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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 7 2012 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an architectural firm. It seeks to employ the beneficiary permanently in the United States as an architectural designer. 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 March 19, 2009 denial, the director denied the petition because the petitioner did not establish that it had the continuing ability to pay the proffered wage. On appeal, the AAO has identified two additional issues, whether or not the petitioner has established a successor-in-interest relationship, and whether or not the beneficiary possessed the minimum experience required to perform the offered position by the priority date.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.[1]

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

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

[1] The Form I-140 is for permanent employment and not temporary or seasonal employment. The AAO notes that Form I-140 at Part 6, question 7 asks whether this is a permanent position. The petitioner answered "no." The job opportunity must be for full-time, permanent employment. It is further noted that although the beneficiary had been working for the petitioner, the beneficiary left his employment with petitioner in mid-2005.

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

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

Here, the Form ETA 750 was accepted on June 19, 2002. The proffered wage as stated on the Form ETA 750 is $700 per week or $36,400 per year. The Form ETA 750 states that the position requires grade school and high school education, five years of college, a bachelor's degree in architecture, and either five years of experience as an architectural designer or six years of experience as an architectural drafter.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1998[3] and to currently employ 8 workers. According to the tax returns in the record, the petitioner operates on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 8, 2002, the beneficiary claimed to have worked for [redacted][4] from August 2001 until April 8, 2002 when he signed the labor certification.

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

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[3]The petitioner's tax returns indicate it was incorporated on December 31, 2002 and the record of proceeding contains no explanation for this inconsistency. 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).

[4]The labor certification was filed by [redacted] with federal employer identification number [redacted], whereas the petition was filed by [redacted] with [redacted] and there is no evidence in the record of proceeding establishing the petitioner is the successor-in-interest to [redacted] which is discussed in more detail below.

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 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 submitted three IRS Forms W-2 it issued to the beneficiary reflecting the wages paid to the beneficiary as shown in the table below:

- In 2003, Form W-2 reflects wages of $41,751.[5]
- In 2004, Form W-2 reflects wages of $44,934.[6]
- In 2005, Form W-2 reflects wages of $24,078.

Therefore, the petitioner has established that it paid the full proffered wage to the beneficiary in 2003 and 2004. For the years 2002, and 2005 through 2007, the petitioner has not established that it paid the beneficiary the proffered wage. Therefore, the petitioner must establish that it can pay the full proffered wage in 2002, 2006 and 2007, and the difference between the wages paid to the beneficiary and the proffered wage in 2005, which is $12,322.

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). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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[5]The wages are a combination of the amounts shown in Box 1 (cash wages) and Box 12a (401K deferred wages).

[6]The wages for 2004 and 2005 are the amounts shown in Box 1 only as no 401K deferred wages are shown for either year.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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

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

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on June 19, 2008 with the receipt by the director of the petition. As of that date, the petitioner had not yet filed its 2007 federal income tax return; therefore, the petitioner's income tax return for 2006 was the most recent return available to the director. On appeal, the petitioner has submitted a 2007 federal income tax return for [redacted] with [redacted] which is the petitioner's EIN.[7] The petitioner submitted the federal income tax return for [redacted] for 2002, which demonstrates its net income for 2002 as shown in the table below. The petitioner's tax returns demonstrate its net income for 2005 through 2007, also shown in the table below.

For [redacted]

[7]There is no evidence in the record of proceeding regarding the petitioner's name change.

- In 2002, the Form 1040, Schedule C, line 31 stated net income[8] of $136,269[9].

For the petitioner—

- In 2005, the Form 1120S stated net income[10] of -$34,619[11].
- In 2006, the Form 1120S stated net income of -$57,979[12].
- In 2007, the Form 1120S stated net income of $159,243.

Therefore, for the years 2005 and 2006, the petitioner did not have sufficient net income to pay the proffered wage. The petitioner established that [redacted] had sufficient net income to pay the proffered wage in 2002, and that it had sufficient net income to pay the proffered wage in 2007. However, as discussed below, the petitioner has not established that it is the successor-in-interest to [redacted]

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[13] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the

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[8] [redacted] is a single-member limited liability company taxed as a sole proprietorship. Its net income is found on line 31, of Schedule C of the single member's IRS Form 1040.

[9] The director inadvertently stated this number as $168,158.

[10] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions, or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions, or other adjustments, net income is found on line 17e (2005) and line 18 (2006-2007) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed March 13, 2012) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional income, credits, deductions, or other adjustments shown on its Schedule K for 2005, 2006, and 2007, the petitioner's net income is found on Schedule K of its tax returns.

[11] The director inadvertently stated this amount as -$36,090.

[12] The director inadvertently stated this amount as -$35,720.

[13] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2005 and 2006, as shown in the table below.

- In 2005, the Form 1120S stated net current assets of -$62,014.
- In 2006, the Form 1120S stated net current assets of $1,917.

Therefore, for the years 2005 and 2006, the petitioner did not have sufficient net current assets to pay the proffered wage. Further, the petitioner has not established that it is the successor-in-interest to he employer listed on the labor certification.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, its net income, or its net current assets.

On appeal, counsel asserts (1) that the beneficiary's wages could have been paid in 2005 from retained earnings, (2) that deference should be given to the petitioner's normal accounting practices, and (3) that a totality of the circumstances test should be applied.

To support counsel's assertion that the beneficiary's wages could have been paid from retained earnings in 2005, counsel points to a May 30, 2008 letter from the petitioner's accountant which states that during 2005, the petitioner's owner took distributions totaling $128,251 and that the owner had the option of not distributing those retained earnings and could have paid other obligations from retained earnings.

Retained earnings are a company's accumulated earnings since its inception less dividends. Dictionary of Accounting Terms 378 (3rd ed. 2000). As retained earnings are cumulative, adding retained earnings to net income and/or net current assets is duplicative. Therefore, USCIS looks at each particular year's net income, rather than the cumulative total of the previous years' net incomes less dividends represented by the line item of retained earnings.

To support counsel's assertion that deference should be given to the petitioner's normal accounting practices, counsel cites *Matter of X*, EAC01-018-50413 (AAO January 31, 2003)[14] and asserts that the petitioner's normal accounting practice is to list its discretionary funds as liabilities, namely in 2005 its discretionary funds are listed on Schedule L, line 18 of its tax return as "Other Current

[14]Counsel refers to a decision issued by the AAO concerning ability to pay, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

Liabilities" and in 2006 its discretionary funds are listed on Schedule L, line 19 of its tax return as "Loans from Shareholders." Counsel then states that these amounts are assets rather than liabilities and could have been used to pay the proffered wage in 2005 and 2006.

The petitioner's 2005 tax return Schedule L lists on line 18 the amount of $245,522 as other current liabilities and references Statement 10 which identifies that amount as being comprised of the following:

Credit Cards $33,327
Payroll Liabilities $4,822
Accrued 401K Match $11,733
Due to Affiliated Companies $195,640

The petitioner's 2006 tax return Schedule L lists on line 19 the amount of $219,332 as loans from shareholders.

The petitioner has provided no evidence to support its assertion that these amounts listed above were discretionary funds and could have been used to pay the proffered wage. 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)).

Further, a letter dated May 30, 2008, from [redacted] CPA, states that during 2005, the petitioner's owner took distributions of $128,251 and that the owner could have used those funds to pay the proffered wage. The record contains no evidence to establish that the distributions were made in cash or that the petitioner's owner would have been willing and able to forgo the distributions to pay the proffered wage.

Additionally, counsel submits a copy of a bank statement for December 2005 for [redacted] The petitioner has not established that it is the successor-in-interest to [redacted] the employer listed on the labor certification. Further, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. In addition, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage.

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, there is no evidence of the petitioner's reputation within its industry. There is no evidence of the occurrence of any uncharacteristic business expenditures or losses from which it has since recovered. There is no evidence of whether the beneficiary will be replacing a former employee or an outsourced service. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

Successor-in-Interest

Beyond the decision of the director, the petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. The petitioner is a different entity from the employer listed on the labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor[15], it does not demonstrate that the job opportunity will be the same as originally offered, and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

Beneficiary Qualifications

Additionally, beyond the decision of the director, 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. 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). 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).

In the instant case, the labor certification states that the offered position requires grade school and high school education, five years of college, a bachelor's degree in architecture,[16] and either five years of experience as an architectural designer or six years of experience in architectural drafting. On the labor certification, the beneficiary claims to qualify for the offered position based on the following experience:

1. [redacted] from August 2001 until April 8, 2002 as an architectural drafter working 40 hours per week.
2. With [redacted] from October 1999 until July 2001 as an architectural

[15]The predecessor filing the labor certification was [redacted] whereas the petitioner is [redacted]

[16] While the record contains the beneficiary's bachelor's degree in architecture issued in Colombia, it does not contain an English translation of that degree. The regulation at 8 C.F.R. § 103.2(b)(3) states:

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Further, the record does not contain transcripts to establish that the beneficiary attended five years of college as required by the labor certification, and it does not contain evidence documenting the beneficiary's grade school and high school education.

drafter working 40 hours per week.

3. With [redacted] from September 1995 until July 1998 as a design architect working 40 hours per week.
4. With [redacted] from 1993 until 1996 as an architectural draftsman working 20 hours per week.
5. With [redacted] Columbia working from 1993 until 1994 as an intern architect working 40 hours per week.[17]

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 two experience letters.

1. A letter from [redacted] letterhead stating the company was formerly [redacted] and that the beneficiary worked there from June 1994 until June 1998. While the letter does not state the beneficiary's position, it does list the beneficiary's duties. However, the description of duties is too vague to determine whether or not the beneficiary was working as a design architect as he listed on the labor certification. The letter does not indicate whether the employment was full- or part-time. The starting date of June 1994 listed in the letter conflicts with the starting date of September 1995 listed on the labor certification.
2. A letter from [redacted] letterhead stating the beneficiary worked there from 1998 to 2000. [redacted] did not list the months employment began and ended. Additionally, these dates of employment conflict with the dates listed on the labor certification. The letter does not indicate whether the employment was full- or part-time.

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). The petitioner has not resolved the inconsistencies in the record.

The evidence in the record does not establish that the beneficiary possessed the required education and experience 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.

An application or petition that fails to comply with the technical requirements of the law may be

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[17]It is noted that the beneficiary earned a bachelor's degree in 1995. However, starting in 1993, he claimed to have been working 60 hours per week (40 hours at [redacted] and 20 hours at [redacted]) while also attending school. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

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).

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.