(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: MAY 2 2 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Nebraska Service Center, and the approval was subsequently revoked. The revocation is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-140 the petitioner describes itself as a tax and accounting business. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that a bona fide job offer existed or that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director revoked 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.

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]

As set forth in the director's revocation, an issue in this case is whether or not the petition is supported by a bona fide job offer.

Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, and that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000).

Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401 (Comm'r 1986), discussed a beneficiary's 50% ownership of the petitioning entity. The decision quoted an advisory opinion from the Chief of DOL's Division of Foreign Labor Certification as follows:

> The regulations require a 'job opportunity' to be 'clearly open.' Requiring the job opportunity to be bona fide adds no substance to the regulations, but simply clarifies that the job must truly exist and not merely exist on paper. The administrative interpretation thus advances the purpose of regulation 656.20(c)(8). Likewise requiring the job opportunity to be bona fide clarifies that a true opening must exist,

[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).

> and not merely the functional equivalent of self-employment. Thus, the administrative construction advances the purpose of regulations 656.20.

Id. at 405. Accordingly, where the beneficiary named in an alien labor certification application has a very close connection to the petitioning entity, the petitioner must establish that the job is *bona fide*, and clearly open to U.S. workers. *See Keyjoy Trading Co.*, 1987-INA-592 (BALCA Dec. 15, 1987) (*en banc*).

In the instant case, the director discovered that the beneficiary is the petitioner's owner's sister-in-law. According to the petition and the application for labor certification, the beneficiary was to be employed full-time as an accountant. According to the petition, the petitioning business employed two people. The director issued a Notice of Intent to Revoke (NOIR) to the petitioner, informing it that the proffered job did not appear to be bona fide. The director noted that the petitioner had filed an additional petition for a full-time accountant. The other petition was on behalf of the petitioner's owner's sister. The director informed the petitioner that it must provide evidence that the proffered job was bona fide. To do this, the petitioner must explain that a legitimate attempt to recruit United States workers was conducted; that the DOL's granting of labor certification was provident (e.g. that DOL knew of the close familial relationship and determined that insufficient United States workers were available); and, that there was actual full-time employment for the beneficiary.

Recruitment

The labor certification requires an accountant with a four-year bachelor's degree. Consequently, the petition is for a professional. *See* 8 U.S.C. § 1153(b)(3). According to 20 C.F.R. § 656.17(e)(1)(i) (2001), employers recruiting for a professional position must, *inter alia,* place an advertisement on two different Sundays in the newspaper of general circulation in the area of intended employment.

The record contains a letter from the petitioner to the California Employment Development Department (EDD), which states "...please find the job opening that we have posted again on our premises for ten consecutive days, from and have been unsuccessful in locating a willing qualified and able applicant that can fill the opening of an Accountant." The record also contains an undated and unsigned letter from the petitioner to EDD which alleges that it placed advertisements for the proffered job in the Daily News from " The petitioner also alleged that it placed ads "in the internet." Although the petitioner states in that letter that it attached copies of the ads, none were included. The two letters to the EDD describe inconsistent recruitment methods. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record contains no other evidence of recruitment. Thus, the record does not contain any evidence which shows that it complied with the regulations and conducted a legitimate test of the labor market by advertising in a newspaper of general circulation in the area of intended employment. The director specifically requested such evidence in his NOIR, but the petitioner did

not provide the requested evidence. Nor does the petitioner provide this evidence on appeal. The petitioner has not established that it actually made an attempt to recruit United States workers.

Disclosure of Relationship

The director also found that the petitioner failed to disclose the close familial relationship to either EDD or DOL. Counsel on appeal states that the petitioner did not attempt to mislead either of these governmental bodies. Rather, counsel asserts that the petition and accompanying paperwork were filled out in "good faith" with no attempt to mislead or conceal the relationship.

The record contains an undated and unsigned letter from the petitioner to EDD, requesting Reduction in Recruitment. The letter states that the petitioner interviewed the beneficiary "who appeared to possess the education that I require to fill the position of an Accountant…Based on her qualifications, I then petitioned her under H-1 status so that she could work for my business…" The tenor of the letter leads the reader to believe that the petitioner had no prior knowledge of the beneficiary, and had no contacts outside of the professional realm. Nothing in this letter would inform the readers that a close familial relationship existed between the petitioner and the beneficiary. Indeed, it is more likely, based on the wording of the letter that the petitioner attempted to conceal the relationship. In fact, the name on the letter is Managing Director of the petitioner, and not the petitioner's president and beneficiary's sister-in-law.[2] The petitioner has not established that it disclosed the relationship to the DOL prior to receiving a labor certification. Consequently, this renders DOL's certification unreliable, and the petitioner has not shown that a valid labor market test was conducted and that an insufficient number of qualified United States workers are available.

Full-time Employment

As noted above, the proffered job must exist in reality and cannot be a job on paper only. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm'r 1986). The need for the employee must be established by the petitioner, and must exist from the priority date until the beneficiary adjusts status.

The petition is for a full-time accountant. The petitioner's letter to EDD states "I have come to realize that it is cost effective for my business to have an Accountant work for me on a full-time and permanent basis so that I can concentrate in the public relations of the business." The letter leads the reader to believe that one accountant is necessary for the petitioner's business. The letter makes no mention of the fact that the petitioner already petitioned for a full-time accountant. The petitioner does not articulate why a second accountant is necessary, or why a company with two employees needed to double in size. The petitioner did not provide evidence that it had acquired new clients, or

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[2] The director noted in the revocation that the authenticity of this letter was in question, as it is unsigned and undated and also includes a flaw in the letterhead identical to another letter in the record. The petitioner failed to address the authenticity of the letter on appeal. *See Matter of Ho, supra.*

significantly increased business that would necessitate hiring two employees for the full-time position of accoutant.

Indeed, no mention of a second accountant is made. The petitioner likewise failed to mention that the other accountant was the petitioner's owner's sister. Thus, the petitioner filed two petitions for full-time accountants seeking to hire two family members without showing a need for either accountant. Based on the above, the petitioner failed to establish an actual need for two accountants at the time the labor certification was filed.

The petitioner states in a letter that it wished to make a change in business operations and hire *a* full time accountant. However, the petitioner did not mention that it had already committed to hire and pay the beneficiary to work full-time as an accountant when it filed an earlier H-1B nonimmigrant petition. The petitioner's assertion that it needed a full-time accountant is inconsistent with the fact that it did not employ and pay the beneficiary on a full-time basis when she was in an H-1B status.

Furthermore, investigators from the Department of Homeland Security (DHS) interviewed the petitioner in 2009. The petitioner's owner stated that she had to terminate the beneficiary due to financial difficulties in 2006. From that date, the petitioner stated she did most of her own accounting work, and used a part-time accountant. The petitioner at present is not utilizing the beneficiary's services as an accountant, and neither does it appear to be using the full-time services of the petitioner's owner's sister whom it petitioned to be an accountant. The petitioner has not established that it has maintained a bona fide need for a full-time accountant from the priority date onward. Much less has the petitioner established that it needed two accountants at the priority date.

The petitioner has the burden of establishing that a bona fide job offer exists. It has not done so in this case. Consequently, the appeal must be dismissed, and the petition's approval must remain revoked.

Ability to Pay the Proffered Wage

Furthermore, the director found that the petitioner failed to establish that it possessed the continued ability to pay the proffered wage. 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 12, 2001. The proffered wage as stated on the Form ETA 750 is $29.18 per hour ($60,694.40 per year based on a forty-hour work week).

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 1998 and to currently employ three workers. 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 February 26, 2001, the beneficiary claimed to have worked for the petitioner since February 2000.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to 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 employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2001 or subsequently. The record does, however, include Forms W-2 issued by the petitioner to the beneficiary in 2001 through 2004, evidencing that the petitioner paid the beneficiary, as shown in the table below.

Year	Wages Paid
2001	$23,788.80

2002	$24,297.60
2003	$28,540.23
2004	$31,299.34

The record also includes Forms W-2 issued to the beneficiary by (a claimed successor-in-interest to the petitioner) in 2005 and 2006, as shown in the table below.

Year	Wages Paid
2005	$36,880.00
2006	$27,196.08

Therefore, neither the petitioner nor its claimed successor paid the beneficiary the full proffered wage from the priority date in 2001 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, 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).

The petitioner filed the instant appeal on August 31, 2009, and indicated it would submit supporting documentation within 30 days. The petitioner's appellate brief and additional evidence was received on September 29, 2009. The petitioner's income tax return for 2007 is the most recent return in the record. As noted above, the petitioner filed an additional petition for an accountant with a priority date of April 30, 2001.[3] Accordingly, the petitioner must establish that it has had the continuing ability

[3] USCIS records reflect that the proffered wage for that petition was $30.66 per hour, or $63,772.80 per year based on a forty-hour work week.

to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). The combined proffered wages for the two petitions is $124,467.24 per year. The petitioner was required to show the continued ability to pay that amount until the first beneficiary adjusted status in 2004. Thus, the petitioner must show that it possessed the net income or net income added to wages paid to the beneficiaries to equal the proffered wage.

The director noted in his revocation that the petitioner had failed to established the ability to pay the proffered wage for the two beneficiaries in 2001, 2004, and 2006. Notably, the director found that the federal income tax returns for 2004 submitted with the instant petition were not the same as the tax returns for that same year submitted by the petitioner in support of the other petition. Such discrepancies call into question the reliability of all the evidence in the record of proceeding. *See Matter of Ho, supra.* The director informed the petitioner that it must provide evidence that established what its actual tax returns showed. The petitioner failed to explain this discrepancy.

Below, the petitioner's net income and wages paid are displayed.

Year	Net Income[4]	Wages Paid to Beneficiaries
2001	$93,119.00	$17,841.60
2004	$306,022.00	$48,129.34
2006	-$343,967.00	NA

Therefore, for the years 2001 and 2006, the petitioner did not establish it possessed sufficient net income to pay the proffered wages.

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.[5] A corporation's year-end current assets are shown

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[4] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed May 14, 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 deductions shown on its Schedule K for 2001, the petitioner's net income is found on Schedule K of its tax return.

[5] 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.

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 2001 and 2006, as shown in the table below.

- In 2001, the Form 1120S stated net current assets of $70,646.
- In 2006, the Form 1120S stated net current assets of $185,987.

Therefore, in 2001, the petitioner did not have sufficient net current assets to pay the proffered wages.

Therefore, from the date the Form ETA 750 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.

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

In the instant case, the petitioner conceded that its financial struggle prevented it from employing the beneficiary. The petitioner's tax returns, to the extent they can be relied upon, show erratic performance over several years. Nothing was provided which shows that the beneficiary has a strong reputation in the industry. 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.

Beneficiary's Experience

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)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires two years of experience in the proffered job as an accountant. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as an accountant with [redacted] in the Philippines, from May 1992 to November 1998; and, with the petitioner from February 2000 through "present" (the document was signed on February 26, 2001).

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter from [redacted] which states the beneficiary was employed from January 1992 to October 1998. We note that these dates are inconsistent with the dates claimed on the application for labor certification. The petitioner has not provided independent evidence to establish where the truth lies. Consequently, the evidence is unreliable. *See Matter of Ho, supra.*

Furthermore, the letter from [redacted] fails to comply with the regulations in that it does not describe the beneficiary's experience. It merely states that [redacted] has shown the utmost interest in his [sic] position as Accountant. She is responsible and trustworthy, a truly dedicated staff member thru

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[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).

out her stay with ' Nothing in this letter corroborates the petitioner's assertion that the beneficiary is qualified for the proffered job. No details of training or experience were provided, and an interest in accounting is not enough to satisfy the requirements for the proffered job.

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.