(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

[redacted]

DATE: SEP 14 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,

Kurt Parlos for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center on September 8, 2008. The petitioner filed an appeal on October 14, 2008. On January 6, 2009, the director issued a decision noting that the appeal was treated as a motion to reopen and reconsider because it was untimely filed. Because the petitioner did not submit any documentary evidence in support of its appeal/motion, the director affirmed his previous decision and the petition remained denied. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a vocational training business. It seeks to employ the beneficiary permanently in the United States as a director of operations. 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 September 5, 2008 denial, the 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

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.

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).

Here, the Form ETA 750 was accepted on January 12, 1998. The proffered wage as stated on the Form ETA 750 is $60,000 per year.

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.[1]

The evidence in the record of proceeding does not establish the organizational structure or fiscal year of The petitioner indicated on the petition that was established in October 1994 and employs 13 workers. On the Form ETA 750B, signed by the beneficiary on December 29, 1997, the beneficiary claimed to have worked for the petitioner since January 1996.

At the outset, the petitioner indicates in a letter dated February 12, 2004 that was being dissolved and its staff and operations were absorbed into . which does business as The date of dissolution of was not provided. The federal employer identification number (EIN) for is The EIN for is

A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). As in this case, where the appellant is a different entity than the petitioner and 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 valid successor relationship for immigration purposes is established if three conditions are satisfied. 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.

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also 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 essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto*, 19 I&N Dec. at 482.

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[1] 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).

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.

The only evidence to describe and document the transaction transferring the business is a letter from Virgilio Abad, owner of both companies. 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)).

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.[2] *See generally* 19 Am. Jur. 2d *Corporations* § 2170 (2010).

The evidence in the record does not satisfy all three conditions described above because it does not describe and document the transaction transferring ownership of the predecessor, it does not demonstrate that the job opportunity is the same as originally offered on the labor certification, and it does not prove that [redacted] is eligible for the immigrant visa in all respects. A successor-in-interest relationship has not been established between [redacted] and [redacted]

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

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[2] 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).

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 evidence of wages paid to the beneficiary from 1998 to 2007. The name of the employer on the 2003 to 2007 IRS Forms 1099-MISC is The EIN on the 1099-MISC is The petitioner's name on the petition, labor certification and 1998 to 2002 IRS Forms W-2 and 1099-MISC is The petitioner's EIN on the petition and IRS Form W-2s and 1099-MISC from 1998 to 2003 is The name, address and EIN on the 2003 to 2007 IRS Form 1099-MISC are inconsistent.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

> [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.

As previously discussed, the petitioner's explanation for the inconsistencies is that the petitioner, was dissolved and staff and operations were absorbed by However, the record does not contain evidence to establish a successor-in-interest relationship. Therefore, the record does not contain evidence to reconcile the inconsistencies. Without evidence to reconcile the inconsistencies, it has not been established that the 2003 to 2007 1099-MISC issued by are evidence of wages paid by the petitioner. However, even if the AAO accepted that is the successor to the evidence is insufficient to establish that the petitioner and its successor had the ability to pay the proffered wage.

In the instant case, the petitioner submitted evidence of wages paid to the beneficiary. Copies of IRS Form W-2 and 1099-MISC were provided for 1998 to 2007. The petitioner also indicated that the beneficiary received a living stipend including payment of his rent and an insurance policy in his name which should be considered evidence of wages paid. As evidence of this, the petitioner provided a copy of the beneficiary's lease, a copy of the insurance contract and copies of company spreadsheet records listing the amounts and dates of payment. However, the record does not contain evidence to show the transfer of money to the beneficiary or to the leasing company. The record does not include copies of bank statements to support the company records. The record also does not include copies of canceled checks documenting payment or evidence that the compensation was reported to the IRS as income. 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)).

The petitioner submitted evidence of wages paid to the beneficiary as shown in the table below:

- In 1998, paid[3] the beneficiary wages of $60,000.
- In 1999, paid the beneficiary wages of $60,000.
- In 2000, paid the beneficiary wages of $60,000.
- In 2001, paid the beneficiary wages of $60,250.
- In 2002, paid the beneficiary wages of $60,000.
- In 2003, paid the beneficiary wages of $14,000.[4]
- In 2003, paid[5] the beneficiary wages of $32,000.
- In 2004, paid the beneficiary wages of $35,000.
- In 2005, paid the beneficiary wages of $32,000.
- In 2006, paid the beneficiary wages of $32,000.
- In 2007, paid the beneficiary wages of $48,000.

For the years 1998, 1999, 2000, 2001, and 2002, the petitioner has established that it paid the beneficiary the proffered wage. Even if the AAO accepted that became the successor to at the beginning of 2003, the beneficiary was paid less than the proffered wage each year from 2003 to 2007. Thus, the petitioner must demonstrate that can pay the difference between wages it actually paid to the beneficiary and the proffered wage in 2003 through 2007, as represented in the following table:

- In 2003, difference of $28,000.
- In 2004, difference of $25,000.
- In 2005, difference of $28,000.
- In 2006, difference of $28,000.
- In 2007, difference of $12,000.

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

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[3] The wages paid amount is found on IRS Form W-2s for 1998 to 2002 and an IRS Forms 1099-MISC for 2002 and 2003 from The AAO notes that the record does not contain evidence to explain why an IRS Form W-2 and a 1099-MISC were issued to the beneficiary in 2002. The petitioner claims that it paid the beneficiary during the first few months of 2003 during the transition of the business to

[4] In 2003, the petitioner filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Northern District of California.

[5] The wages paid amount is found on IRS Form 1099-MISC for 2003 to 2007 from

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 stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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

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

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

The record before the director closed on August 26, 2008 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, [redacted]'s 2008 federal income tax return was not yet due. Therefore, [redacted] income tax return for 2007 would have been the most recent return available. No explanation was provided for its absence. [redacted]'s tax returns demonstrate its net income for 2003 to 2006, as shown in the table below.

- In 2003, the Form 1120S stated net income[6] of $3,423.
- In 2004, the Form 1120S stated net income of $18,053.
- In 2005, the Form 1120S stated net income of $445.
- In 2006, the Form 1120S stated net income of $2,287.

Therefore, even if the AAO accepted that is the successor to for the years 2003 to 2006, did not have sufficient net income to pay the difference between wages actually paid to the beneficiary and 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.[7] 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. tax returns demonstrate its end-of-year net current assets for 2003 to 2006, as shown in the table below.

- In 2003, the Form 1120S stated net current assets of $(34,629).
- In 2004, the Form 1120S stated net current assets of $(48,296).
- In 2005, the Form 1120S stated net current assets of $(78,690).
- In 2006, the Form 1120S stated net current assets of $(59,718).

Therefore, even if the AAO accepted that is the successor to for the years 2003 to 2006, the petitioner has not established that had sufficient net current assets to pay the difference between wages actually paid to the beneficiary and the proffered wage.

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[6] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (2003) line 17e (2004-2005) line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed July 24, 2012) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because had additional income, credits, deductions or other adjustments shown on its Schedule K for 2003 to 2006, its net income is found on Schedule K of its tax returns.

[7] 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.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that Vabad Inc. 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, copies of financial statements from 2003 to 2008 were submitted. Some of the statements were compiled, and some were unaudited. However, 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 some of these statements, the AAO cannot conclude that they are audited statements. The accountant's report that accompanied some of the other financial statements makes clear that they were produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner was established in 1994 but was dissolved. The tax returns for indicate that it has been in business since 2000. The petitioner indicated on the petition that it currently employs 13 employees. The tax returns for indicate that the company's gross income declined each year from 2004 to 2006. The company had minimal wages paid to all

employees in each relevant year. No evidence was provided to explain any temporary or uncharacteristic disruption in its business activities from 2003 to 2006. No evidence was provided to establish an outstanding reputation in the industry comparable to the petitioner in *Sonegawa*. No evidence was provided to establish the historical growth of the business. No evidence was provided to document that the beneficiary is replacing a former employee or an outsourced service. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that its purported successor had the continuing ability to pay the proffered wage.

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

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).

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires four years of college and a Bachelor of Science in business management, social science or related field. The labor certification indicates that four years of experience is required in the job offered or the related occupation of supervisory experience in admissions and educational program development. The labor certification also indicates that computer literacy, word processing and spreadsheet skills are required.

On the labor certification, the beneficiary claims to qualify for the offered position based on a Bachelor of Science from the [redacted] completed in 1980. The beneficiary claims to meet the experience requirements based on experience with five different employers: [redacted] as Director of Operations from January 1996 to the date he signed the labor certification on December 29, 1997; [redacted] as Director of Admissions from March 1994 to January 1996; [redacted] as Corporate Rehab Program Director from September 1992 to February 1994; [redacted] as Director of Student

Services and Admission from August 1991 to August 1992; dba as National Counseling Department Director from March 1984 to July 1991.

The record contains a copy of the beneficiary's Bachelor of Science degree from the and a copy of his Master of Arts degree from the together with transcripts.

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 five letters to document the beneficiary's experience.

The first letter is from district manager, on letterhead. The letter is dated January 28, 1985 and indicates that the beneficiary was employed from March 1, 1984 until the date of the letter. The letter does not indicate the beneficiary's job title, the duties he performed or whether the employment was full or part time. It also does not document any experience with the company after January 28, 1985 when the letter was written.

The second letter is from dated January 7, 1998. It is handwritten on letterhead but indicates that she worked with the beneficiary at The letter indicates that she has known the beneficiary for 13 years and began working with him in 1984 but does not indicate how long she worked with him at or what her job title was with the company. She signed the letter as "Job Training Coordinator," but it is unclear whether that was her position at or whether it was her position at at the time she wrote the letter. The letter indicates that the beneficiary was the National Counseling Department Director from 1984-1991 supervising all company counselors. However, the letter is not on letterhead, does not list the address of and does not indicate whether the beneficiary's employment was full or part time.

The third letter is from and is dated January 6, 1997. It is written on letterhead but indicates that she is the former president of She indicates that the beneficiary was employed there from 1991 to 1992 as the Director of Student Services. The letter is not on letterhead, does not list the address of and does not indicate the duties performed by the beneficiary or whether the employment was full or part time.

The fourth letter is a handwritten letter from dated January 7, 1998. She indicates that she worked at and knew the beneficiary when he worked for (dba from 1992 to 1994 as . The letter does not indicate what her job title was with the company or how long she worked with the beneficiary. The letter is not on company letterhead, does not list the address of and does not indicate the duties performed by the beneficiary or whether the employment was full or part time.

The fifth letter is from and is dated January 6, 1998. It indicates that she was the Director of Financial Aid for and worked with the beneficiary from 1994 to 1996 while he was the Director of Admissions and Director of Training Development. The letter is not on company letterhead, does not list the full address of and does not indicate the duties performed by the beneficiary or whether the employment was full or part time.

The record also contains a copy of the beneficiary's resume. However the resume is the beneficiary's unsupported representation of his experience and is not reliable evidence. 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)).

None of the letters submitted by the petitioner as evidence of the beneficiary's qualifications for the proffered job meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A). 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.