(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

[redacted]

Date: MAY 30 2013 Office: NEBRASKA SERVICE CENTER File: [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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Director, Nebraska Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a franchise. It seeks to employ the beneficiary permanently in the United States as a baker. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL).[1] The director determined that the petitioner did not submit the requisite evidence to show that it had the ability to pay the proffered wage or that the beneficiary possessed the education and experience required by the terms of the labor certification. 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 January 13, 2010 denial, the issues in this case are whether the petitioner submitted evidence of its ability to pay the proffered wage and whether the beneficiary had the education and experience required by the terms of the labor certification on the priority date.

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

With regard to the petitioner's ability to pay the proffered wage, 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

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[1] The petitioner submitted two Forms I-140 for the beneficiary relying on the same ETA 750. The first petition was submitted on February 21, 2008 resulting in a decision dated January 21, 2009 denying the petition for the petitioner's failure to submit the required initial evidence. The second Form I-140 was filed March 6, 2009 and is the basis for the instant appeal.

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

> 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 April 26, 2001. The proffered wage as stated on the Form ETA 750 is $550 per week ($28,600 per year).

The evidence in the record shows that the petitioner was structured as a C corporation in 2001 and elected to be an S corporation in 2002. On the petition, the petitioner stated it was established on March 15, 1993 and currently employs 12 workers. On the Form ETA 750B, signed by the beneficiary on April 25, 2001, the beneficiary stated that he began working for the petitioner in May 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. The petitioner submitted Internal Revenue Service (IRS) Forms W-2 for the beneficiary for 2001, 2002, 2003, 2007, 2008, and 2009.

Nevertheless, these IRS Forms W-2 may not be accepted as evidence of the petitioner's ability to pay the prevailing wage. The petitioner filed the Form I-140 petition identifying itself as ' ' with a Federal Employer Identification Number (FEIN) of The AAO notes that the petitioner's previous Form I-140 petition identified the same name and FEIN. The IRS Forms W-2 were issued to the beneficiary by a different corporate entity with a different FEIN. FEIN . The petitioner also submitted a 2000 IRS Form W-2 from d/b/a FEIN that indicates payment of wages to the beneficiary in 2002. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." As the petitioner has not established any relationship with or explained why it would have two distinct FEINs, the payments to the beneficiary reflected on the IRS Forms W-2 may not be considered as evidence of the petitioner's ability to pay the proffered wage.

Furthermore, as the director noted in his decision, the addresses provided for the beneficiary on the IRS Forms W-2 conflict with information provided by the beneficiary elsewhere. Specifically, the beneficiary provided a Form G-325A, signed June 11, 2007, with his Form I-485, Application to Register Permanent Residence or Adjust Status, that stated his residences for the previous five years as: 2002 to 2003, South Chicago Heights, IL; February 2003 to the date of signing, Brookfield, IL. The addresses listed on the Forms W-2 issued by the petitioner were Brookfield, IL (2001, 2002, and 2003) and Willowbrook, IL (2007, 2008, and 2009). "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

On appeal, counsel stated that "the Chicago Heights and the Brookfield address were used interchangeably throughout 2001 to 2006 . . . [the beneficiary] continued receiving mail and other correspondence at the Chicago Heights address, as the Unit was occupied by relatives of his." Counsel stated that the beneficiary lived at the Chicago Heights address first and continued receiving mail there, but none of the Forms W-2 have the Chicago Heights address and instead demonstrate that the beneficiary was receiving mail at the Brookfield address two years before he moved there. In any event, 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). The petitioner presented no evidence to show where the beneficiary was residing or receiving mail or that any of his addresses were occupied by relatives, such as with lease agreements, utility bills, or other documents establishing residence. Also, as the director noted, the address provided by the beneficiary on his tax return transcript for 2005 was the Chicago Heights address when he represented that he was residing at the Brookfield address at that time. The petitioner also submitted multiple IRS Forms W-2 for 2007

with varying addresses: one sent to the Chicago Heights address and others sent to the Tennessee Drive address and the Forms I-140 submitted in 2008 and 2009 contained the Brookfield address, not the Willowbrook address. Because of the discrepancies in the record, the AAO is unable to accept the Forms W-2 as evidence that the petitioner paid the beneficiary any wages during the relevant time period.[3]

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, 881 (E.D. Mich. 2010). 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

[3] Furthermore, the record contains multiple IRS Form W-2s in 2007 showing that the beneficiary was employed by five different employers: [redacted] paid the beneficiary $1,953.75, [redacted] paid the beneficiary $8,100; [redacted] paid the beneficiary $9,144; and [redacted] paid the beneficiary $20,239. The Forms W-2 for 2008 show that the beneficiary received $3,948.75 from [redacted]; $3,512 from [redacted] $5,448 from [redacted] and $2,700 from [redacted]

> 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, 558 F.3d 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,* 719 F.Supp. at 537 (emphasis added).

The record before the director closed on October 23, 2009 with the receipt by the director of the petitioner's submission in response to the Request for Evidence (RFE). As of that date, the most current tax return available was the petitioner's 2008 federal tax return. The petitioner submitted the following tax returns:

- In 2001, the Form 1120[4] stated net income of $44,752.
- In 2002, the Form 1120S stated net income[5] of $2,775.
- In 2003, the Form 1120S stated net income of $48,256.
- In 2004, the Form 1120S stated net income of $81,744.
- In 2005, the Form 1120S stated net income of $120,584.
- In 2006, the Form 1120S stated net income of $203,866.
- In 2007, the Form 1120S stated net income of $62,953.
- In 2008, the Form 1120S stated net income of $112,544

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[4] For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return.

[5] 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 (2002-2003), line 17e (2004-2005), or line 18 (2006-2008) of Schedule K. *See* Instructions for Form 1120S, 2008, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed July 11, 2011) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional adjustments shown on its Schedule K for all of the years at issue, the petitioner's net income is found on Schedule K for all years.

As mentioned previously, the petitioner's FEIN on the Form I-140 petition does not match the FEIN on the tax returns listed above. 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. at 591-92. Thus, these returns will not be accepted as evidence of the petitioner's ability to pay the proffered wage.

Even were the AAO to accept this evidence, however, the record does not establish that the petitioner had the ability to pay the proffered wage. For the years 2001, 2003, 2004, 2005, 2006, 2007, and 2008, the petitioner had sufficient net income to pay the proffered wage to the instant beneficiary. For 2002, the petitioner did not have sufficient net income to pay the proffered wage to the instant beneficiary. Furthermore, USCIS electronic records show that the petitioner filed one other Form I-140 petition which has been pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). The other petition was submitted by the petitioner on August 16, 2007. It has a priority date of January 21, 2005 and was approved on January 21, 2009. The record in the instant case contains no information about the proffered wage for the beneficiary of that petition, about the current immigration status of the beneficiary, whether the beneficiary has withdrawn from the visa petition process, or whether the petitioner has withdrawn its job offer to the beneficiary. The record in the instant petition fails to establish the petitioner's ability to pay the proffered wage to the single beneficiary of the instant petition in 2002, based on its net income, and further, it is unclear whether the petitioner's net income is sufficient to establish the petitioner's ability to pay the proffered wage to the beneficiary of the other petition filed by the petitioner from its priority date in 2005 to 2008.

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.[6] 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

[6] 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.

proffered wage using those net current assets. The tax returns of reflect the following net current assets:

- In 2002, the Form 1120S stated net current assets of $12,299.
- In 2005, the Form 1120S stated net current assets of -$1,048.
- In 2006, the Form 1120S stated net current assets of $50,797.
- In 2007, the Form 1120S stated net current assets of $4,526.
- In 2008, the Form 1120S stated net current assets of $33,642.

As stated above, the petitioner must provide evidence of its ability to pay the proffered wage to the instant beneficiary and to the other sponsored worker from each priority date onward. The net current assets in 2002, 2005, and 2007 are all less than the proffered wage to the instant beneficiary. Further, it is unclear whether the net current assets of are sufficient to establish the petitioner's ability to pay the proffered wage to the instant beneficiary and the beneficiary of the other petition filed by the petitioner in 2006 and 2008.

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 beneficiaries of both of its pending petitions the proffered wage as of the priority date of each petition through an examination of wages paid to the beneficiary, or its net income or net current assets. If the tax returns of were considered, the returns would show the ability to pay the proffered wage using net current assets in 2001, 2003, and 2004.

The petitioner submitted a 2002 audit of its balance sheet. The regulation at 8 C.F.R. § 204.5(g)(2) states that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance whether the financial statements of the business are free of material misstatements. The accountant's report that accompanied those financial statements makes clear that they are audited statements. The balance sheet notes net income of $72,203 and net current assets of $12,299. The accountant has not charged depreciation and amortization in the petitioner's net income calculation. Therefore, the petitioner is attempting to add depreciation back to the net income shown on its tax returns for 2002. As stated previously, the AAO will not add depreciation back to net income. *See River Street Donuts,* 558 F.3d at 118. Thus, figure for net income stated on its 2002 tax return was utilized in determining the petitioner's ability to pay the proffered wage in 2002.

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 has been in business since 1993 but has not established historical growth since its incorporation. The financial documents submitted were for a company other than the petitioner, and the petitioner did not establish any sort of qualifying relationship with Om Namah, Inc. so that those records could be considered. In addition, the petitioner submitted no evidence about the proffered wage for its other sponsored worker, so the AAO is unable to determine whether the petitioner had the ability to pay the proffered wage to that worker from the priority date of that petition in 2005 to 2008. The petitioner submitted no evidence as to its reputation or any evidence showing that one year was off or otherwise not representative of the petitioner's overall financial picture. Also, the IRS Forms W-2 submitted contained conflicting information about the beneficiary's address when compared to documents submitted in support of the petition, so the AAO is unable to consider them as evidence of the petitioner's ability to pay the wage. 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.

Regarding the beneficiary's qualifications for the position, the petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its labor certification application, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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 Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, 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).

The Form ETA 750 requires eight years of grade school,[7] three years of high school, and two years of experience as a baker with the following specific job description:

> Mixing, forming and frying dough to produce doughnuts according to work order. Glaze doughnuts using hand dipper, roll dough with rolling pin and form doughnuts with hand cutter. Lower wire tray of uncooked doughnuts into fryer, using hooks. Tend automatic equipment that mixes, cuts and fries doughnuts, weigh cut dough and fried doughnuts to verify weight specifications. Adjust controls of equipment accordingly.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. The Form ETA 750B states that the beneficiary attended from September 1985 to June 1992, and that he attended from September 1992 to June 1996. It also states that the beneficiary worked at in Portage, Michigan from April 1998 to May 2000, and that he worked at in Brookfield, Illinois from May 2000 to the date he signed the Form ETA 750B on April 25, 2001.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
> >
> > (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Regarding the beneficiary's education, in response to the director's RFE, the petitioner submitted a Leaving Certificate from stating that the beneficiary attended its school from June 15, 1993 to February 27, 1997[8] and a Leaving Certificate from

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[7] The petitioner provided a School Leaving Certificate issued by the Committee indicating that the beneficiary attended seven years of primary school at from July 7, 1986 to May 31, 1993.

[8] The handwritten certificate from references the Pupil's General Register Number of

Secondary stating that the beneficiary attended the school from June 15, 1995 to April 9, 1996. In the director's decision, he noted that the Leaving Certificates submitted were handwritten and difficult to read and that the information contained therein conflicted with the information provided by the beneficiary on Form ETA 750B.

On appeal, the petitioner submits a School Leaving Certificate stating that the beneficiary attended from June 15, 1993 to May 29, 1995,[9] a Leaving Certificate from stating the beneficiary attended the school from June 15, 1995 to April 9, 1996, and a Leaving Certificate from stating that the beneficiary attended from July 22, 1996 to April 8, 1997. However, entries on the beneficiary's Form I-485 and prior and current Form I-140 state that he entered the United States in July 1996. As stated above, "it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. at 591-592. On appeal, the beneficiary submits an affidavit dated February 9, 2010 stating that "the reference to July 1996 as the date of [his] entry into the United States on [the Form I-485] is a typographical mistake." The beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his prior education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The affidavit also fails to address the entries on both Forms I-140 filed on the beneficiary's behalf indicating that he entered the United States in July 1996.

Further, the information submitted on appeal conflicts both with the information provided by the beneficiary on the Form ETA 750B and the documents submitted in response to the director's RFE. The petitioner has not resolved the inconsistencies in the record with independent, objective evidence and, therefore, the petitioner has not established that the beneficiary has the required education for the proffered position.

As to the beneficiary's experience, with the original submission, the beneficiary submitted a June 15, 2000 letter from stating that the beneficiary worked at the in Portage, Michigan from April 4, 1998 to May 15, 2000. The director issued an RFE requesting additional documentation to verify the beneficiary's claimed experience requesting:

1. Another letter or notarized attestation from the beneficiary's former employer giving the name, address, telephone number, title of the employer and a description

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[9] The typewritten certificate from references the Pupil's General Register Number of It is unclear why the two certificates from list different pupil numbers and different leaving dates. Doubt cast on any aspect of the petitioner's proof 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. at 591.

of the experience of the beneficiary, including specific dates of the employment, specific duties, and hours worked per week.
2. Submit corroborating evidence that the beneficiary worked at the location indicated in the job experience letter submitted with the petition.
3. Submit corroborating evidence that the beneficiary lived in the community indicated in the job experience letter submitted with the petition.

In response, the petitioner submitted the same June 15, 2000 letter from as well as a letter dated October 16, 2009, from the beneficiary regarding his claimed work in Portage, Michigan.[10] The director's decision specifically noted the petitioner's failure to submit the evidence requested in the RFE. On appeal, the petitioner submits an affidavit from stating that he used to own a franchise in Portage, Michigan that closed in October 2000 and that the beneficiary worked for that franchise from April 4, 1998 to May 15, 2000 full-time. The petitioner submitted no evidence verifying that the beneficiary lived in or around Portage, Michigan so as to corroborate the letter from The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the affidavit from submitted on appeal. Therefore, the petitioner has not established that the beneficiary has the required two years of experience in the job offered. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered 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.

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[10] The beneficiary's letter is self-serving and does not provide independent, objective evidence of his prior work experience. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(noting that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).