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 14 2013 OFFICE: NEBRASKA 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:

[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,

Jon K
FOR

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially denied by the Director, Nebraska Service Center and came before the Administrative Appeals Office (AAO) on appeal. This decision was affirmed and the appeal was dismissed by the AAO on September 25, 2012. The matter is now before the AAO on a motion to reconsider. The motion will be granted. The previous decision of the AAO, dated September 25, 2012, will be affirmed, and the petition will remain denied.

The petitioner is a fulfillment service business. It seeks to employ the beneficiary permanently in the United States as a customer service coordinator. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the United States Department of Labor (DOL).

As set forth in the director's decision[1] issued on July 11, 2009, the director determined that the petitioner had not established that it was a successor-in-interest to the entity that originally filed the labor certification. The director denied the petition accordingly. The petitioner appealed the director's decision to the AAO. The AAO affirmed the director's decision on September 25, 2012, and held that the petitioner had not established: (1) that it was a successor-in-interest to the entity that filed the labor certification; and (2) that the labor certification employer had the ability to pay the proffered wage from December 23, 2005 to September 1, 2006.

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.

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

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[1] On appeal, counsel asserted that the director "erred by . . . [i]ssuing a non-specific, conclusory denial." On motion, counsel asserts that the director's denial "lacked specificity, which made it impossible for the petitioner to properly and accurately argue the appeal – a denial of due process." The AAO notes that the director's decision indicates that the director previously requested "evidence to establish the successor-in-interest relationship between the company listed on the labor certification" and the petitioner. The record reflects that in total the director issued two requests for evidence (RFEs) to permit the petitioner to document this relationship. In his denial, the director again discussed the issue of the successor-in-interest relationship and concluded that the petitioner "failed to establish" the relationship. This was the sole ground for the denial, and the sole issue raised on appeal, and the sole issue discussed in the AAO's September 25, 2012, decision. A denial must state the "specific reasons for denial." 8 C.F.R. § 103.3(a)(i). The director's decision discussed the issue in the matter, its requests for specific types of evidence to address deficiencies in the record, and the evidence provided in response, prior to reaching the conclusion of the decision. In light of the director's two RFEs, and the petitioner's response to these requests, it cannot be said that the director's decision failed to provide specific reasons for the denial; the director provided notice of the specific issue twice before the denial, and in the denial explained that as the petitioner did not provide evidence to corroborate its claimed successor-in-interest relationship, the petition could not be approved.

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 motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy. On motion, counsel asserts that the petitioner has established that it is a successor-in-interest to the labor certification employer and that the successor-in-interest analysis used by the USCIS runs counter to the rule making authority granted to the agency. Counsel also asserts that the labor certification employer had the ability to pay the proffered wage for 2005 and 2006. On motion, the petitioner submitted evidence of IRS Form 4506-T, Request for Transcript of Tax Return, dated October 12, 2012, in which the original entity that filed the labor certification, requested that the IRS provide it with its tax return for 2005 and 2006. The petitioner again submitted the portion of counsel's brief previously submitted on appeal, relating to the issue as to whether the successor-in-interest analysis goes beyond USCIS's rulemaking authority.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Successor-In-Interest

The labor certification was filed on December 23, 2005 under the name The Form I-140 was filed on July 30, 2007 under the name an entity with a different Federal Employer Identification Number (FEIN), name and address than the labor certification employer. Therefore, Fulfillment must establish that it is a successor-in-interest to the labor certification employer,

On motion, counsel for the petitioner asserts that the USCIS's application of *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, is *ultra vires* and does not comport with the Act. First, the AAO lacks the authority to deem a regulation *ultra vires.* As such, the AAO is not the proper venue for a determination of such an issue.

Second, even if the AAO had the requisite authority to entertain an *ultra vires* challenge, counsel's argument would fail. Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

In general, a federal agency's interpretation of a statute whose administration is entrusted to it is to be accepted unless Congress has spoken directly on the issue. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 461 U.S. 837, 844-45, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Even if statutory or regulatory language is ambiguous, deference is usually given to the agency's interpretation. *See United States v. Moses*, 94 F.3d 182, 185 (5th Cir. 1996). Counsel for the

petitioner has not provided any evidence that Congress has spoken directly on this issue. Therefore, deference should be given to the Commissioner's decision in *Matter of Dial Auto*, which was designated as a precedent decision by the Commissioner in 1986.

Counsel asserts that the AAO's decision does not "rely on any properly promulgated regulation, or any published binding judicial decision." Counsel urges that the AAO again consider a 16 page argument from its brief of September 1, 2009. Counsel's advocates therein: (1) "any employer, without limitations may file a petition for a desired alien worker in any of the enumerated categories;" (2) "there is no requirement that the petitioning employer must be identical to the employer named in the Application for Labor Certification [*sic*];" (3) "there is an express permission to accompany the petition by 'any' labor certification;" (4) "[t]here is never any requirement to provide evidence that the petitioning employer is identical with the employer named in the Application for Labor Certification [*sic*];" and (5) "the identity of the employer is not a factor in the definition of 'job opportunity.'" (Emphasis in original).

While counsel has provided a detailed interpretation of statute, regulation, and cases, counsel has not discussed the regulation in force at the time the instant labor certification was filed which does not permit a substitution of employer. The current regulatory scheme governing the labor certification process went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. *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 instant labor certification was filed on December 23, 2005, after the effective date of the PERM regulation.

Prior to the enactment of the PERM regulations, DOL permitted the substitution of a successor employer before a final determination was made, where the particular job opportunity was preserved in the same area of intended employment consistent with 20 C.F.R. § 656.30(c)(2). *See Horizon Science Academy,* 06-INA-46 (BALCA Mar. 8, 2007) (when the present Form ETA 750 was filed, employers could not be substituted unless the alien was working in the exact same position, performing the same duties, in the same area of intended employment, and for the same wages); *see also American Chick Sexing Assn'n & Accu. Co.,* 89-INA-320 (BALCA Mar. 12, 1991) (substitution made before final rebuttal to CO); *Int'l Contractors, Inc. & Technical Programming Services, Inc.,* 89-INA-278 (BALCA June 13, 1990). DOL would also allow a new employer to substitute where it is the same job opportunity in the same area of intended employment. *See also Law Offices of Jean-Pierre Karnos,* 03-INA-(BALCA May 20, 2004) (where there was a new employer who took over the law practice of Karnos on his death, a new labor certification does not have to be filed for an accountant applicant where it is the same job opportunity in the same area of intended employment including the same job duties and wages). However, substitutions or modifications of the labor certification are no longer permitted. 20 C.F.R. § 656.11. Although subsection (a) of that regulation addresses changes to the identity of the beneficiary on the application, subsection (b) states that requests for modification of the labor certification "will not be accepted." 20 C.F.R. § 656.11(b).

As counsel discusses, a labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the labor certification. 20 C.F.R. § 656.30(c)(2). For a labor certification, "job

opportunity" is defined as a "job opening for employment." 20 C.F.R. § 656.3. Employment is defined as "[p]ermanent, full-time work by an employee for an employer." *Id.* Employer is defined to include "(1) a person, association, firm, or a corporation … that proposes to employ a full-time employee at a place within the United States." *Id.* Further, an employer is required to "possess a valid Federal Employer Identification Number (FEIN)." *Id.* The regulations at 20 C.F.R. § 656.3 and § 656.30(c)(2) therefore state that an employer, in the singular, possessing a valid FEIN, may propose to employ an employee for full-time work (the job opportunity). The regulations make clear that the job opportunity described on the labor certification is for a particular job opportunity, that this proposed employment must be by an employer, and that an employer is "a" corporation with "a" valid FEIN. In carrying out these regulations, DOL uses ETA Form 9089 to request specific details about the employer and job opportunity, including the employer's name, address, and FEIN. As modifications of the labor certification are not permitted pursuant to 20 C.F.R. § 656.11(b) once the labor certification is accepted by DOL, counsel's assertion that the employer is not material to the job opportunity is without merit. The regulations clarify that DOL renders its determinations based on a particular job opportunity offered by a specific employer.

Counsel also asserts that the director's and the AAO's adherence to *Matter of Dial Auto* "contravenes the unmistakable text of the Act ('any employer') and of the regulations ('any United States employer'), and therefore it cannot be permitted to stand."

The AAO's decision was based, without ambiguity, on a precedent decision, *Matter of Dial Auto,* which was designated by the Commissioner of the legacy Immigration and Nationality Service (INS) as a precedent decision. The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit). Further, 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act. Precedent decisions are designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). As *Matter of Dial Auto* was designated as a precedent decision, and published by the Executive Office for Immigration Review in a bound volume, volume 19, of the "Administrative Decisions Under Immigration and Nationality Laws of the United States" (I&N Dec.), the AAO is bound to follow that decision. Counsel states, without support, that the concept of a successor-in-interest "has been lifted by the legacy INS from other areas of U.S. law and injected into Immigration Law without legal basis, authority or proper procedure to do so." Counsel's assertions are unsupported and provide no basis to conclude that this precedent decision was selected and designated as a precedent decision "without legal basis, authority, or proper procedure." As noted above, the legal basis for designating precedent decisions exists, and is currently codified at 8 C.F.R. § 103.9(a).

As noted by the AAO in its decision dated September 25, 2012, the 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. As the AAO discussed in its prior decision, the Commissioner's decision, however, does not require a successor-in-interest to establish that it assumed all rights, duties, and obligations. 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.[2] *Id.* at 1569 (defining "successor").

The merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets, 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.[3] *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. In its prior decision, the AAO discussed that 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

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[2] 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).

[3] 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).

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.

The AAO carefully reviewed the evidence on appeal and concluded that the record did not contain sufficient evidence to fully describe and document the purported transaction transferring ownership of the labor certification employer, or a relevant part thereof; and that the petitioner did not establish its eligibility for the immigrant visa in all respects, specifically stating that the petitioner had not documented the labor certification employer's ability to pay the beneficiary's proffered wage from the priority date until the purported successorship. On motion, the petitioner provided a new brief from counsel, pages from counsel's previous brief, and two IRS Forms 4506-T

The record at the time of appeal contained a letter from dated January 3, 2007, which states that . on September 1, 2006. The record also contained a letter from the General Manager of dated February 26, 2009, in which he attests to having been the General Manager there beginning in November 2007 and that began servicing the needs of the clients of in September 2006. As discussed by the AAO in its previous decisions, these letters were created by the petitioner after the purported successorship for the purpose of supporting its claim to be a successor-in-interest and as such are self-serving and do not provide independent, objective evidence to substantiate the nature of the acquisition of See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). The record contains billing statements for September 2006, February 2007, and March 2007, which the petitioner asserts demonstrates that the labor certification employer's clients were transferred to the petitioner, but these statements do not clearly establish the transfer of ownership of the labor certification employer to the petitioner. The petitioner has not provided evidence of any assets being purchased or evidence that the petitioner carried on the essential rights and obligations of the predecessor to carry on the business.

The AAO notes counsel's assertion that no written agreement or other documents are necessary to establish a successor-in-interest relationship. However, the transfer of the business normally would have other documentary evidence to support the transaction, such as leases, sale of assets, transfers of licenses, or bank statements that document the amounts paid for the purchase. While the billing

statements provided lack much evidentiary weight,[4] their probative value is further diminished by the contradictory letters in the record. On motion, the petitioner has not provided any evidence to overcome the inconsistencies discussed in the AAO's prior decision. The petitioner did not provide other evidence to support its claim, such as letters to these clients notifying them about the purported merger.

The petitioner has not provided sufficient evidence that the petitioner assumed the essential rights and obligations of the labor certification employer in order to overcome the grounds laid out in the AAO's decision. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the petitioner has not established that is a successor-in-interest to

Ability to Pay the Proffered Wage

The AAO's decision found that the petitioner, on appeal, had not overcome the director's initial finding that it had not established its ability to pay the beneficiary's proffered wage from the priority date onward.

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In successorship cases, 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. Here, the ETA Form 9089 was accepted on December 23, 2005. The proffered wage as stated on the ETA Form 9089 is $17.79 per hour or $37,003.20 annually. Thus, even if the successor-in-interest relationship

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[4] The AAO notes that while the billing statements provided may indicate some shared clients, they do not document that these clients' accounts were sold and transferred to the petitioner. As the AAO discussed in its prior decision, the transfer of assets must be established by objective evidence, such as bank records showing amounts paid and received for the transferred assets.

could be established, which it has not been, the petitioner must establish the ability of to pay the beneficiary's proffered wage from December 23, 2005 to September 1, 2006 and the ability of . to pay the proffered wage from September 1, 2006 onward.

The petitioner did not submit any additional evidence documenting the ability of to pay the proffered wage for 2005 and 2006 to overcome the basis for the AAO's dismissal of the petitioner's appeal. The record contains evidence that the petitioner requested tax transcripts from the IRS for 2005 and 2006, but the record does not demonstrate whether the petitioner has received these, or when it is projected to receive them.[5] The AAO noted in its prior decision that claimed its 2005 and 2006 tax returns were in storage and that it stated it would be too difficult to obtain them. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The record also contains income statements for for 2005 and 2006, but these have not been audited. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. The record does not contain any regulatory required evidence of the labor certification employer's ability to pay the beneficiary's proffered wage. Therefore, the petitioner has not established that had the ability to pay the difference between the proffered wage and any wages purportedly paid to the beneficiary from the priority date onward.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 a priority date for any immigrant petition later based on the ETA Form 9089, 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. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, 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. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will 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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[5] The transcript requests are dated October 12, 2012, and request that they transcriptions be mailed to an address in Florida, and not the AAO. The AAO notes that the forms appear to be incomplete, as Part 6, type of transcript requested, is left blank. Further, the person listed as the "president" of on the forms has a different name and address than the company's president as identified on the labor certification.

or greater than the proffered wage, the evidence may be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

The record contains evidence of 2005 W-2 Forms issued by Administaff which each state different addresses and Employer Identification Numbers (EIN) from The record contains an affidavit from the beneficiary that states that doing business as , went through three payroll companies, including This document is self-serving as it is from the beneficiary, rather than the employer, and does not sufficiently explain why used three payroll companies for 2005 and two payroll companies for 2006. The AAO notes that the petitioner has not provided documentary evidence of the relationship between the labor certification employer. The record contains a Human Resource Services Agreement between but the record does not contain such agreements for and Therefore, it is unclear whether the beneficiary's W-2 Form for could be attributed to the beneficiary's employment with . Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is incumbent upon 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. *Id.*

Accordingly, at most, the record reflects that the beneficiary was paid $19,440.16 by However, this is $17,563.04 less than the proffered wage. Thus, the petitioner must establish the ability of to pay the difference between the proffered wage and the wages paid to the beneficiary for 2005 and its ability to pay the entire proffered wage of $37,003.20 for 2006. As noted above, the petitioner has failed to provide any required regulatory evidence with the Form I-140, in response to two RFEs, on appeal, and again on motion. Therefore, there is no evidence in the record of proceeding to establish the labor certification entity's ability to pay the proffered wage.

The record reflects that the petitioner has established its ability to pay the beneficiary's proffered wage from September 1, 2006 onward. However, even if the claimed successor-in-interest relationship had been established by independent, objective evidence the petitioner has not demonstrated the claimed predecessor's ability to pay the difference between the proffered wage and the wages paid to the beneficiary from December 23, 2005 through September 1, 2006. Therefore, the petitioner has not established the ability to pay the beneficiary's proffered wage as of the priority date.

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. The petitioner has not met that burden. The previous decision of the AAO will be affirmed.

ORDER: The motion to reconsider is granted, and the decision of the AAO dated September 25, 2012 is affirmed. The petition remains denied.