(b)(6)

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

Date: APR 0 2 2012 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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

The petitioner is a board and care for elderly facility. It seeks to employ the beneficiary permanently in the United States as a nurse aide. 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 and that the beneficiary is qualified to perform the duties of the proffered position as she did not meet the requirements of the job offered as of the priority date. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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 February 4, 2009 denial, the issues in this case are 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 and whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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]

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

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

> 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 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on January 15, 1998. The proffered wage stated on the Form ETA 750 is $8.84 per hour, which is $18,387.20 per year based on forty hours per week. The Form ETA 750 states that the position requires two years of experience in the job offered as a residential care aide live in or two years of experience in the related occupation of home care attendant. Part A.15 of Form ETA 750 states that the position also requires fingerprint and criminal screening, health and tuberculosis screening, CPR and First Aid requirements by the State of California Health and Welfare Code.

The evidence in the record of proceeding shows that the petitioner is structured as a sole proprietorship as the petitioner is listed on Schedule C of the sole proprietor's 1998, 1999, 2000, and 2001 individual federal income tax returns. On the I-140 immigrant petition, the petitioner claimed to have been established in 1994 and to currently employ two workers. On the Form ETA 750B, signed by the beneficiary on January 14, 1998, the beneficiary stated that she was a student from March 1995 to August 1997, and unemployed from September 1997 to present.[2] No other experience is listed on the labor certification.

To establish its ability to pay the proffered wage, on appeal the petitioner submitted the following evidence:

- A copy of the first page of [redacted] 2005 federal tax returns (Form 1120S);
- A copy of [redacted] 2006 federal tax returns (Form 1120S); and

[2] The AAO will consider the beneficiary's unemployment status until at least the date the beneficiary signed Form ETA 750, on January 14, 1998.

- A copy of 2007 state income tax (Forms 100S, 5806, and 3805Q).[3]

The petitioner's failure to provide complete annual reports, federal tax returns, or audited financial statements for each year from the priority date is sufficient cause to dismiss this appeal. In addition, there is no evidence in the record to establish the relationship between [4] and the petitioner, The financial resources from . cannot be considered to determine the petitioner's ability to pay the proffered wage, as is a separate and distinct legal entity from the petitioner. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D. Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." Therefore, the AAO cannot consider the evidence submitted on appeal in determining the petitioner's ability to pay the proffered wage. Thus, the AAO will make a determination based on the remaining evidence of record.

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'l Comm'r 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'l Comm'r 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

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[3] Per the terms of the regulation, evidence of ability to pay shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. The regulation does not allow the petitioner to use state tax returns to establish its ability to pay the proffered wage. 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.

[4] The California Secretary of State's website reveals that is currently "suspended" from doing business. *See* http://kepler.sos.ca.gov/cbs.aspx (accessed February 24, 2012).

or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date in January 1998 onwards.

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), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). 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 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'r 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. *See 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 petitioner 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 and according to the most updated information of record, the sole proprietor supported a family of three in all years except 2004, when he supported a family of two.[5] The proprietor's federal tax returns reflect the following information for the following years:

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[5] The proprietor's 1998, 1999, and 2000 Individual Income Tax Returns (Form 1040) list [redacted] (daughter) and [redacted] (daughter) as dependents. The proprietor's 2001 Individual Income Tax Return (Form 1040) lists [redacted] (daughter) and [redacted] (other) as dependents. The proprietor's 2004 Individual Income Tax Return (Form 1040)

	1998	1999	2000	2001
Proprietor's adjusted gross income (Form 1040, line 33)	$5,828	$28,165	$22,636	$16,099

	2004
Proprietor's adjusted gross income (Form 1040, line 36)	$81,949

For the year 2002, the petitioner submitted a copy of the sole proprietor's 2002 state income tax. The sole proprietor's 2002 state income tax cannot be considered in the analyses of the petitioner's ability to pay the proffered wage as it is not one of the three types of evidence required by the regulations at 8 C.F.R. § 204.5(g)(2). For the year 2003, the petitioner submitted 's 2003 federal tax returns (Form 1120S). The financial resources from cannot be considered to determine petitioner's ability to pay as is a separate and distinct legal entity from the petitioner. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980) and also *Sitar v. Ashcroft*, 2003 WL 22203713 (D. Mass. Sept. 18, 2003). The petitioner provided a "projected income statement" prepared by Tax Preparer for for the year ending December 31, 2005. It is noted that President of did not signed the income statement and, therefore, did not approve it. The AAO cannot accept this statement as evidence of ability to pay the proffered wage for the year 2005. The statement is vague, not supported by documentary evidence, and does not constitute one of the three types of evidence required by the regulations at 8 C.F.R. § 204.5(g)(2). Furthermore the statement was not prepared for the petitioner, 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As mentioned above, sole proprietors must show that they can cover their existing business expenses, pay the proffered wage out of their adjusted gross income or other available funds, and support themselves and their dependents. In the instant case, the sole proprietor's AGI for 1998 and 2001 is less than the proffered wage. Further, the sole proprietor did not submit evidence of his/her monthly expenses for all relevant years.

The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director on the December 10, 2008 Request for Evidence (RFE), the petitioner declined to provide copies of its 2005, 2006, and 2007 federal income tax returns will all pages and including all schedules. The 2005, 2006, and 2007

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lists (daughter) as the only dependent.

tax returns would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. Although specifically and clearly requested by the director, the petitioner failed to provide a list of the sole proprietor's average monthly recurring household expenses for each and every year since the priority date was established in 1998. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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 (Reg'l Comm'r 1967). 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 has been in business since 1994 and its sole proprietor's adjusted gross income has increased from $5,828 in 1998 to $81,949 in 2004. However, the record lacks copies of the sole proprietor's 2002, 2003, and 2005 Forms 1040 accompanied by Schedule C, as well as evidence of the sole proprietor's monthly expenses for all relevant years. This precludes the AAO from analyzing the petitioner's adjusted gross income in all years. Further, the petitioner has not established a historical growth since 1994, the occurrence of any uncharacteristic business expenditures or losses, or its reputation within its industry. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date, in the instant case January 15, 1998. 8

C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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.
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> > (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.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:	
Education:	Complete grade school and complete high school.
Experience:	Two years of experience in the job offered as a residential care aide live in or two years of experience in the related occupation of home care attendant.
Block 15:	Comply with fingerprint and criminal screening, health and tuberculosis screening, CPR and First Aid requirements by the

State of California Health and Welfare Code.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter signed by stating that the beneficiary worked as her full-time home care attendant from May 1993 to June 1995. On appeal, the petitioner submitted a notarized letter signed by daughter of dated March 30, 2009, stating that the beneficiary was employed on a full-time basis as a home care attendant from May 1993 to June 1995. No other evidence was submitted. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Furthermore, the beneficiary failed to represent this previous employment on the labor certification signed by her on January 14, 1998. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

In addition, the petitioner also failed to demonstrate that the beneficiary met all the special requirements stated on Block 15 of ETA 750 as of January 15, 1998, the priority date. As stated on the labor certification, the petitioner should have established that the beneficiary complied with fingerprint and criminal screening, health and tuberculosis screening, CPR and First Aid requirements by the State of California Health and Welfare Code as of the priority date. The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, *and any other requirements* of the individual labor certification" (emphasis added). The petitioner must establish that the beneficiary meets all of the requirements of the job offered by the priority date, including the "other special requirements" for the offered position set forth at Part A, Items 15 of Form ETA 750.

With the original filing the petitioner submitted an EMS First Aid Card showing that or - someone other than the beneficiary – has completed an eight-hour First Aid and CPR course in 2006 and a civil surgeon's declaration dated May 17, 2006, stating that 's lab test could not have been done on time for his Adjustment of Status interview. On December 10, 2008, the director issued a Request for Evidence (RFE) requesting the petitioner to submit, amongst other things, evidence that the beneficiary successfully completed training in CPR and First Aid and has a health and tuberculosis screening. In the December 10, 2008 RFE, the director explicitly noted that someone other than the beneficiary was listed on the first aid card. 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).

In response to the director's December 10, 2008 RFE, the petitioner submitted the following evidence:

- A copy of the beneficiary's American Red Cross Card issued by the American Red Cross of Greater Los Angeles, evidencing that the beneficiary has completed the requirements for Standard First Aid on January 16, 2008, and that the certificate is valid for 3 years.

- A copy of the beneficiary's American Heart Association card, issued on January 12, 2009. The card certifies that the beneficiary has completed the national cognitive and skills evaluations in accordance with the curriculum of the American Heart Association for BLS for Healthcare Providers (CPR & AED) Program at the , and that the expiration date is January 31, 2011.

The evidence of record does not establish that the beneficiary met the special requirements set forth on Form 750 preceding the priority date. To demonstrate that the beneficiary met the special requirements of the labor certification as of the priority date, the petitioner should have submitted evidence showing that on or prior to January 15, 1998, the beneficiary complied with fingerprint and criminal screening, health and tuberculosis screening, CPR and First Aid requirements by the State of California Health and Welfare Code as of the priority date.

The evidence in the record does not establish that the beneficiary possessed the required experience and met all special requirements set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

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.