second excerpted article, *Informal Urban Economy*,[7] is translated from Portuguese and contains a series of charts detailing the size of Brazil's informal economy.

Even accepting counsel's argument that Brazil has a large informal economy consisting of a substantial number of gray-market companies (of a which a subset have not registered as legal entities), the submitted articles do not establish that [redacted] was doing business and employed the beneficiary starting January 1, 1987, over a year before officially forming and registering with the government.

The appeal also contains the translation of a Declaration (dated March 16, 2009) of [redacted] the accountant who counsel claims is affiliated with [redacted] The Declaration states that many small businesses in Brazil operate unofficially for a period of time before registering with the government. However, the Declaration does not state whether [redacted] operated unofficially as of in January 1, 1987.

Finally, counsel also submits on appeal the translation of a Sixth Alteration and Consolidation of [redacted], identifying Sandoval Nepomuceno as a 50% partner in the company. Counsel submits this document to authenticate the statement of [redacted] submitted with the NOIR response.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. 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.* at 591.

The beneficiary claimed to have gained his qualifying employment for the offered position with [redacted] from January 1987 until June 1989. This claimed employment was not listed on the beneficiary's Form G-325. The director revoked the approval of the petition when it was discovered that [redacted] was not registered with the Brazilian government until August 8, 1988, 19 months after the claimed start date of the beneficiary's employment. In its NOIR response and on appeal, counsel claims that Aspene [redacted] operated unofficially as a gray-market company from January 1, 1987 until it filed for registration on July 7, 1988 (which was ultimately issued on August 8, 1988). However, the evidence in the record does not contain independent, objective evidence sufficient to resolve the contradictions in the record. Articles about Brazil's informal economy do not establish when [redacted] initiated its operations. The statement from the accountant does not specifically state that [redacted] operated unofficially

[7] Moreira, Sandra, *Brazilian Institute of Geography and Statistics* (2003).

as a gray-market company from January 1, 1987. Counsel does not explain the discrepancies between the beneficiary's employment experience listed on the labor certification and on the Form G-325. Only the declaration of [redacted] states that the company "began activities" on January 1, 1987. This statement is not sufficient to establish that [redacted] was operating and employing the beneficiary, who was performing the duties of the proffered position, as of January 1, 1987. The record does not contain any leases, invoices, contracts, or other independent objective evidence that [redacted] had been operating as early as January 1, 1987. Although [redacted] does not appear to have a vested interest in the instant proceedings, his statement cannot be considered independent, objective evidence sufficient to resolve the inconsistencies in the record.

Further, even without the inconsistencies discussed above, the submitted documents attesting to the beneficiary's claimed prior employment do not meet the regulatory requirements for evidence of qualifying experience.

Specifically, the regulation at 8 C.F.R. § 204.5(l)(3) provides, in part:

> (ii) *Other documentation—*
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
> >
> > (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The statements in the record of proceeding regarding the beneficiary's prior employment do not describe the duties performed by the beneficiary, nor do they state whether the employment was full- or part-time. Therefore, they do not meet the requirements of 8 C.F.R. § 204.5(l)(3).

Thus, the petitioner has not established that the beneficiary possesses the experience required to perform the proffered position. 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)).

Beyond the decision of the director, the appeal will also be dismissed because the petitioner is no longer in existence. If the petitioner no longer exists, the appeal must also be dismissed as moot unless there is a successor-in-interest. *See Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm'r 1986)(hereinafter *Matter of Dial Auto*).

A successor-in-interest is "one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." *Black's Law Dictionary* 1570 (defining "successor in interest").

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.[8] *Id.* at 1569 (defining "successor"). When considering other business organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application. *See, eg. Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984).

The merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets or asset transaction, even one that takes up a predecessor's business activities, does not necessarily create a successor-in-interest. *See Holland v. Williams Mountain Coal Co.*, 496 F.3d 670, 672 (D.C. Cir. 2007). An asset transaction occurs when one business organization sells property – such as real estate, machinery, or intellectual property - to another business organization. The purchase of assets from a predecessor will only result in a successor-in-interest relationship if the parties agree to the transfer and assumption of the essential rights and obligations of the predecessor necessary to carry on the business.[9] *See generally* 19 Am. Jur. 2d *Corporations* § 2170 (2010).

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[8] Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes "consolidations" that occur when two or more corporations are united to create one new corporation. The second group includes "mergers," consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes "reorganizations" that occur when the new corporation is the reincarnation or reorganization of one previously existing. The fourth group includes transactions in which a corporation, although continuing to exist as a "shell" legal entity, is in fact merged into another through the acquisition of its assets and business operations. 19 Am. Jur. 2d *Corporations* § 2165 (2010).

[9] The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest relationship unless the transfer results from the bona fide acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. *See* 19 Am. Jur. 2d *Corporations* § 2170; *see also* 20 C.F.R. § 656.12(a).

Considering *Matter of Dial Auto* and the generally accepted definition of successor-in-interest, a petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or the relevant parts of, the beneficiary's predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it can establish eligibility for the immigrant visa in all respects.

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also acquired the essential rights and obligations of the predecessor necessary to carry on the business. To ensure that the job opportunity remains the same as originally certified, the successor must continue to operate the same type of business as the predecessor, in the same metropolitan statistical area, and the successor's essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto*, 19 I&N Dec. at 482.

In order to establish eligibility for the immigrant visa in all respects, the petitioner must support its claim with all necessary evidence, including evidence of ability to pay the proffered wage to the beneficiary. The petitioning successor must prove the predecessor's ability to pay the proffered wage as of the priority date and until the date of transfer of ownership to the successor. In addition, the petitioner must establish the successor's ability to pay the proffered wage in accordance from the date of transfer of ownership forward. 8 C.F.R. § 204.5(g)(2); *see also Matter of Dial Auto*, 19 I&N Dec. at 482.

The labor certification and petition were filed by [redacted] located at [redacted] A new company named [redacted] filed the response to the NOIR. Counsel's cover letter states that [redacted] was purchased by [redacted] on March 13, 2006." Submitted with the NOIR response is a letter dated September 25, 2008 by [redacted] The letter states:

> On March 13, 2006, [redacted], purchased the assets of [redacted] Massachusetts corporation.
>
> [redacted] purchased all of [redacted] right to title and interest in and to all of [redacted] tangible and intangible assets, properties and rights used, developed or held for use in the Business, other than certain Excluded Assets.

The record also contains a letter dated November 9, 2010 from [redacted] (the original petitioner). The letter states that [redacted] consisted of two divisions: one division did business as Power Tool and Equipment Rental, and the other as [redacted]. On March 13, 2006, the Festive Occasions division of [redacted] was sold to [redacted] (also known as [redacted]). The letter states that [redacted]. was formed on March 2, 2006. The letter also states that [redacted]c. continues to

operate today as Power Tool and Equipment Rental. Finally, the letter states that, in February 2010, [redacted]. sold its assets to a third company, Rentals Unlimited, located at [redacted] and that "a majority of the employees continued to be retained by [redacted]." It is unclear from the record how [redacted] has knowledge of the details of the claimed transaction between [redacted]

The record also contains a letter of [redacted], dated December 7, 2010. [redacted] is the entity currently claiming to be the successor-in-interest to the petitioner. The letter states that, on February 12, 2010, [redacted] purchased [redacted] The letter states:

> The purchase was for "Transferred assets only". This did not include employees. Employees that were at [redacted] at the time of the sale, were offered positions but it was not guaranteed in the sale. Where [redacted] offer the same services, [redacted] chose to hire the employees of [redacted] if they wanted to work at [redacted]

The letterhead for [redacted]s letter lists the primary address for [redacted] as [redacted] with offices in Newport, Rhode Island and Boston, Massachusetts.

The record also contains the following documents:

- Foreign Certificate of Withdrawal dated February 17, 2010, filed by [redacted] with the Commonwealth of Massachusetts. The certificate states that [redacted] was incorporated on March 2, 2006.

- Secured Party Bill of Sale between Eastern Bank (the "Secured Party") relating to certain assets of [redacted] ("Debtors"), dated February 12, 2010. The bill of sale states that, upon receipt of the purchase price, the Secured Party will convey to [redacted]. ("Purchaser") all of the Secured Party's right, title and interest in and to the Debtor's assets. There is no explanation in the record regarding how [redacted] relates to the instant petition.

- Fictitious name certificate filed with the City of Woburn, Massachusetts, dated February 12, 2010. The certificate states that [redacted] at [redacted] will be doing business as [redacted]

- Summary of [redacted] from the Commonwealth of Massachusetts Corporations Division website, stating that the business was established on February 3, 2010 and is located at [redacted]

- Articles of Organization of [redacted], dated February 3, 2010.

- Summary of Rentals Unlimited, Inc. from the Commonwealth of Massachusetts Corporations Division website, stating that the business was established on March 1, 2009 (and was converted from Rentals Unlimited LLC on February 24, 2009), and is located at 31 Tosca Drive Stoughton, Massachusetts.

- Federal income tax returns for Rental Service, Inc. for 2001, 2002, 2003, 2004 and 2005.

- Form 941, Employer's Quarterly Federal Tax Return for the third quarter of 2010 for Rentals Unlimited, Inc. ([redacted], stating that the company had 145 employees and wages paid of approximately $1.5 million.

- Wage and Income Transcript for the beneficiary from the IRS website stating that the beneficiary was employed by [redacted] in 2003.

- Form W-2, Wage and Tax Statement issued to the beneficiary by [redacted] 2[redacted] in 2004 and 2005.

- Wage and Income Transcript for the beneficiary from the IRS website stating that the beneficiary was employed by [redacted] and [redacted] Inc. [redacted]

- Forms W-2, Wage and Tax Statement, issue to the beneficiary by [redacted] [redacted] for 2007, 2008 and 2009.

Applying the analysis set forth above to the instant petition, the petitioner has not established a valid successor relationship for immigration purposes. There have been two claimed successor-in-interest transactions: the sale of the assets of the [redacted] division of [redacted]. to [redacted] and the sale of the assets of [redacted].

There is no documentation of the first asset purchase in the record. The documentation of the second asset purchase is in the form of a Secured Party Bill of Sale between the bank and the purchaser. This document does not enable the AAO to determine whether the purchasing party is a successor-in-interest to the seller. Such a determination would require in this case an asset purchase agreement with a list of transferred and/or excluded assets. Therefore, the petitioner has not fully documented the claimed transactions. The evidence in the record also does not establish that the job opportunity remains the same as originally certified.

In addition, even if the claimed transactions were fully documented, the evidence in the record does not establish ability to pay the proffered wage. 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 January 5, 2001 priority date. In a successor-in-interest case, the evidence in the record must establish that each predecessor entity possessed the ability to pay the proffered wage from the date of the asset purchase, merger or other relevant transaction. *See Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481.

Therefore, in the instant case, the evidence in the record must establish that [redacted] possessed ability to pay from the January 5, 2001 priority date to March 13, 2006; that [redacted] possessed the ability to pay from March 13, 2006 until February 12, 2010; and that [redacted] possessed ability to pay from February 12, 2010 to the present.

The proffered wage as stated on the labor certification is $11.00 per hour ($20,200.00 per year, based on a 35-hour work week). On October 27, 2010, the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI) instructing the petitioner to provide tax returns for the predecessor and successor entities. However, the record only contains federal income tax returns for [redacted] for 2001, 2002, 2003, 2004 and 2005. The record does not contain any annual reports, federal tax returns or audited financial statements for [redacted]

The regulation 8 C.F.R. § 204.5(g)(2) states that the petitioner must demonstrate its ability to pay the proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence," and that the evidence of ability to pay "*shall* be in the form of copies of annual reports, federal tax returns, or audited financial statements." (Emphasis added.). Therefore, failure to provide this required initial evidence is, by itself, sufficient cause to dismiss this appeal. While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation. 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). 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)).

Therefore, the evidence in the record also fails to establish the continuing ability to pay the proffered wage beginning on the priority date.

In summary, the evidence in the record does not establish that:

- The beneficiary possessed the required two years of experience required to perform the offered position as of the priority date;
- [redacted] is a successor-in-interest to [redacted]
- [redacted] is a successor-in-interest to [redacted]
- [redacted] possessed the ability to pay the proffered wage from March 13, 2006 until February 12, 2010; and
- [redacted] possessed ability to pay the proffered wage from February 12, 2010 to the present.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043; *see also Soltane v. DOJ*, 381 F.3d at 145

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

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.