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 2 8 2012 Office: NEBRASKA 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant.[1] It seeks to employ the beneficiary permanently in the United States as a specialty cook, Thai cuisine. 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 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.

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[1] The petitioner's name on Form I-140 and ETA 750 Part A is [redacted] On the attorney's letter dated July 11, 2007, counsel refers to the petitioner as "[redacted] also known as [redacted] However, on Form ETA 750 Part B, the prospective employer is listed as [redacted] located at [redacted] The evidence of record also shows that [redacted] registered [redacted] as a fictitious business name on August 22, 2002. The petitioner submitted tax returns for [redacted] The record does not contain any evidence that in 2001 [redacted] was the fictitious name for [redacted] or [redacted] A Google search revealed that [redacted] operates in two different locations: (i) [redacted] (accessed August 3, 2012). The record contains federal tax returns for [redacted] According to the [redacted] Secretary of State website, [redacted] was incorporated on January 21, 2003, with its address at [redacted] and has a current active status. [redacted] was incorporated on July 7, 1989, with address at [redacted] and also has an active status. No records were found for [redacted] Further research revealed that a corporation named [redacted] was constituted on January 29, 1986 and has a current suspended status. *See* [redacted] (accessed August 3, 2012). The record does not contain any documentary evidence of any relationship between the petitioner and [redacted] 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).

As set forth in the director's June 12, 2009 denial, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on April 27, 2001. The proffered wage as stated on the Form ETA 750 is $10.09 per hour which is $20,987.20 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 specialty cook, Thai cuisine.

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]

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

As noted above, Form ETA 750A lists as the employer and Form I-140 lists as the petitioner. Form ETA 750 Part B lists the prospective employer as According to the Renewal of the Fictitious Business Name Statement of record filed on May 10, 2007, registered the fictitious business name – On this form filed in 2007, the box is checked to indicate that this business is conducted by an individual. The form notes that the registrant commenced to transact business under this name on August 22, 2002.

The evidence in the record of proceeding shows that in the year 2001 was structured as a sole proprietorship and in 2002 was structured as a sole proprietorship.[3] The record contains copies of 2003 Form 1120 and 2004, 2005, and 2006 Forms 1120S. Schedule K-1 of 2004, 2005, and 2006 tax returns shows that is the sole shareholder of Although counsel refers to the petitioner as " counsel's assertion is not supported by any documentary evidence of the legal relationship between and The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel's assertion that is, in fact, cannot be reconciled with the Renewal of the Fictitious Business Name Statement which indicates that the petitioner is a business conducted by an individual. 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. It is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

In addition, the petitioner submitted 2007 federal tax return, Form 1120S. is structured as an S Corporation and is 100% owned by . There is no evidence in the record demonstrating a relationship, if any, between and the petitioner.

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[3] A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'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).

On the petition, the petitioner claimed to have been established in 1990 and to currently employ forty workers. On the Form ETA 750B, signed by the beneficiary on April 17, 2001, the beneficiary claimed to work for [redacted], since August 1995.

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 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 did not submit any evidence that it employed and paid the beneficiary an amount equal to or greater than the proffered wage as of the priority date in 2001, or subsequently.

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).

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).

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).

The petitioner submitted partial copies of [redacted] 2001 and 2002 federal income tax returns (Form 1040). The record lacks a copy of the first page of Form 1040 for 2001. Although the petitioner submitted a copy of the first page of [redacted] 2002 tax return, this copy is incomplete and does not show the sole proprietor's adjusted gross income (line 35 is covered by a copy of Form W-2 issued to [redacted]. Therefore, the petitioner failed to submit complete copies of the sole proprietor's tax returns for years 2001 and 2002. The submission of incomplete copies of the sole proprietor's 2001 and 2002 federal tax returns prevents the AAO from analyzing the sole proprietorship's ability to pay the proffered wage based on adjusted gross income. This deficiency was pointed out to the petitioner in the director's Request For Evidence (RFE). Despite this

notification, complete copies of the sole proprietor's tax returns were not submitted in response to the RFE or on appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, as mentioned above, a sole proprietor must show that he can cover his existing business expenses, pay the proffered wage out of his adjusted gross income or other available funds, and support himself and his dependents. The record does not contain a list of the sole proprietor's average personal monthly expenses for the years 2001 and 2002. Therefore, the petitioner did not demonstrate ability to pay the proffered wage in 2001 and 2002.

As mentioned above, the record contains copies of the 2003 through 2006 tax returns, as well as a copy of 2007 federal tax return. As stated above, no relationship between either and the petitioner has been established. Although the record indicates that both have a common shareholder (, 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." As the petitioner , failed to demonstrate its relationship with , the AAO will not consider the tax returns submitted for 2003 through 2007.

On appeal, counsel claims that the wages and income of the sole shareholder of a corporation can be used as evidence of ability to pay the proffered wage. Counsel also asserts that is the sole shareholder of and the sole shareholder of , and because they are both S Corporations, resources are transferred from one company to another. Counsel's assertion is supported by a letter dated February 3, 2006, signed by Certified Public Accountant (CPA) with explains that "the gross revenue from all restaurants owned by were co-mingled into a number of bank accounts," and instead of segregating the funds from each restaurant, "we used an aggregate approach, and amended several federal and income tax returns, including the 2001 tax return. stated that adjusted gross income for 2001 was $647,000. No supporting documentation was included to support this figure. As noted above, the assets of the petitioner's shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

The record of proceeding also contains a letter dated November 23, 2003, from . This letter is not signed. The letter states that is the owner of several Thai restaurants including, , and that the amount reported on 2001 individual tax return reflects a consolidation figure of all of the

restaurants owned by . Nothing in this letter indicates title or how he is aware of the petitioner's business or finances.

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 indicated that in 2001 and 2002 the petitioner operated as a sole proprietorship. The record contains incomplete copies of and 2001 and 2002 federal income tax returns (Form 1040). The petitioner did not submit evidence of the sole proprietor's average monthly expenses for 2001 and 2002. No evidence was provided to demonstrate the petitioner's ability to pay the proffered wage from 2003 through 2008. No evidence was provided to explain any temporary or uncharacteristic disruption in its business activities during those years or to establish the petitioner's outstanding reputation in the industry comparable to the petitioner in *Sonegawa*. 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.

Based upon the evidence submitted, the petitioner did not establish that it had the continuing ability to pay the proffered wage.

Beyond the decision of the director,[4] the petitioner has also failed to establish that it will be the actual employer of the beneficiary. *See* 8 C.F.R. § 204.5(c); 20 C.F.R. § 656.3.

In determining whether the petitioner will be the beneficiary's actual employer, USCIS will assess the petitioner's control over the beneficiary in the offered position. *See Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318 (1992); *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440 (2003) (hereinafter "*Clackamas*"); *see also* Restatement (Second) of Agency § 220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker's relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer's regular business. *See Clackamas*, 538 U.S. at 448-449; *cf.* New Compliance Manual, Equal Employment Opportunity Commission, § 2-III(A)(1), (EEOC 2006) (adopting a materially identical test and indicating that said test was based on the *Darden* decision).

The evidence of record raises questions as to who will be the beneficiary's actual employer. As mentioned above, the petitioner's name on Form I-140 and ETA 750 Part A is [redacted] However, on Form ETA 750 Part B, the prospective employer is listed as [redacted] Public Records information reveals that [redacted] was incorporated on July 7, 1989, and has an active status. The evidence of record also shows that [redacted] registered the petitioner's fictitious business name on August 22, 2002. The petitioner submitted documentation related to [redacted] Although the director's RFE specifically required the petitioner to submit evidence of any relationship between [redacted] the evidence submitted does not clarify whether [redacted] is related to [redacted] 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).

It is noted that although the February 21, 2003 Minutes of the Special Meeting of [redacted] board of directors stated that [redacted] assumed the obligations, rights and duties of the sole proprietorship [redacted] no reference is made to [redacted] Furthermore, Public Records information shows that both [redacted] possess a currently active status.

In addition, although the evidence of record shows that [redacted] and [redacted] are 100% owned by [redacted] due to the numerous discrepancies mentioned above, it is unclear whether the beneficiary will work for [redacted]. The petitioner failed to establish which entity will employ the

[4] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

beneficiary. Although both are 100% owned by the entities have separate FEINs. The FEIN number listed on Part 1 of Form I-140 belongs to 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).

Therefore, the petition must also be denied because the petitioner failed to establish that it will actually employ the beneficiary.

Also 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 two years of experience as a cook, Thai specialty. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a full-time specialty cook with ocated at from August 1995 to present, and as a full-time specialty cook with from October 1991 to July 1995.

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 dated February 26, 2009, signed by President of and by former owner of attested that the beneficiary was employed by his brother and former owner of from October 1991 until July 1995, and that the restaurant was located at stated that closed in November 2004. The letter is not clear as to whether the beneficiary worked for or for in October 1991 as an assistant cook.[5] The letter of record does not comply with the requirement of the regulations as it does not describe the duties performed by the beneficiary or whether he was employed part-time or full-time.

[5] It is noted that is located at the same address listed for on the Secretary of State website. accessed August 6, 2012).

Furthermore, it appears that the beneficiary gained experience as an assistant cook, while the labor certification does not allow experience in a related occupation.

Furthermore, on Form G-325A submitted by the beneficiary in connection with his Form I-485 application to adjust status, and signed on July 26, 2007, the beneficiary represented that he has been working for [redacted] located at [redacted] as a specialty cook since August 1995. The beneficiary also represented that from January 1974 to October 1999 he lived in [redacted] On Form I-140 Part 3, it is stated that the beneficiary arrived in the United States on October 15, 1999. Form I-140 was signed by [redacted] and the attorney of record on July 10, 2007. The information provided on the beneficiary's Form G-325A and on Form I-140 Part 3 cannot be reconciled with the statement that the beneficiary was present in the United States and working for [redacted] from October 1991 to July 1995. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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

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.