(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: SEP 10 2012 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the 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 convenience store. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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

As set forth in the director's November 24, 2008 denial, the single 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).

The record contains a Form ETA 750 listing the employer as and listing the beneficiary as rather than who is the beneficiary of the Form I-140 in the instant matter. Part B of the Form ETA 750 submitted lists the credentials of A Form ETA 750B signed by the beneficiary was not submitted. Counsel's letter in support of the petition dated November 21, 2006, states that the original labor certification is with another previously denied Form I-140, that the labor certification can be retrieved from there, and that he is submitting an attorney certified copy.

The AAO notes that counsel must have mistakenly requested that the labor certification from the prior employer be used in the instant case. A petitioner may substitute a beneficiary of an approved labor certification prior to July 16, 2007,[1] but there is no provision for substituting a petitioner.[2] Counsel is also mistaken in stating that an attorney certified copy of the labor certification was submitted. An original Form ETA 750 was submitted by the petitioner listing the petitioner as the

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[1] Substitution of beneficiaries was permitted by the DOL at the time of filing this petition. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 C.F.R. §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to U.S. Citizenship and Immigration Services (USCIS) based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (codified at 20 C.F.R. § 656). DOL's final rule became effective July 16, 2007, and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. As the filing of the instant case predates the rule, substitution may be allowed for the present petition.

[2] A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. As a successor-in-interest relationship was not claimed by the petitioner or addressed in the evidence, an appeal filed by a different entity could be rejected as filed by the wrong party.

employer and as the beneficiary. The record does not contain a request to substitute the beneficiary of the labor certification, but it appears to be the petitioner's intent as the Form I-140 was filed on behalf of rather than In addition, the director's decision names as the beneficiary. The Form ETA 750 was accepted on February 16, 1999. The proffered wage as stated on the Forms ETA 750 is $13.10 per hour ($27,248.00 per year). The Form ETA 750 states that the position requires two years of experience in the job offered or in the related occupation of business manager.

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.[3]

The evidence in the record of proceeding shows that the petitioner is structured as a sole proprietorship. On the petition, the petitioner claimed to have been established in 1997 and to currently employ six workers. As previously noted, the Form ETA 750B was not signed by the beneficiary and did not include the work experience and credentials of the beneficiary, thus it is not stated if the beneficiary worked for the petitioner.

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 has not established that it employed and paid the beneficiary the full proffered wage from the priority date in 1999 onwards. No Forms W-2 or 1099 showing wages earned by the beneficiary were submitted. The record includes one pay stub showing year-to-date wages of $29,500.00 paid from the petitioner to the beneficiary as of October 30, 2008.

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[3] 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).

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner is a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioner could support himself, his spouse and five dependents on a gross income of slightly more than $20,000 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor supports no dependents. The proprietor's tax returns demonstrate his adjusted gross income for 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, as shown in the table below.

- In 1999, the Form 1040, line 33 stated adjusted gross income of $39,996.00.
- In 2000, the Form 1040X, line 1 stated adjusted gross income of $38,926.00.
- In 2001, the Form 1040, line 33 stated adjusted gross income of $50,310.00.
- In 2002, the Form 1040, line 35 stated adjusted gross income of -$94,870.00.
- In 2003, the Form 1040, line 34 stated adjusted gross income of $32,503.00.
- In 2004, the Form 1040, line 36 stated adjusted gross income of $58,694.00.
- In 2005, the Form 1040, line 37 stated adjusted gross income of $55,031.00.
- In 2006, the Form 1040, line 37 stated adjusted gross income of $41,414.00.

- In 2007, the Form 1040, line 37 stated adjusted gross income of $36,068.00.

In addition, the petitioner asserted that his yearly household expenses for 1999 through 2008 are reflected in the figures below. However, the AAO also notes that the proprietor's household expenses appear to have omitted several common expenditures including those for phone, water utilities, fuel, and clothing; therefore, any claims of having sufficient funds available to pay the proffered wage would require inclusion of those expenses as well. In addition, the petitioner's bank accounts indicate that the petitioner made ATM withdrawals from Damascus, Syria in 2007 and in 2008, thus indicating that he also likely incurred personal travel expenses which were not included on the listing of household expenses.

- In 1999, the proprietor's household expenses were $15,204.00
- In 2000, the proprietor's household expenses were $16,980.00
- In 2001, the proprietor's household expenses were $17,940.00
- In 2002, the proprietor's household expenses were $18,900.00
- In 2003, the proprietor's household expenses were $20,400.00
- In 2004, the proprietor's household expenses were $20,100.00
- In 2005, the proprietor's household expenses were $17,760.00
- In 2006, the proprietor's household expenses were $23,050.00
- In 2007, the proprietor's household expenses were $33,900.00
- In 2008, the proprietor's household expenses were $33,900.00

Therefore, based on the household expense figures provided, the proprietor had available funds to pay the proffered wage according to the table below.

Year	Adjusted Gross Income	Less Household Expenses	Available Funds
1999	$39,996.00	$15,204.00	$24,792.00
2000	$38,926.00	$16,980.00	$21,946.00
2001	$50,310.00	$17,940.00	$32,370.00
2002	-$94,870.00	$18,900.00	$0
2003	$32,503.00	$20,400.00	$12,103.00
2004	$58,694.00	$20,100.00	$38,594.00
2005	$55,031.00	$17,760.00	$37,271.00
2006	$41,414.00	$23,050.00	$18,364.00
2007	$36,068.00	$33,900.00	$2,168.00
2008	Not provided	$33,900.00	Not applicable

In 2001, 2004, and 2005, the balance of available funds left after household expense are subtracted from the adjusted gross income is more than the proffered wage of $27,248.00, and thus the proprietor had sufficient funds available to pay the proffered wage in 2001, 2004, and 2005 if the household expenses were to be accepted. However, as previously stated, several commonly occurring household expenses such as phone, water utilities, fuel, and clothing were omitted. In

1999, 2000, 2002, 2003, 2006, and 2007, the proprietor's adjusted gross income minus the amount claimed to be spent on household expenses leaves a balance of available funds which are not sufficient to pay the proffered wage of $27,248.00.

On appeal, counsel asserts that the financial statements submitted demonstrate the proprietor's ability to pay the proffered wage in that each statement lists the net worth of each Counsel asserts that the proprietor has access to a cash amount that is equivalent to the store's net worth and that the total net worth is a liquid asset available to the proprietor. However, the record does not contain any evidence that the proprietor is able to draw upon funds apart from those reported on the tax returns and noted above.

Counsel's reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. In addition, the AAO notes that net worth is not a liquid asset which represents funds immediately available to pay the proffered wage. Black's Law Dictionary 1639 (8th ed.2004) defines "net worth" as "[a] measure of one's wealth, [usually] calculated as the excess of total assets over total liabilities." As such, net worth is calculated using both current assets and non-current assets. Non-current assets are not readily liquefiable assets. Further, it is unlikely that a business would sell or encumber significant non-current assets, some of which may be necessary to operate the business, to pay the beneficiary's wage. USCIS may reject a fact stated in the petition if it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson,* 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Counsel also asserts that the proprietor continues to employ the beneficiary at or above the proffered wage, and thus has provided *prima facie* proof of his ability to pay the proffered wage. In support of this assertion, the proprietor has submitted a pay stub for the period ending October 30, 2008, indicating year-to-date wages paid to the beneficiary of $29,500.00. The AAO notes that the proprietor must demonstrate his continuing ability to pay the proffered wage beginning on the priority date, and this evidence from 2008 fails to establish the proprietor's ability to pay the proffered wage on the priority date and the subsequent eight years prior to the issuance of that pay stub. On the Form ETA 750, the beneficiary did not include any employment experience with the proprietor, and the record does not contain any evidence of the beneficiary's employment with the proprietor in any other year.

The AAO notes that the evidence submitted in support of the Form I-140 includes copies of Forms W-2 for other individuals as well as a letter from counsel dated November 21, 2006, which states that the evidence includes "Copy of Forms W-2 for certain employees of the petitioner, the salaries of which will be available to pay the beneficiary in this case." In addition to Forms W-2, the record

also contains a list of employees along with an explanation as to why they left the employment of the petitioner. However, on appeal, counsel does not assert that the salaries of employees who will be replaced will be used to pay the beneficiary the proffered wage. The AAO further notes that the record does not provide evidence that the petitioner has replaced or will replace them with the beneficiary. In general, wages already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. Moreover, there is insufficient evidence that these employees held the position of manager or that their jobs involved the same duties as those set forth in the Form ETA 750. The petitioner has not documented the position, duty, and termination of the worker who performed the duties of the proffered position. If that employee performed other kinds of work, then the beneficiary could not have replaced him or her.

The record also contains copies of various bank statements for [redacted] accounts belonging to the proprietor from the period of September 18, 2001, to October 17, 2008. However, the proprietor has not demonstrated that these funds are not already reflected on the Schedule C forms of the sole proprietor's tax returns. Although USCIS will not consider gross income without also considering the expenses that were incurred to generate that income, the overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal or borderline. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). In addition, as the priority date is February 16, 1999, the bank statements do not cover the any part of the year in which the priority date falls (1999), any part of the following year (2000), or the first eight and one-half months of the next year (2001). These monthly statements do not show an initial average annual balance, in the year of the priority date, exceeding the full proffered wage. Subsequent statements do not show annual average balances which increase each year after the priority date year by an amount exceeding the full proffered wage. At no time do any of the average monthly balances exceed $8,000. In many months, the balances fall below $100. The average balances in the years 1999 through 2007 have not been demonstrated to be sufficient to cover the full proffered wage. Thus, the sole proprietor's cash assets as reflected in his checking and savings accounts fail to establish the petitioner's continuing ability to pay the proffered wage.

Counsel also asserts on appeal that the proprietor's ability to pay the proffered wage is further demonstrated by the substantial amount of his payroll expenses and the well-known reputation of the [redacted] The AAO notes that the reputation of a business and its ability to pay wages to other employees does not establish the ability to pay the proffered wage to the beneficiary; however, the reputation of the business and the amount of salaries and wages paid may be considered generally in the context of a totality of circumstances analysis, which will be done below.

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 proprietor demonstrated sufficient income less household expenses to pay the proffered wage in 2001, 2004, and 2005, if the household expense figures were to be accepted. However, as they do not appear to include many common expenses, they cannot be deemed credible, and the petitioner has failed to demonstrate the ability to pay the proffered wage in 2001, 2004, and 2005. The petitioner also failed to demonstrate sufficient funds in 1999, 2000, 2002, 2003, 2006, and 2007. The proprietor's gross receipts at each store during the relevant years varied. The proprietor indicated on the Form I-140 that it employs six people. Salaries and wages also varied. While the store has been in business over ten years, it does not pay substantial compensation to its owner, and the bank statements provided did not reflect substantial balances. The proprietor did not submit evidence sufficient to demonstrate that he was willing and able to forego compensation in order to pay the beneficiary the proffered wage. In addition, there is insufficient evidence in the record of the historical growth of the proprietor's business or of the occurrence of any uncharacteristic business expenditures or losses from which it has since recovered. In regard to the reputation of the proprietor, the [redacted] is well known, but the evidence does not establish the individual reputation within the industry of the proprietor or his individual stores. 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.

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position.[4] 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

[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).

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 in the job offered or in the related occupation of business manager. As previously stated, a new Form ETA 750B with the substituted beneficiary's information and credentials was not submitted along with the instant petition. The AAO notes that a petition filed without an approved and completed labor certification which establishes that the beneficiary meets all the requirements in the labor certification may be denied.

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 on letterhead dated May 9, 1998, stating that the beneficiary worked as a manager for the business for four years as of the date of the letter. The record also contains a letter dated April 9, 2006, on letterhead stating that the beneficiary worked in the business since 1994, and until the end of 1998 as a director of one of their shops. The AAO notes that both letters fail to state who wrote the letters and what their positions or titles are. Further, neither letter state whether or not the employment was full-time. Therefore, the letters fail to provide the required name and title of the employer and to adequately describe the employment.

Thus, 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.