U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 2 5 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 cook Italian specialty. 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 had the requisite experience for the proffered position. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's April 14, 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 at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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

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[1] The petitioner's 2005, 2006, and 2007 federal tax returns of record (Form 1120S) show that the petitioner's legal name is Julios Inc. Schedule K-1 of the petitioner's tax returns indicates that the petitioner's sole shareholder is [redacted]. Individuals or entities doing business for profit under a name different from the owner(s) full legal name(s) must file a Fictitious Name Statement with the registrar-recorder/county clerk office in the county where the business resides. This information is available at http://www.sba.gov/content/register-your-fictitious-or-doing-business-dba-name/ (accessed May 5, 2012). The petitioner did not submit evidence of being registered with a fictitious name.

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 March 16, 2005. The proffered wage as stated on the Form ETA 750 is $16.87 per hour, which is $30,703.40 per year based on thirty-five hours per week. The Form ETA 750 states that the position requires two years of experience in the job offered as a cook Italian specialty.

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]

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. According to the tax returns in the record, the petitioner was incorporated on June 20, 1984, and its fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on March 11, 2005, the beneficiary claimed to have worked for the petitioner.[3]

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

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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).

[3] It is noted that on the Form G-325A, signed by the beneficiary on August 3, 2007, the beneficiary stated that she worked for the petitioner from August 2004 to August 2005. Although the beneficiary listed her previous experience with the petitioner on Form ETA 750, she failed to declare the date she started working for the petitioner. The record contains a letter dated April 28, 2009, and signed by [redacted] President of [redacted] In this letter, Mr. [redacted] affirms that the beneficiary has been employed by the petitioning company since 2008, when she obtained her work authorization. No reference was made to the beneficiary's claimed previous employment with the petitioner. 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).

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 submitted a copy of the beneficiary's 2008 Form W-2, showing that in 2008 the petitioner paid the beneficiary $14,761.[4]

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[4] The AAO cannot accept the beneficiary's 2008 Form W-2 as evidence of wages paid to the beneficiary by the petitioner. The Social Security number (SSN) listed on the beneficiary's 2008 Form W-2 is different than the SSN listed on the beneficiary's 2006 Form W-2 issued by a previous employer, also in the record. Research in all available databases revealed that the SSN listed on the beneficiary's 2006 Form W-2 is associated with other individuals, including the beneficiary. Furthermore, there is no SSN listed on Part 3 of Form I-140, filed in 2007. Finally, the record also includes the beneficiary's 2006 U.S. Individual Income Tax Return (Form 1040). The number listed on the Form 1040 appears to be an individual taxpayer identification number (ITIN), which is a tax-processing number issued by the IRS to those individuals who do not have a SSN for filing tax returns and other tax-related documents, and cannot be accepted for employment purposes. *See* http://www.irs.gov/instructions/iw2w3/ch01.html (accessed May 5, 2012). 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).

Misuse of another individual's SSN is a violation of Federal law and may lead to fines and/or imprisonment and disregarding the work authorization provisions printed on your Social Security card may be a violation of Federal immigration law. Violations of applicable law regarding Social Security Number fraud and misuse are serious crimes and will be subject to prosecution.

The following provisions of law deal directly with Social Security number fraud and misuse:

• **Social Security Act:** In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Act made it a felony to...*willfully, knowingly, and with intent to deceive the Commissioner of*

Therefore, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe from the priority date in 2005 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). 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.

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

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*Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.*

Violators of this provision, Section 208(a)(6) of the Social Security Act, shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both. *See* the website at http://www.ssa.gov/OP_Home/ssact/title02/0208.htm (accessed on April 26, 2011).

• **Identity Theft and Assumption Deterrence Act:** In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act (Public Law 105-318) to address the problem of identity theft. Specifically, the Act made it a Federal crime when anyone...*knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.*

Violations of the Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

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.
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> 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 March 31, 2009, with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2008 federal income tax return was not yet due. With the brief on appeal, submitted on June 15, 2009, the petitioner submitted a copy of its Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Return (IRS Form 7004) for year 2008. Therefore, the petitioner's federal income tax return for 2007 is the most recent return in the record. The petitioner's federal tax returns demonstrate its net income for 2005, 2006, and 2007, as shown in the table below.

- In 2005, the Form 1120S stated net income[5] of $(65,392).

[5] 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

- In 2006, the Form 1120S stated net income of $(32,795).
- In 2007, the Form 1120S stated net income of $2,597.

Therefore, for the years 2005, 2006, and 2007, the petitioner did not have sufficient net income to pay the proffered wage.

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.[6] 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 proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2005, 2006, and 2007, as shown in the table below.

- In 2005, the Form 1120S stated net current assets of $152,259.
- In 2006, the Form 1120S stated net current assets of $20,166.
- In 2007, the Form 1120S stated net current assets of $12,760.

Therefore, for the years 2006 and 2007, the petitioner did not have sufficient net current assets to pay the proffered wage.

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, or its net income or net current assets.

On appeal, the petitioner submitted a letter dated April 28, 2009, and signed by Julio Rodriguez. In this letter, Mr. [redacted] stated that the compensation he received in 2006 and 2007 are monies that may be applied to the business net income. The petitioner's tax returns reflect the following:

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for additional income, credits, deductions or other adjustments, net income is found on line 17e (2004-2005) line 18 (2006-2011) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed May 5, 2012) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because in 2006 the petitioner had other adjustments shown on Schedule K, the petitioner's net income for 2006 is found on Schedule K of its tax returns.

[6]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.

- In 2006, the petitioner paid Julio Rodriguez's officer compensation in the amount of $12,500.
- In 2007, the petitioner paid Julio Rodriguez's officer compensation in the amount of $21,000.

Although Mr. Rodriguez appears to be willing to forego officer compensation, Mr. Forms W-2 were not submitted to support the amount of officer compensation paid in 2006 or 2007.

On appeal, counsel asserts that the petitioner closed its business for seven months due to a fire in the building where the petitioner is located, and that the fire that destroyed the petitioner's business in 2006 constitutes unusual circumstances that cause 2006 to be an uncharacteristically unprofitable year for the petitioner. Counsel claims the occurrence of an uncharacteristic disruption in its business activities during the year 2006 is comparable to *Matter of Sonegawa.* The petitioner submitted a copy an Incident Report issued by the Police Department on January 16, 2006. According to this report, there was no fire in the building at the time of the Fire Department arrival. The Fire Department deemed the fire suspicious and the scene was turned over to two detectives for further investigation. The petitioner did not provide any other evidence regarding this incident. The report is not conclusive regarding the occurrence. The petitioner did not submit any supporting documentary evidence from the Fire Department or its insurance company detailing the specific damage to its restaurant or the repair expenses. 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, 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)).

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 claims to have been in business since 1984. The petitioner submitted its federal tax returns from 2005 to 2007. The figures on its tax returns do not demonstrate the petitioner's ability to pay the beneficiary the proffered wage of $30,703.40 per year for years 2006 and 2007. While the petitioner's gross receipts for 2005 through 2007 reflect the petitioner's growth in sales, no evidence was submitted to establish a basis for expected continued growth. The petitioner claims that, for the year 2006, there was a fire in the building in which its business is located and that the business remained closed for several months. No evidence of specific damage to the business or the extent of repairs was submitted. Further, the incident in 2006 does not explain the petitioner's low net income and net current assets in 2007. In fact, the petitioner's net current assets in 2006, the year of the fire, were higher than in 2007, where no unusual circumstances were claimed. In order to establish its reputation in the industry, the petitioner provided three reviews from Yahoo and three reviews from Tripadvisor. One of the reviews is entitled "A disappointment in " and does not demonstrate a positive reputation such as that in *Sonegawa*. Further, an internet search of online restaurant reviewer Yelp reveals additional negative reviews, and that the petitioner may be closed.[7] 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.

Therefore, the petitioner has not established its ability to pay the proffered wage from the priority date onward.

Also noted by 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).

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[7] *See* (accessed June 13, 2012). If your organization is no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of your organization's business. *See* 8 C.F.R. § 205.1(a)(iii)(D). Moreover, any concealment of the true status of your organization seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). You must resolve any inconsistencies in the record with independent, objective evidence. *Id.*

In the instant case, the labor certification states that the offered position requires two years of experience in the proffered position as an Italian specialty cook. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a full-time cook (Italian and Peruvian dishes) with [redacted] Peru from February 1996 to July 1998.

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 August 15, 2005 and signed by [redacted] Personnel Management H.H.R.R. with [redacted]. The director noted in his request for evidence that the letter submitted (a copy) was not acceptable as the address and phone numbers were illegible. The director requested a legible copy of the letter. In response to the director's request, counsel noted that the restaurant was closed for business, but provided an address and phone number. Counsel asserted that the beneficiary was attempting to locate the original letter.

The director noted in his decision that the authenticity of the letter was in question, as it was written in English and the duties listed were almost exactly the same as the duties listed for the proffered position on Form ETA 750. The director stated that it is highly improbable that a letter written in Peru would have the exact language as the duties listed on Form ETA 750 and be written in English.

On appeal, counsel submits a legible copy of the letter from [redacted]. The letter does not bear an original signature and appears to be a photocopy. The issues noted by the director in his decision are not addressed on appeal. A review of [redacted] website reveals that this restaurant is not closed, but is currently in operation. *See* [redacted] (accessed June 13, 2012). Further, the address and phone number on the website do not match the address and phone number in counsel's response to the request for evidence or the photocopy of the letter. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Finally, on Form G-325A, Biographic Information, signed by the beneficiary on August 3, 2007 and submitted with the beneficiary's application to adjust status to lawful permanent resident, in a section eliciting information of the beneficiary's last occupation abroad, the beneficiary provided no entry. This cannot be reconciled with the beneficiary's claim to have been employed as a cook with [redacted] in [redacted] Peru. [i]t 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. *Id.*

A willful misrepresentation of a material fact occurs is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

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.

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.