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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 0 6 2013 OFFICE: TEXAS SERVICE CENTER [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:

SELF REPRESENTED

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,

Jan K for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal and the petitioner has filed a motion to reopen the AAOs decision. The motion will be granted, the previous decision by the AAO dated June 14, 2012, will be affirmed, and the petition will remain denied.

The petitioner is law office. It seeks to employ the beneficiary permanently in the United States as a network administrator. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to submit sufficient evidence to establish that the petitioner had the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The petitioner submitted additional documents on appeal. The AAO dismissed the appeal, affirming the director's decision that the petitioner had not established an ability to pay the proffered wage, and also finding, beyond the decision of the director, that the petitioner did not demonstrate that the beneficiary possessed the qualifications for the position offered.

The record shows that the motion is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted. The petitioner indicates that the beneficiary does in fact have the requisite qualifications as described in the job requirements for labor certification, and has submitted supporting evidence. The petitioner also states that although it did not demonstrate an ability to pay the proffered wage, the Form I-140 petition should be approved based on a new petitioner under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21).

As set forth in the AAO decision dated June 14, 2012, one of the issues 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. Beyond the decision of the director, the AAO also determined the petitioner did not demonstrate that the beneficiary obtained the requisite qualifications prior to the priority date of the labor certification.

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

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on March 27, 2005. The proffered wage as stated on the Form ETA 750 is $36,982.00 per year. The Form ETA 750 states that the position requires three years of experience, four years of college and a bachelor's degree in Electrical Engineering.

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 motion.[1]

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1997 and to currently employ three individuals. 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 25, 2005 the beneficiary did not claim to have worked for the petitioner at the time of filing. The petitioner has submitted tax returns for 2005, 2006, and 2007 into the record. The petitioner also indicated that a line of credit in the amount of $50,000.00 and personal IRA statements should be considered. The AAO previously reviewed this evidence and found that the petitioner had not established its ability to pay the beneficiary the proffered wage through an analysis of wages paid, its net income or its net current assets. On motion, the petitioner does not address the AAO's findings on its ability to pay the proffered wage, and the petitioner has not submitted any new evidence regarding its ability to pay the beneficiary's proffered wage. Therefore, the petitioner has not overcome this ground for denial.

For the first time, the petitioner argues on motion that there is a "new petitioner" who does have the ability to pay the beneficiary's proffered wage.[2] The petitioner indicates that the petition is still

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[1] The submission of additional evidence on motion 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 motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

"approvable" due to the terms of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). The AAO does not agree that the terms of AC21 make it so that the instant *immigrant petition* can be approved despite the fact that the petitioner has not demonstrated its eligibility. AC21 allows an *application for adjustment of status*[3] to be approved despite the fact that the initial job offer is no longer valid. The language of AC21 states that the I-140 "shall remain valid" with respect to a new job offer for purposes of the beneficiary's application for adjustment of status despite the fact that he or she no longer intends to work for the petitioning entity provided: (1) the application for adjustment of status based upon the initial visa petition must have been pending for more than 180 days; and (2) the new job offer the new employer must be for a "same or similar" job. A plain reading of the phrase "will remain valid" suggests that the petition must be valid *prior* to any consideration of whether or not the adjustment application was pending more than 180 days; and/or the new position is same or similar. In other words, it is not possible for a petition to remain valid if it is not valid currently. The AAO would not consider a petition wherein the initial petitioner has not demonstrated its eligibility to be a valid petition for purposes of section 106(c) of AC21. This position is supported by the fact that when AC21 was enacted, USCIS regulations required that the underlying I-140 was approved prior to the beneficiary filing for adjustment of status. When AC21 was enacted, the only time that an application for adjustment of status could have been pending for 180 days was when it was filed based on an approved immigrant petition. Therefore, the only

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[2] The petitioner appears to indicate in its motion that it no longer intends to employ the beneficiary, or, that the beneficiary no longer intends to accept employment with the petitioner. The petitioner indicates that there is a new employer for the beneficiary. The petitioner states that this new employer qualifies as a valid employer based on the current labor certification, approved on February 15, 2007, with a priority date of March 27, 2005. The petitioner quotes language from *Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010), indicating that under Section 106(c) of the American Competitive Act in the Twenty-First Century Act 2000 (AC21): "A petition shall remain valid with respect to a new job if the individual changes jobs or employers." The petitioner seems to assert on motion that the beneficiary should be able to transfer the instant labor certification to another petitioner. However, if there is no *bona fide* job offer with the current petitioner of record, or if the beneficiary has no intent to accept a job with that petitioner, there would be no basis on which the AAO could approve the petition, and the motion to reopen the decision would be moot.

[3] The AAO notes that after the enactment of AC21, USCIS altered its regulations to provide for the concurrent filing of immigrant visa petitions and applications for adjustment of status. This created a possible scenario wherein after an alien's adjustment application had been pending for 180 days, the alien could receive and accept a job offer from a new employer, potentially rendering him or her eligible for AC21 portability, prior to the adjudication of his or her underlying visa petition. A USCIS memorandum signed by William Yates, May 12, 2005, provides that if the initial petition is determined "approvable," then the adjustment application may be adjudicated under the terms of AC21. *See Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313)* at 3. This memorandum was superseded by *Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010), which determined that the petition must have been valid to begin with if it is to remain valid with respect to a new job.

possible meaning for the term "remains valid" was that the underlying petition was approved and would not be invalidated by the fact that the job offer was no longer a valid offer. *See Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010).

The operative language in section 204(j) and section 212(a)(5)(A)(iv) of the Act states that the petition or labor certification "shall remain valid" with respect to a new job if the individual changes jobs or employers. The term "valid" is not defined by the statute, nor does the congressional record provide any guidance as to its meaning. *See* S. Rep. 106-260; *see also* H.R. Rep. 106-1048. Critical to the pertinent provisions of AC21, the labor certification and petition must be "valid" to begin with if it is to "*remain* valid with respect to a new job." Section 204(j) of the Act, 8 U.S.C. § 1154(j) (emphasis added).

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). We are expected to give the words used in the statute their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Furthermore, we are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

With regard to the overall design of the nation's immigration laws, section 204 of the Act provides the basic statutory framework for the granting of immigrant status. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F), provides that "[a]ny employer desiring and intending to employ within the United States an alien entitled to classification under section . . . 203(b)(3) . . . of this title may file a petition with the Attorney General [now Secretary of Homeland Security] for such classification." (Emphasis added.)

Section 204(b) of the Act, 8 U.S.C. § 1154(b), governs USCIS's authority to approve an immigrant visa petition before immigrant status is granted:

> After an investigation of the facts in each case . . . the Attorney General [now Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is . . . eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

Statute and regulations allow adjustment only where the alien has an approved petition for immigrant classification. Section 245(a) of the Act, 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(g)(1), (2).[4]

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[4] We note that the Act contains at least one provision that does apply to pending petitions; in that instance, Congress specifically used the word "pending." *See* section 101(a)(15)(V) of the Act, 8 U.S.C. § 1101(a)(15)(V) (establishing a nonimmigrant visa for aliens with family-based petitions that have

Pursuant to the statutory framework for the granting of immigrant status, any United States employer desiring and intending to employ an alien "entitled" to immigrant classification under the Act "may file" a petition for classification. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). However, section 204(b) of the Act mandates that USCIS approve that petition only after investigating the facts in each case, determining that the facts stated in the petition are true and that the alien is eligible for the requested classification. Section 204(b) of the Act, 8 U.S.C. § 1154(b). Hence, Congress specifically granted USCIS the sole authority to approve an immigrant visa petition; an alien may not adjust status or be granted immigrant status by the Department of State until USCIS approves the petition.

Therefore, to be considered "valid" in harmony with the portability provisions of AC21 and with the statute as a whole, an immigrant visa petition must have been filed for an alien that is entitled to the requested classification and that petition must have been approved by USCIS pursuant to the agency's authority under the Act. *See generally* section 204 of the Act, 8 U.S.C. § 1154. A petition is not validated merely through the act of filing the petition with USCIS or through the passage of 180 days.

The portability provisions of AC21 cannot be interpreted as allowing the adjustment of status of an alien based on an unapproved visa petition when section 245(a) of the Act explicitly requires an approved petition (or eligibility for an immediately available immigrant visa) in order to grant adjustment of status. To construe section 204(j) of the Act in that manner would violate the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Dept. of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 340 (1994).

We will not construe section 204(j) of the Act in a manner that would allow ineligible aliens to gain immigrant status simply by filing visa petitions and adjustment applications, thereby increasing USCIS backlogs, in the hopes that the application might remain unadjudicated for 180 days.[5]

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been pending three years or more).

[5] Moreover, every federal circuit court of appeals that has discussed the portability provision of section 204(j) of the Act has done so only in the context of deciding an immigration judge's jurisdiction to determine the continuing validity of an approved visa petition when adjudicating an alien's application for adjustment of status in removal proceedings. *Sung v. Keisler*, 2007 WL 3052778 (5th Cir. Oct. 22, 2007); *Matovski v. Gonzales*, 492 F.3d 722 (6th Cir. Jun. 15, 2007); *Perez-Vargas v. Gonzales*, 478 F.3d 191 (4th Cir. 2007). In *Sung*, the court quoted section 204(j) of the Act and explained that the provision only addresses when "an *approved* immigration petition will remain valid for the purpose of an application of adjustment of status." *Sung*, 2007 WL 3052778 at *1 (emphasis added). *Accord Matovski*, 492 F.3d at 735 (discussing portability as applied to an alien who had a "previously approved I-140 Petition for Alien Worker"); *Perez-Vargas*, 478 F.3d at 193 (stating that "[s]ection 204(j) . . . provides relief to the alien who changes jobs after his visa petition has been approved"). Hence, the requisite approval of the underlying visa petition is explicit in each of these decisions.

The enactment of the job flexibility provision at section 204(j) of the Act did not repeal or modify sections 204(b) and 245(a) of the Act, which require USCIS to approve an immigrant visa petition prior to granting adjustment of status.

In the instant matter, the petitioner filed its form I-140 On August 24, 2007, concurrently with a form I-485, Application to Register Permanent Residence or Adjust Status. On October 27, 2008, the director informed the petitioner of his intent to deny the petition. On January 26, 2009, the petition was denied. On February 25, 2009, the petitioner appealed the decision to the AAO. The AAO dismissed the petitioner's appeal on June 14, 2012. Now, for the first time on motion, the petitioner asserts the beneficiary is eligible for portability under AC21. However, the petitioner does not address the AAO's finding that it lacked the ability to pay the beneficiary the proffered wage. Therefore, as the AAO's finding that the petitioner has not established the ability to pay is not addressed, the petitioner has not established the validity of its I-140 petition. As such, the provisions of AC21 cannot make a deficient petition valid. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

The AAO also found beyond the decision of the director, that the petitioner did not establish that the beneficiary possessed the requisite experience in order to qualify for the position. The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its labor certification application, 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).

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), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The AAO determined that the petitioner submitted no evidence that the beneficiary possessed the education and experience as required on the Form ETA 750. The AAO in reviewing all of the evidence presented as a whole, determined that the beneficiary did not have the requisite three years of experience in the position offered as network administrator, as required by the petitioner in the labor certification application. The Form ETA 750 indicates that the offered position requires a four year Bachelor of Arts degree in electrical engineering as well as three years of experience as a network administrator.

The petitioner submits for the first time on motion, a credential evaluation dated May 28, 2002 prepared by [redacted] which states that the beneficiary's Electronics Engineering degree, from [redacted] University, Colombia is the equivalent of a U.S. Bachelor of Science degree in Electrical Engineering. In addition, the evaluation also indicates that the beneficiary's degree of Master in Electrical Engineering from the University

of the is the equivalent of a Master of Science in Electrical Engineering from a U.S. University.

The regulations define a third preference category professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." *See* 8 C.F.R. § 204.5(l)(2). The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a professional that:

> (C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

In this case, it appears that the beneficiary holds a Master's degree in the field of Electrical Engineering. This degree appears to meet the requirements of the labor certification.

However, to be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I& N Dec. 45, 49 (Reg. Comm. 1971).

According to the ETA Form 750B, the position also requires three years of experience in the related occupation of Network administrator, as well as three years of experience in "ITIL an ISO-9004-2, website support PERL and MS-IIS5.0".

In stating that the beneficiary has the requisite experience, the petitioner submits experience letters for the beneficiary.

Vice President, in a later dated October 14th 2005, states that the beneficiary was employed as a Network Administrator "since April 2003." She lists his duties to include: design and implement web sites using Frontpage, Dreamweaver, over MS-IIS5.0. Programing software modules using PERL, network administrator implementing processes based on ITIL and ISO standards, develop and design computer and telecommunication networks, test control apparatus and equipment, develop web sites for small businesses and monitoring and controlling networks. This letter does not indicate an end date for the beneficiary's employment, and does not state whether his

employment was full-time or part-time, preventing the AAO from determining the length of his purported employment.

Administrator, in an undated letter indicates that the beneficiary worked as Director of Services and Adjunct Manager from February 1991 to January 2002. His duties were:

> September 1997 to April 2000- Consultant for the development and implementation of methodologies, procedures and try-outs for inspections over quality of service and attention to clients of telephone services rendered through, This methodology was developed based on ISO-9000 quality standards.
>
> May 1997 to January 1999-Design and implementation of operational and technical support procedures for first level Help-Desks, based on ITIL and ISO-9000 methodologies for
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> November 1998 to October 2001-Design and implementation of maintenance procedures for the networks of digital satellite and ground microwaves; and for the operation of the main center of telecommunication controls of nationwide as per the quality standards of ITU-M.3400, ITIL and ISO-9004-2.

The dates provided for the beneficiary's employment with appear to overlap, without explanation. Further, the letter does not state whether his employment was full-time, or part-time, preventing the AAO from determining the length of his purported employment.

in an undated letter indicated the beneficiary acted as a consultant in quality auditing geared to customer service on three occasions: September 1997 to January 1998, September 1988 [*sic*] to September 1999, and September 1999 to April 2000. The information regarding the beneficiary's consulting work with was not listed under work experience in question 15 on the labor certification.

In *Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

Although the petitioner submitted three experience letters from the aforementioned companies for the beneficiary upon motion, these letters are insufficient to document the beneficiary possesses the required 3 years of experience required as of the priority date. According to the employment information listed for the beneficiary in the labor certification, he was employed with from April 2003 up to and including the date of signature of the ETA Form 750B, on March 24, 2005, as a Network Engineer. This job title conflicts with the information in the experience letter submitted from that company, which lists his position as Network Administrator. The letter also does not indicate whether the beneficiary's employment was full-time, or part-time, preventing the AAO from determining the length of his purported employment.

The beneficiary also lists employment with from June 1996 to June 2001, as a Service Director, which conflicts with both titles given for the beneficiary in the experience letter. Moreover, according to the experience letter from submitted with the instant motion, the beneficiary was employed as a Director of Services and Adjunct Manager with that company, from February 1999 until January 2002. However, in the ETA Form 750B the beneficiary lists his employment as a Service Director with that same company from June 1996 to June 2001. Thus, both the job title and dates of purported employment conflict. These inconsistencies cast doubt on the claimed experience. Further, the dates of his duties as a Director of Services and Adjunct Manager also appear to overlap without explanation as to how this might have occurred.

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

> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

Therefore, the petitioner has not demonstrated that the beneficiary possessed all of the required experience for the position before the priority date.

On motion, the petitioner has not established that it had the ability to pay the beneficiary's proffered wage from the priority date, and the petitioner has not established that the beneficiary possessed the requisite experience as required by the terms of the labor certification. Therefore, the petitioner has not overcome the grounds for denial in the director's decision, or the AAO's decision.

The petition will remain 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 motion to reopen the previous decision of the AAO is granted. The prior decision of the AAO dated June 14, 2012, will not be disturbed. The petition remains denied.