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 2 4 2013 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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

As set forth in the director's September 30, 2010 denial, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

The regulation 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 ETA Form 9089, Application for Permanent 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 ETA Form 9089, Application for Permanent 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 ETA Form 9089 was accepted on November 14, 2007. The proffered wage as stated on the ETA Form 9089 is $24,045 per year. The ETA Form 9089 states that the position requires 24 months experience in the job offered of specialty cook.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 2005 and to currently employ four workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the ETA Form 9089, signed by the beneficiary on November 24, 2009, the beneficiary claimed to have worked for the petitioner since September 15, 2005.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes 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'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2007 or subsequently.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10,

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

2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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

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

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

The record before the director closed on September 3, 2010 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2010 federal income tax return was not yet due. Therefore, the petitioner's income tax

return for 2009 was the most recent return available. On appeal, the petitioner has submitted its income tax returns for 2010 and 2011. The petitioner's tax returns demonstrate its net income for 2007 through 2011, as shown in the table below.

- In 2007, the Form 1120S stated net income[2] of $26,434.
- In 2008, the Form 1120S stated net income of $19,175.
- In 2009, the Form 1120S stated net income of $25,509.
- In 2010, the Form 1120S stated net income of $28,676.
- In 2011, the Form 1120S stated net income of $30,505.

Therefore, for the year 2008, the petitioner did not have sufficient net income to pay the proffered wage.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[3] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for *, as shown in the table below.

- In 2008, the Form 1120S stated net current assets of $7,611.

Therefore, for the year 2008, the petitioner did not have sufficient net current assets to pay the proffered wage.

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[2] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 18 (2006-2011) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed May 29, 2013) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional other adjustments shown on its Schedule K for 2007, the petitioner's net income is found on Schedule K of its 2007 tax return tax returns.

[3] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Therefore, from the date the ETA Form 9089 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel contends that the petitioner's net income should be combined with its net current assets to demonstrate the petitioner's ability to pay the proffered wage. Net income and net current assets are not, in the view of the AAO, cumulative. The AAO views net income and net current assets as two different methods of demonstrating the petitioner's ability to pay the wage--one retrospective and one prospective. Net income is retrospective in nature because it represents the sum of income remaining after all expenses were paid over the course of the previous tax year. Conversely, the net current assets figure is a prospective "snapshot" of the net total of petitioner's assets that will become cash within a relatively short period of time minus those expenses that will come due within that same period of time. Thus, the petitioner is expected to receive roughly one-twelfth of its net current assets during each month of the coming year. Given that net income is retrospective and net current assets are prospective in nature, the AAO does not agree with counsel that the two figures can be combined in a meaningful way to illustrate the petitioner's ability to pay the proffered wage during a single tax year. Moreover, combining the net income and net current assets could double-count certain figures, such as cash on hand and, in the case of a taxpayer who reports taxes pursuant to accrual convention, accounts receivable.

Counsel also asserts that the restaurant industry "was in turmoil" in 2008. In support of this claim, the petitioner submits a copy of a graph prepared by the National Restaurant Association (NRA) charting sales growth for the restaurant industry since 1971.[4] The record of proceeding contains no evidence specifically connecting the petitioner's business decline to the recession in 2008, not even a statement from the petitioner showing a loss or claiming difficulty in doing business specifically because of the recession. A broad statement by counsel that, because the restaurant industry as a whole was in turmoil in 2008, the petitioner's business was impacted adversely cannot, by itself, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Rather, such a general statement merely suggests, without supporting evidence, that the petitioner's financial status might have appeared stronger had it not been for the events of 2008. The AAO also notes that the petitioner's tax returns suggest that gross receipts increased in 2008 to $585,854 from $517,909 in 2007, an increase of approximately 13%.

Counsel contends that the Service recognizes that companies will operate at a loss in the short term to improve their business in the long term. In support of this contention, counsel relies on the Adjudicator's Field Manual (AFM), Chapter 22.2(c). The chapter of the AFM relied upon by counsel instructs adjudicators to take into account that companies sometimes operate at a loss to improve their business position in the long run. According to the AFM, an example of this would be research and development costs on a product line that is not expected to generate revenue for several years. In these cases, the memo instructs that sufficient documentation should be included in the record of proceeding which fully explains the sources of funding and the expected profit potential. The AFM

[4] The AAO notes that graph states that growth rates for 2008 to 2010 are estimated.

states that adjudicators should examine the specific facts presented. Additionally, the AFM instructs that in the case of large, well-known corporations or other entities such as universities that have established records of filing petitions with USCIS, the financial information on the petition is usually sufficient.

In this case, the petitioner has not presented any documentation to show that it is temporarily operating at a loss to increase its profits in the future due to investment in an area such as research and development or another area which will increase profits in the future. Counsel argues that the decrease in net income for 2008 was due to an increase in food cost and in labor costs. This, in turn, according to counsel, decreased gross margins from 57% in 2007 to 54% in 2008. The petitioner also submits a letter from its accountant, dated February 27, 2012 to support counsel's assertions. The petitioner's business is a restaurant. Food and labor cost is a regular part of the petitioner's business. There is nothing in the record to support a finding that the increase in food cost or labor cost was a one-time, unforeseen expense or that the petitioner is operating at a short-term loss due to investment, such as research and development or another area that will improve its profitability in the future. Additionally, the petitioner has not shown that it is a well-known corporation or other entity with a history of filing petitions with USCIS. Furthermore, the petitioner has not fully documented any source of funding and the expected profit potential for the company. 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).

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the ETA Form 9089 was accepted for processing by the DOL.

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

beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

Counsel states that the petitioner "remains one of the premier sushi restaurants in Atlanta." In support of this statement, the petitioner submits copies of a printout from Citysearch.com showing that the petitioner was voted "best of Citysearch" for Citysearch describes itself as follows:

> "For the last 16 years, you've come to rely on Citysearch.com as the site with thorough local business listings and user reviews. Now, we're taking the concept of being the trusted source for experiencing your city a step further by focusing on what we call 'recommendations, not reviews.'"[5]

Citysearch.com contains business listings and user reviews as well as Citysearch "scout" reviews. There is nothing in the record to support industry recognition or a sound reputation. Additionally, there is nothing in the record to support an increase in profits such as that in *Sonegawa* as a result of the petitioner's business reputation or awards or recognition since 2007. Despite the "Best of Citysearch" recognition in the petitioner did not show the ability to pay the proffered wage in 2008. Moreover, the petitioner has not demonstrated any awards, recognition, or reviews other than the "Best of Citysearch" recognition since The record of proceeding fails to demonstrate how the petitioner's reputation has increased or has the potential to increase its profits.

Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

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

Beyond the decision of the director,[6] the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d

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[5] *See* http://www.citysearch.com/aboutcitysearch/about_us

[6] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires 24 months experience. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a cook.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The petitioner submitted an experience letter from , a manager at with the instant petition. In a request for evidence (RFE) dated January 31, 2013, the AAO noted that the beneficiary's supervisor as listed on the labor certification was The AAO also noted that shares the same address as the beneficiary and the same last name as the beneficiary's wife. The AAO requested experience letters regarding the beneficiary's past employment in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(A). The AAO also requested independent, objective evidence of the beneficiary's experience with such as payroll records or Forms W-2 to resolve the inconsistencies in the record.

The petitioner responded to the AAO's RFE on March 13, 2013. In response to the AAO's RFE, the petitioner submits the following evidence in support of the beneficiary's experience: an affidavit from the petitioner's sole shareholder stating that she was a waitress at Restaurant and confirming the beneficiary's employment with the restaurant; an affidavit from stating that she was the head waitress and a floor manager at Restaurant; an affidavit from , the beneficiary's former supervisor, confirming the beneficiary's employment at and an affidavit from , former supervisor of

The affidavits submitted in response to the AAO's RFE from the petitioner's sole shareholder and do not comply with the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). Experience letters must be written by a trainer or the employer. The petitioner's sole shareholder states that she was a waitress at during the period February 1, 2002 to December 20, 2004. There is nothing in the record to indicate that she was the beneficiary's supervisor or that she had first-hand knowledge of the beneficiary's employment and experience, as a specialty cook. This letter also does not describe the beneficiary's duties in detail.

Likewise, the affidavit from confirming the beneficiary's employment at does not comply with the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). There is nothing in the record to indicate that had first-hand knowledge of the beneficiary's job duties, hours, and dates of employment, or that was the beneficiary's supervisor. A detailed description of the beneficiary's job duties was also not provided.

Additionally, in response to the AAO's RFE, the petitioner submits an affidavit from who

states that he was the former supervisor at [redacted]. The AAO notes that the beneficiary's supervisor at [redacted] was listed as "[redacted]" on the labor certification. In the affidavit, [redacted] states that his name was misspelled on the labor certification. The fact that the original letter submitted to document the beneficiary's experience at [redacted] was "the Manager," that the affidavit from [redacted] states that she was a "head waitress and floor manager," and that the affidavit from [redacted] states that he was "the Supervisor" raises doubts as to who actually supervised and managed the beneficiary's work. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* At 592.

Furthermore, in the AAO's RFE, the petitioner was asked to reconcile the inconsistencies in the record regarding the beneficiary's prior employment experience with [redacted] by submitting independent, objective evidence in the form of payroll records or Forms W-2. In its RFE, the AAO informed the petitioner that 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). However, the petitioner failed to provide additional supporting documentation of the beneficiary's employment with [redacted] as requested, including copies of payroll records or Forms W-2 issued to the beneficiary. No explanation is given as to why these documents are not available. Since the petitioner failed to submit requested evidence that precludes a material line of inquiry, the petition will be denied for this reason pursuant to 8 C.F.R. § 103.2(b)(14).

In response to the AAO's RFE, the petitioner also submits an affidavit from [redacted] the beneficiary's former supervisor at [redacted] which states that the beneficiary worked full-time as a cook from January 10, 1997 to June 1, 2000 "planning menus and cooking Japanese and Korean style food." While this letter documents more than the required 24 months of experience, the fact that the inconsistencies in the beneficiary's employment experience were not reconciled with independent, objective evidence casts doubt over the reliability over the record. The AAO notes that the affidavits of the petitioner's sole shareholder, [redacted] all use the same language to describe the beneficiary's duties: "…working 40 hours per week, planning menus and cooking Japanese and Korean style food." 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the

benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.