(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: FEB 0 8 2013 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Chinese restaurant. It seeks to employ the beneficiary permanently in the United States as a Chinese food cook. 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 Form I-140 petitioner had not established that it was the successor-in-interest to the employer which filed Form ETA 750; that the proffered position did not represent a bona fide job opportunity; and that the petitioner had not demonstrated that the beneficiary had the requisite experiential qualifications to perform the proffered position. The director denied the petition accordingly.

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

As set forth in the director's April 20, 2009 denial, the first issue in this case is whether or not the Form I-140 petitioner is the successor-in-interest to the employer which filed Form ETA 750.

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

The regulation at 8 C.F.R. § 204.5(c) provides that "[a]ny United States employer desiring and intending to employ an alien may file a petition for classification of the alien under...section 203(b)(3) of the Act." In addition, the DOL regulation at 20 C.F.R. § 656.3[1] states:

> *Employer* means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation.

[1] The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current DOL regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date.

The regulation at 8 C.F.R. § 204.5(l)(3) requires every employer who desires and intends to employ an alien to submit, with the I-140 petition, "an individual labor certification from the Department of Labor."

In the instant case, the Form ETA 750 which accompanied the instant petition, was accepted on March 9, 2005.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

On appeal, the petitioner provided an attachment to Form I-290B setting forth the bases for the appeal, but provided no documentary evidence in support of the appeal.

The evidence in the record of proceeding shows that the petitioner is structured as a corporation, having been so established in Puerto Rico. However, the nature of the corporation has not been clarified. On the petition, the petitioner claimed to have been established in 2004 and currently to employ nine workers. However, the petitioner left blank the fields in Part 5 of Form I-140 in which it would identify its gross annual and net annual incomes. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on March 7, 2005, the beneficiary did not claim to have worked for the petitioner.

On appeal, the petitioner claims that the director erred in his determination that was not the successor-in-interest to in determining that the proffered position does not represent a bona fide job offer; and in finding that the beneficiary's employment letters did not substantiate his qualifying experience.

An employer which desires and intends to employ an alien must begin the employment process by filing for employment certification with the DOL. Once the DOL has evaluated the job market to ensure: (1) There are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed, it certifies the labor certification. The employer then submits the certified labor certification with its petition seeking to classify the beneficiary as a skilled worker or professional.

In the instant situation, Form ETA 750 was filed by on March 9, 2005. Form I-140 was filed by on August 16, 2007.

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

With the initial petition submission, the petitioner submitted a letter dated August 13, 2007 from Certified Public Accountant (CPA). In his letter, states:

> This is to certify that was established on February 5, 1995. It owned and ran Its operation lasted until the year of 2005 when became a successor of in interest of was created in August of 2004 for the sole purpose of adding a new stockholder that includes the same owners and the same business as All of assets and liabilities were assumed and continued by Accordingly, the ceased operation in the year of 2005 when it completed the transfer of all transactions to the new corporation

The petitioner provided no other documentation, such as contracts or purchase agreements, substantiating a transfer of ownership of the petitioning business from Inc. Therefore, on June 30, 2008, the director issued a request for evidence (RFE), asking the petitioner to provide, among other things, documentation demonstrating that a bona fide successorship had been effected, to wit, evidence demonstrating a transfer of ownership of the petitioning business from

With its response, the petitioner provided a property deed, dated September 23, 1992, with an English language translation and a lease agreement dated October 1, 2005. The property deed indicates that purchased a property, the location of which is not indicated, from Mr. on September 23, 1992. The lease agreement indicates that owns the property located at The agreement then indicates that as the landlord, would lease to , as the tenant, the same property "to be use as Chinese restaurant for a period of five years starting on October 1 of 2005 and ending on September 30 of 2010..." [sic].

Counsel for the petitioner also provided a statement, claiming that was established on September 23, 1992[3] and subsequently acquired the property at Counsel then claims that opened a restaurant at that location on February 5, 1995. According to counsel, was established on September 8, 2004. Counsel states that became the landlord to easing its property at to in October 2005. Counsel then states "[i]n 2005, LJWW, Inc. assumed, by process, the actives and passives of

[3] This claim conflicts with the claim made by CPA was established on February 5, 1995. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner provided no independent, objective evidence demonstrating which claim is accurate.

In response to the director's RFE, the petitioner provided no contracts or sales agreements to demonstrate a transfer of ownership of any property or assets from [redacted]. 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)).

U.S. Citizenship and Immigration Services (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 Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986) ("*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 *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 482-3 (emphasis added).

In the present matter, the USCIS 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.*

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: "One 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 (9th ed. 2009) (defining "successor in interest").

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.[4] *Id.* at 1569 (defining "successor"). When considering other business 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.[5]

The merger or consolidation of a business organization into another will give rise to a successor-in-interest

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[4] 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 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).

[5] For example, unlike a corporation with its own distinct legal identity, if a general partnership adds a partner after the filing of a labor certification application, a Form I-140 filed by what is essentially a new partnership must contain evidence that this partnership is a successor-in-interest to the filer of the labor certification application. *See Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). Similarly, if the employer identified in a labor certification application is a sole proprietorship, and the petitioner identified in the Form I-140 is a business organization, such as a corporation which happens to be solely owned by the individual who filed the labor certification application, the petitioner must nevertheless establish that it is a bona fide successor-in-interest.

relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets, 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.[6] *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 a relevant part 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 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.

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.

While the director did, indeed, request evidence demonstrating that the petitioner, assumed all of rights, duties, obligations, and assets of thereby seemingly through a strict interpretation of *Matter of Dial Auto*, limiting the successor-in-interest finding to cases where

[6] 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).

the petitioner could show that it assumed "all" of the original employer's rights, duties, obligations, and assets, the petitioner failed to demonstrate that assumed any of the rights, duties, obligations, or assets of The only evidence supplied to demonstrate a successor-in-interest relationship was a lease agreement whereby would be leasing a property located at According to the lease agreement as well as the petitioner's assertions made in response to the director's RFE, both Inc. continued to exist and operate after the claimed successorship was supposed to have taken place.

Since the petitioner provided no documentation of any kind which demonstrates the transfer of any rights, duties, obligations, or assets from ., the petitioner has not demonstrated that is the successor-in-interest to

On appeal, the petitioner asserts that the operation of has continued at having first been controlled by and then by However, as discussed above, the only evidence provided to support the petitioner's assertions is a lease agreement, which indicates that agrees to lease the property located at for the operation of a restaurant. The petitioner provided no evidence, such as articles of incorporation, showing that was initially organized to operate a restaurant. The petitioner provided no sales agreements or contracts, which demonstrate that ansferred ownership of its business to Rather, the evidence shows that unctions as the landlord to and continues to do so. Therefore, the petitioner has not demonstrated that is the successor-in-interest to

As set forth in the director's April 20, 2009 denial, the second issue in this case is whether or not the proffered position represents a bona fide job opportunity.

In his decision, the director made reference to the letter dated August 13, 2007 from CPA. In his letter, tated:

> This is to certify that was established on February 5, 1995. It owned and ran Its operation lasted until the year of 2005 when became a successor of in interest of *was created in August of 2004 for the sole purpose of adding a new stockholder* that includes the same owners and the same business as [sic].
>
> [emphasis added]

vent on to identify the owners of as:

- President holding 33%
- Treasurer holding 33%
- Secretary holding 33%

identified the owners of . as:

- President holding 25%
– Treasurer holding 25%
– Secretary holding 25%
(the beneficiary) – Vice President holding 25%

In his RFE, the director identified two issues bearing upon the bona fide nature of the job opportunity. First, the director noted that, according to the petitioner, was established with the express purpose of making the beneficiary a partial owner of the petitioning entity. Second, according to the petitioner, was established seven months prior to the filing of Form ETA 750. Thus, at the time Form ETA 750 was filed not only was supposedly a functioning business entity, but the beneficiary was also an owner of Therefore, the director found that the beneficiary was an owner of the entity, which would file Form I-140 for classification of the beneficiary as a skilled worker, and that the petitioner did not disclose this information to the DOL.

While the AAO does not completely agree with the director's rationale for explaining the petitioner's failure to demonstrate that the proffered position represents a bona fide job opportunity, the AAO does concur with the director's conclusion that the job opportunity does not appear to be bona fide.

Based upon the petitioner's statements, the evidence does not demonstrate that the entity, which filed Form ETA 750, was the intended employer. The regulation at 8 C.F.R. § 204.5(c) provides that "[a]ny United States employer desiring and intending to employ an alien may file a petition for classification of the alien under…section 203(b)(3) of the Act."

According to CPA was established on February 5, 1995 and operated the restaurant at from that point until 2005. also asserts that was created in August 2004 for the express purpose of adding the beneficiary as a 25-percent stockholder in the corporation.

It should be noted, at this point, that the petitioner has provided no documentary evidence, such as the articles of incorporation, for either to identify the specific dates upon which either entity was established or to identify the identities of the corporate stockholders. The only evidence provided to substantiate the corporate transactions consists of the petitioner's and counsel's statements. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

If was established in September 2004, as attested to by the Puerto Rico Department of State,[7] and was established for the purposes of adding the beneficiary as a stockholder, then it is

[7] *See* (accessed

reasonable to assume that would have been the intended employer. The director assumed as much and requested an explanation regarding why as an entity which was formed seven months prior to the filing of Form ETA 750, would not have been the entity which filed Form ETA 750. In the petitioner's response to the director's RFE, the petitioner failed to address this issue or to provide any evidence bearing upon why would not have filed Form ETA 750.

The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide evidence explaining or documenting why as a corporation supposedly formed seven months prior to the filing of Form ETA 750 and formed with the intention of adding the beneficiary as a stockholder, and thereby, for purposes of continuing to employ the beneficiary would not and did not file Form ETA 750. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

It could be surmised that did not file Form ETA 750 because the beneficiary was an owner and because the petitioner would have had to disclose such information to the DOL. Whether this is true or not, filed Form ETA 750 after the petitioner claims that it began transferring operations to in his letter, states that "the ceased operation in the year 2005 when it *completed* the transfer of all transactions to the new corporation Inc." (emphasis added). statements indicate that the supposed transfer of operations -- something which has never been demonstrated as explained above – was a process. In fact, counsel states, in response to the director's RFE, "[w]e wish to declare that the transition took months while the government permits were requested..." Thus, the process began in 2004 and only concluded in 2005.

Based upon such statements was the intended employer of the beneficiary when it was formed in 2004. Accordingly, should have filed Form ETA 750. Since which was not the intended employer, filed Form ETA 750, there was no bona fide offer of employment because did not desire and intend to employ the beneficiary. Further, the petitioner provided no evidence demonstrating that ever operated a restaurant. The only evidence provided, regarding the property on which the petitioning restaurant is located, is a lease from October 2005, the lease indicating that would lease the property from with the intention of using it as a restaurant. Therefore, the petitioner has provided no evidence that could have ever offered the beneficiary employment in the proffered position.

On appeal, the petitioner asserts that the director found that there was a familial relationship between the owners of the petitioning entity and the beneficiary, but that this is not the case. However, this was not the director's finding. Rather, the director found that the beneficiary was a shareholder in the intended employer in the instant circumstance, and that the petitioner provided no

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October 30, 2012).

evidence demonstrating that the beneficiary's ownership interest in . had been disclosed to the DOL prior to the certification of Form ETA 750. As explained above, the AAO does not completely agree with the director's rationale for finding that the proffered position does not represent a bona fide job opportunity. However, the AAO does concur with the director's finding that the proffered position does not represent a bona fide job opportunity. If were a bona fide successor-in-interest to the transfer of ownership had, in fact, occurred after certification of the labor certification, and the DOL had been able to perform a bona fide assessment of the job market in the area of certification, then the petitioner would not have been required to disclose to the DOL the beneficiary's eventual purchase of a share in the petitioning entity. Based upon the evidence in the record, the beneficiary purchased a share in the petitioning entity prior to the filing of the labor certification, while a different entity filed for the labor certification. That is, the intended employer did not file the labor certification, whether for purposes of intending to conceal the beneficiary's ownership in Inc. or not.

As set forth in the director's April 20, 2009 denial, the third issue in this case is whether or not the beneficiary has the experience required to perform the proffered position as set forth in the terms of the labor certification.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating 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. 1986). *See also Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION
Grade School: Required, but the duration is not specified
High School: Not specified
College: None required
College Degree Required: None required
Major Field of Study: None required
TRAINING: None Required.
EXPERIENCE: Three (3) years in the job offered
OTHER SPECIAL REQUIREMENTS: None.

The labor certification states that the beneficiary qualifies for the offered position based on experience as a Chinese food cook with [redacted] from January 2001 until October 2004. The labor certification also states that the beneficiary worked as a Chinese food cook with [redacted] from October 1997 until February 1999. No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

With the initial petition submission, the petitioner provided no evidence of the beneficiary's experience. In his RFE, the director requested documentary evidence in the form of letters from former employers, demonstrating that the beneficiary had three years of experience which are required by the terms of the labor certification. In response, the petitioner submitted two identical letters, purported to be from different employers.

The first letter is dated March 6, 2005 and is from [redacted] Puerto Rico. According to [redacted] the beneficiary worked for [redacted] as a Chinese cook from October 1997 until February 1999. The letter is in English, bears no indication that it is a translation of a Spanish-language document, and is not accompanied by a certification from a translator as would be required by 8 C.F.R. § 103.2(b)(5). Further, the letter does not identify the specific duties, which the beneficiary performed, and does not indicate whether the beneficiary worked on a full-time or part-time basis. Moreover, the individual who wrote the letter does not identify his position with the company.

The second letter is also dated March 6, 2005 and is from [redacted]

Puerto Rico. According to the beneficiary worked for as a Chinese cook from March 1995 until October 1997. This letter is also in English, bears no indication that it is a translation of a Spanish-language document, and is not accompanied by a certification from a translator as would be required by 8 C.F.R. § 103.2(b)(5). Further, the letter does not identify the specific duties which the beneficiary performed and does not indicate whether the beneficiary worked on a full-time or part-time basis. Moreover, the individual who wrote the letter does not identify his position with the company. Further, the dates during which the beneficiary was purportedly employed by according to , differ than the dates attributed to the same employer on Form ETA 750B (January 2001 until October 2004).

Apart from the internal problems associated with each letter, the two letters are identical. They both contain the same date and the same format with the name of the entity and its address positioned at the same position as well as the body of the letter and the signature of the author. Further, the language of both letters is identical with the exception of the dates attributed to the employment and the names of the authors. While the names of the authors are different, the handwriting is also identical.

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. at 591-592. The petitioner provided no such evidence.

Because of the internal inconsistencies associated with the employment letters and the fact that the two letters are identical and because the petitioner provided no independent, objective evidence to substantiate the claims made in either letter, the evidence does not support the claimed experience. The petitioner has, therefore, not demonstrated that the beneficiary has the three years of experience, which are required for the performance of the proffered position according to the terms of the labor certification.

On appeal, the petitioner asserts that the director erred in refusing to consider the experience claimed in the letters. The petitioner asserts that the letters are copies of originals, which were submitted to the DOL during the labor certification process, and that they were written by the owners of the businesses represented. However, the AAO has explained its rationale for doubting the veracity of the experience claimed in the letters.

The petitioner's assertions do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983).

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.