(b)(1)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: NOV 2 6 2012 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in the petitioner case. All of the documents related to this matter have been returned to the office that originally decided the petitioner case. Please be advised that any further inquiry that the petitioner might have concerning the petitioner case must be made to that office.

If the petitioner believe the AAO inappropriately applied the law in reaching its decision, or the petitioner have additional information that the petitioner wish to have considered, the petitioner 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,

Ron Rosenberg
Acting 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 describes itself as a travel agency. It filed a petition seeking to employ the beneficiary permanently in the United States as a travel agency manager. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).[1]

The petition was accompanied by a copy of an uncertified Form ETA 750, Part A, Application for Alien Employment Certification ("labor certification"), for the company The priority date of the petition as stated on the Final Determination letter from the U.S. Department of Labor (DOL) is April 23, 2003.[3]

The director's decision denying the petition concluded that the petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date, and failed to establish that the beneficiary possessed the required education set forth on the labor certification.

The record shows that the appeal is properly filed 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.

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.[4]

---

[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] The director requested a duplicate labor certification from the DOL on July 19, 2006 after a copy of Part A of the ETA Form 750 was submitted with an I-140 filed in April 2006 by However, the duplicate labor certification was never received. The director denied the earlier petition because the petitioner failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and it failed to establish that the beneficiary possessed the required education and experience set forth on the labor certification. The petitioner appealed the director's decision to the AAO, and the AAO upheld the director's decision.

[3] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

[4] 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

On August 7, 2012, the AAO issued a Notice of Intent to Dismiss and Derogatory Information ("NOID"), informing the petitioner that according to the government of the State of Texas, ASN, Inc. ("ASN") forfeited its corporate status on July 24, 2009. Additionally, the AAO noted that also forfeited its corporate status on April 9, 2010.

In response to the NOID, counsel and the petitioner informed the AAO that the petitioner was absorbed into and submitted evidence to establish that corporate status has been reinstated.

The petitioner stated that at the end of tax year 2008, decided they would merge the two businesses and office locations into one in order to save money on expenses, taxes and equipment.[5] It is stated the office was closed and it moved all of its business, equipment, computers, and commissioned employees to the office. The record shows the address of

Counsel asserts in the response to the NOID, that the instant matter should be considered a successor-in-interest as it is a matter of the same business, simply joined with its sister business owned and operated by the same married couple.

USCIS has not issued regulations governing immigrant visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto*, a binding, legacy Immigration and Naturalization Service ("INS") decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

The facts of the precedent decision, *Matter of Dial Auto*, are instructive in this matter. *Matter of Dial Auto* involved a petition filed by Dial Auto Repair Shop, Inc. on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, Elvira Auto Body, filed the underlying labor certification. On the petition, Dial Auto claimed to be a successor-in-interest to Elvira Auto Body. The part of the Commissioner's decision relating to the successor-in-interest issue follows:

> Additionally, the representations made by the petitioner concerning the relationship between Elvira Auto Body and itself are issues which have not been resolved. In order to determine whether the petitioner was a true successor to Elvira Auto Body, counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of Elvira Auto Body and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the

---

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).

[5] It is noted that the record does not contain a final return for tax year 2008 for .

> *petitioner's claim of having assumed all of Elvira Auto Body's rights, duties, obligations*, etc., is found to be untrue, then grounds would exist for invalidation of the labor certification under 20 C.F.R. § 656.30 (1987). Conversely, if the claim is found to be true, and it is determined that an actual successorship exists, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

19 I&N Dec. at 482-83 (emphasis added).

In the present matter, the USCIS Texas Service Center Director strictly interpreted *Matter of Dial Auto* to limit a successor-in-interest finding to cases where the petitioner could show that it assumed "all" of the original employer's rights, duties, obligations, and assets. The Commissioner's decision, however, does not require a successor-in-interest to establish that it assumed all rights, duties, and obligations. Instead, in *Matter of Dial Auto*, the petitioner specifically represented that it had assumed all of the original employer's rights, duties, and obligations, but failed to submit requested evidence to establish that this claim was, in fact, true. The Commissioner stated that if the petitioner's claim was untrue, the INS could invalidate the underlying labor certification for fraud or willful misrepresentation. For this reason the Commissioner said: "if the claim is found to be true, *and* it is determined that an actual successorship exists, the petition could be approved . . . ." *Id.* (emphasis added).

The Commissioner clearly considered the petitioner's claim that it had assumed all of the original employer's rights, duties, and obligations to be a separate inquiry from whether or not the petitioner is a successor-in-interest. The Commissioner was most interested in receiving a full explanation as to the "manner by which the petitioner took over the business" and seeing a copy of "the contract or agreement between the two entities" in order to verify the petitioner's claims. *Id.* at 482.

Accordingly, *Matter of Dial Auto* does not stand for the proposition that a valid successor relationship may only be established through the assumption of "all" or a totality of a predecessor entity's rights, duties, and obligations. Instead, the generally accepted definition of a successor-in-interest is broader: "[O]ne who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." *Black's Law Dictionary* 1570 (defining "successor in interest"). A petitioner is not precluded from demonstrating a successor-in-interest relationship simply because it acquired a division of the predecessor entity instead of purchasing the predecessor in its entirety.

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.[6] *Id.* at 1569 (defining "successor"). When considering other business

---

[6] Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes "consolidations" that occur when two or more corporations are united to create one new corporation. The second group

organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application. *See eg. Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984).

The merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets or asset transaction, even one that takes up a predecessor's business activities, does not necessarily create a successor-in-interest. *See Holland v. Williams Mountain Coal Co.*, 496 F.3d 670, 672 (D.C. Cir. 2007). An asset transaction occurs when one business organization sells property – such as real estate, machinery, or intellectual property - to another business organization. The purchase of assets from a predecessor will only result in a successor-in-interest relationship if the parties agree to the transfer and assumption of the essential rights and obligations of the predecessor necessary to carry on the business.[7] *See generally* 19 Am. Jur. 2d *Corporations* § 2170 (2010).

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

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

---

includes "mergers," consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes "reorganizations" that occur when the new corporation is the reincarnation or reorganization of one previously existing. The fourth group includes transactions in which a corporation, although continuing to exist as a "shell" legal entity, is in fact merged into another through the acquisition of its assets and business operations. 19 Am. Jur. 2d *Corporations* § 2165 (2010).

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

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

Applying the analysis set forth above to the instant petition, the petitioner has not established a valid successor relationship for immigration purposes.

The petitioner did not fully describe and document the acquisition of . Counsel merely states the office was closed and it moved all of its business, equipment, computers, and commissioned employees to the office. The record does not contain a purchase agreement, or other documentation showing was transferred as a whole to . Further, the record does not show that was merged or consolidated with or that acquired the essential rights and obligations of to carry on the business. There is no purchase agreement between that lists both the assets acquired and the liabilities assumed by the in its acquisition of . Likewise, there is not an agreement that lists those liabilities or obligations assumed by the related to the continued operation of (e.g., liabilities arising out of assumed contracts and operation and ownership of transferred assets).

Further, the claimed successor failed to establish the ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. In a successor-in-interest case, the record must establish that the predecessor possessed the ability to pay the proffered wage from the priority date until the date of the transaction giving rise to the successor-in-interest, and that the successor possessed the ability to pay the proffered wage from the transaction onwards.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

> *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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases,

additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

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 23, 2003. The proffered wage as stated on the Form ETA 750 is $79,539 per year. The Form ETA 750 states that the position requires a bachelor degree, with no specified field of study and two years of experience as a travel agency manager, or two years of experience in the related occupation of supervisor of travel agents.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1989, to have a gross annual income of $824,786, and to currently employ seven workers. According to the tax returns in the record, the petitioner's fiscal year runs from October 1 to September 30. The record does not contain the Form ETA 750B, signed by the beneficiary.

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, neither [redacted] have submitted evidence to establish that either company employed and paid the beneficiary the full proffered wage from the priority date of April 23, 2003.

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 sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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 stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service 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).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the AAO closed on September 5, 2012 with the receipt by the AAO of the petitioner's submissions in response to the AAO's NOID. The petitioner's income tax return for fiscal year 2007 is the most recent return available. In response to the NOID, the petitioner submitted the federal income tax returns for for fiscal years 2008 through 2010. 's tax year runs from September 1 to August 31. 's and 's tax returns demonstrate their net income for fiscal years 2002 through 2010, as shown in the table below.

- In 2002, orm 1120 stated net income of -$42,365 (for the period from October 1, 2002 to September 30, 2003).
- In 2003 Form 1120 stated net income of $1,970 (for the period from October 1, 2003 to September 30, 2004).
- In 2004, Form 1120 stated net income of -$30,568 (for the period from October 1, 2004 to September 30, 2005).
- In 2005, Form 1120 stated net income of -$21,139 (for the period from October 1, 2005 to September 30, 2006).
- In 2006, Form 1120 stated net income of $2,964 (for the period from October 1, 2006 to September 30, 2007).
- In 2007, Form 1120 stated net income of -$43,499 (for the period from October 1, 2007 to September 30, 2008).[8]
- In 2008, Form 1120 stated net income of -$51,559 (for the period from September 1, 2008 to August 31, 2009).
- In 2009, Form 1120 stated net income of $7,307 (for the period from September 1, 2009 to August 31, 2010).
- In 2010, Form 1120 stated net income of $21,350 (for the period from September 1, 2010 to August 31, 2011).

Therefore, for the fiscal years 2002 through 2011, neither had sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[9] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end

---

[8] fiscal year 2007 indicates that it is the company's final return.

[9] 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.

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 and tax returns demonstrate their end-of-year net current assets for fiscal years 2002 through 2010, as shown in the table below.

- In 2002, Form 1120 stated net current assets of $64,774 (for the period from October 1, 2002 to September 30, 2003).
- In 2003, Form 1120 stated net current assets of $76,747 (for the period from October 1, 2003 to September 30, 2004).
- In 2004, Form 1120 stated net current assets of $26,679 (for the period from October 1, 2004 to September 30, 2005).
- In 2005, Form 1120 stated net current assets of $32,203 (for the period from October 1, 2005 to September 30, 2006).
- In 2006, Form 1120 stated net current assets of $24,937 (for the period from October 1, 2006 to September 30, 2007).
- In 2007, Form 1120 stated net current assets of $38,773 (for the period from October 1, 2007 to September 30, 2008).
- In 2008, Form 1120 stated net current assets of $123,087 (for the period from September 1, 2008 to August 31, 2009).
- In 2009, Form 1120 stated net current assets of $130,056 (for the period from September 1, 2009 to August 31, 2010).
- In 2010, Form 1120 stated net current assets of $38,543 (for the period from September 1, 2010 to August 31, 2011).

Except for fiscal years 2008 and 2009, neither had sufficient net current assets to pay the proffered wage.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, neither or established that they 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, except for fiscal years 2008 and 2009.

Therefore, the record does not establish a valid successor-in-interest between Therefore, since is no longer in existence, no *bona fide* job offer exists with the petitioner. In addition, the evidence in the record fails to establish and ability to pay the proffered wage.

The petitioner must also 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 a bachelor degree, with no major field of study listed, and two years of experience as a travel agency manager, or two years of experience in the related occupation of supervisor of travel agents. The record does not contain Part B of the labor certification, which would list the beneficiary's qualifications. The record contains a copy of the beneficiary's Bachelor of Arts from the issued in 1988.

The degree was only submitted after the director denied the petition. The petitioner provides no explanation why the degree was not submitted with the initial filing, or with the 2006 I-140 filed by the petitioner. The record does not contain a copy of the beneficiary's transcripts evidencing his attendance at the 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). Therefore, in the instant case, the beneficiary's diploma is not, by itself, sufficient to establish that the beneficiary possessed the required education set forth on the labor certification. Instead, further independent, objective evidence of the beneficiary's education is required.

Beyond the decision of the director, the petitioner has also not established that the beneficiary has the required experience as stated on labor certification.[10] In the instant case, labor certification states that the offered position requires two years of experience as a travel agency manager, or two years of experience in the related occupation of supervisor of travel agents.

Any experience claimed by the beneficiary 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 from Managing Director, on letterhead stating the company employed the beneficiary from July 1988 to October 1999, as a business manager; a letter from General Manager, on letterhead, stating the company employed the beneficiary as a ticketing agent from April 1, 1987 to June 22, 1988; a letter

[10] 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).

from [redacted] Managing Director, on [redacted] letterhead, stating the company employed the beneficiary as a counter assistant from February 1986 to March 31, 1987; and a letter with an incomplete date, from [redacted] Managing Partner, on [redacted] letterhead, stating the company employed the beneficiary as a counter assistant for the "last 18 months." However, none of these letters describe the duties performed by the beneficiary in detail. Therefore the AAO cannot conclude that the beneficiary was employed as a travel agency manager or supervised travel agents. The letters also fail to state if the jobs were full-time. As such, the evidence in the record also 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.