(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 30 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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 Director, Nebraska Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion to reopen the petition will be granted. Upon review of the matter, the AAO's prior decision (May 13, 2010) is affirmed. The petition remains denied.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook (Indian-style cuisine). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the United States Department of Labor (DOL). The director determined that the petitioner 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.

Beyond the decision of the director, the AAO further denied the petition on appeal on the grounds that the petitioner failed to sufficiently establish that the beneficiary is qualified for the position offered.

The record shows that the motion to reopen is properly filed. 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 regulation at 8 C.F.R § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner has stated new facts in his motion which are supported by documentary evidence. The motion to reopen will be granted and the matter, therefore, will be reviewed.

Counsel states that the proffered wage is $12.00 per hour ($24,960 annually); and asserts all of the following: the initial beneficiary and the substituted beneficiary (beneficiary) have been paid wages from 2001 to present which counsel asserts should be considered; from 2006 the wage amount for the initial beneficiary listed on the labor certification and the beneficiary exceeded the proffered wage, and this is prima facie proof that that the petitioner can pay the proffered wage; the petitioner has suffered losses due to the September 11 terrorist attacks in 2001; the petitioner has overcome the losses from the September 11 attacks as the income was $25,648 in 2006 and $43,582 in 2008; the total assets of the business have increased though the years; the difference between the actual wages paid and the proffered wage can be made up by the net current assets; the petitioner's owner's personal assets and liabilities should be considered when the petitioner is a sole proprietor or in a partnership; the Form I-140 should be approved based on the totality of the circumstances; and the beneficiary is qualified for the position offered.

Sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii), provide 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 and qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the 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 23, 2001. The proffered wage as stated on the Form ETA 750 is $12.00 per hour ($24,960 per year).

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 petitioner submitted tax returns for an S corporation. On the petition, the petitioner claimed to have been established in May 1996 and to currently employ 21 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 September 29, 2005, the beneficiary claimed to have worked for the petitioner from April 2004 until the present.

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[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).

The petitioner's name on the Form ETA 750 and Form I-140 is The tax identification number on the Form I-140 is The petitioner sent tax returns for with a tax identification number of According to Illinois state corporation records, is an assumed name for As mentioned, the petitioner's name is listed as on the Form I-140 and Form ETA 750. However, the owner's tax returns show as a separate entity with a separate tax identification number than the entity that submitted tax returns for Illinois corporation records also reflect a second separate entity with this name. This issue must be resolved before the tax returns submitted for can be properly accepted.

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).

The petitioner must establish ability to pay from the priority date onwards.

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 they employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of ability to pay the proffered wage. The record does not include evidence that the petitioner paid the beneficiary the full proffered wage from the priority date on April 23, 2001 until the present. The beneficiary states on his Form ETA 750 that he began employment with the petitioner in April 2004. The record does not include evidence of any wages paid to the beneficiary in 2004 or 2005. The beneficiary's 2006 Form W-2 reflects wages of $13,520.[2] The beneficiary's 2007 Form W-2 reflects wages of $24,960. The beneficiary's 2008 Form W-2 reflects wages of $24,960. Counsel asserts that the beneficiary's wages were $42,266 in 2009. The record does not include supporting documentary

[2] Similarly, the AAO notes that the tax identification number is for and the petitioner must resolve the issue related to the separate registration before the statements can be properly accepted to show the petitioner, ability to pay the proffered wage. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states, "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."

evidence of the beneficiary's wages for 2009, and from 2010 onwards. 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).

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).

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.
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> 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 April 24, 2006 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 2006 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2005 was the most recent return available. However, subsequent to the director's decision, the petitioner has submitted its 2006, 2007 and 2008 federal income tax returns. Here, again, the AAO notes that the tax returns submitted were for what appears to be a valid corporation with a d/b/a, however, the petitioner must resolve the issues related to the separate registered corporation and tax identification number before the tax returns can definitely be accepted. The tax returns submitted demonstrate net income as shown in the table below.

- In 2001, the Form 1120S stated net income of $(70,467).[3]
- In 2002, the Form 1120S stated net income of $(112,332).
- In 2003, the Form 1120S stated net income of $(175,761).
- In 2004, the Form 1120S stated net income of $(101,270).
- In 2005, the Form 1120S stated net income of $(52,526).
- In 2006, the Form 1120S stated net income of $12,081.

Therefore, for the year 2006, the petitioner's net income in addition to the wages paid to the beneficiary would be sufficient to pay the proffered wage upon resolution of the name and tax identification number issue.[4] However, the petitioner did not have sufficient net income to pay the proffered wage, or the difference between the proffered wage and the wages paid, for 2001 through 2005. The record does not include evidence of net income for 2009 onwards.

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[3] 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), line 17e (2004-2005) and line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed May 17, 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 and other adjustments shown on its Schedule K for 2005 and 2006, the petitioner's net income is found on Schedule K of its 2005 and 2006 tax returns.

[4] In 2007 and 2008, the W-2 forms submitted would establish the petitioner's ability to pay the proffered wage in these years upon resolution of the tax identification number issue.

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 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 tax returns submitted demonstrate its end-of-year net current assets for 2001 through 2008, as shown in the table below.

- In 2001, the Form 1120S stated net current assets of $(212,811).
- In 2002, the Form 1120S stated net current assets of $(301,224).
- In 2003, the Form 1120S stated net current assets of $(260,440).
- In 2004, the Form 1120S stated net current assets of $(299,232).
- In 2005, the Form 1120S stated net current assets of $(229,853).
- In 2006, the Form 1120S stated net current assets of $(262,136).
- In 2007, the Form 1120S stated net current assets of $(93,051).
- In 2008, the Form 1120S stated net current assets of $(97,564).

Therefore, for the years 2001 through 2005, the petitioner did not have sufficient net current assets to pay the proffered wage, or the difference between the proffered wage and the wages paid. The petitioner would be able to establish its ability to pay based on wages paid and net income in 2006, 2007 and 2008. The record does not include evidence of net current assets for 2009 onwards.

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. Specifically, the years which the petitioner did not establish the ability to pay the proffered wage are 2001 through 2005 and 2009 onwards.

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

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[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.

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 asserts that the length of incorporation, significant gross income, and significant salaries and wages paid support petition approval based on the totality of the circumstances. In the instant case, the petitioner was incorporated in 1996. The petitioner had a net income loss for 2001 through 2005 and 2007, and a positive net income only in 2006 and 2008; its net current assets are significantly negative for the tax years submitted; and there is no evidence of its business reputation or that an unusual event has caused its business to temporarily experience problems.

Counsel asserts that wages paid to the initial beneficiary should be considered and the substituted beneficiary (beneficiary) have wages from 2001 to present; and further asserts that from 2006 the wage amount for the initial beneficiary and the beneficiary exceeded the proffered wage, and this would be prima facie proof that that the petitioner can pay the proffered wage. Counsel provides no basis for this contention. There is no evidence that the beneficiary will be replacing the initial beneficiary. The tax returns submitted and the evidence submitted show that the beneficiary worked at the same time as the initial beneficiary in the same years, and is, therefore, not a replacement. In assessing the totality of the circumstances in this individual case, the AAO finds that the petitioner has not established that it had the continuing ability to pay the proffered wage.

Counsel states that the petitioner has suffered losses due to the September 11, 2001 terrorist attacks; and the petitioner has overcome the losses from the September 11 attacks as the income was $25,648 in 2006 and $43,582 in 2008. The record of proceeding contains no evidence specifically connecting the petitioner's business decline to the events of September 11, 2001, not even a statement from the petitioner showing a loss or claiming difficulty in doing business specifically because of that event. A mere broad statement by counsel that, because of the nature of the petitioner's industry, its business was impacted adversely by the events of September 11, 2001, 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 September 11, 2001.

Counsel asserts that the petitioner's owner's personal assets and liabilities will be considered when the petitioner is a sole proprietor or in a partnership; and one of the partners owns 100% of the land where the restaurant is situated. The AAO notes that the petitioner is an S corporation and therefore personal assets and liabilities are not considered. 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."

Additionally, as noted above, the AAO found that the petitioner failed to establish that the beneficiary had the experience for the position offered. The Form ETA 750A lists the minimum education, training and experience in section 14 as two years of experience in the job offered. 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, United States Citizenship and Immigration Services (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 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 AAO notes that the priority date is April 23, 2001. Therefore, only experience obtained before this date will be addressed.

Counsel asserts that the beneficiary is qualified for the position offered. As mentioned in the initial AAO decision, the beneficiary took classes in hotel management and catering "tech." in 1993, 1994 and 1996, but it is unclear from the mark sheets if the beneficiary had training in cooking Indian-style cuisine as no such courses are listed. Therefore, the beneficiary's education/training cannot be substituted for employment experience to satisfy the requirements of the labor certification. The beneficiary's Form ETA 750 lists employment with [redacted] as an Indian Specialty Cook from July 2001 until June 2003. Therefore, this experience cannot be considered as it was obtained after the April 23, 2001 priority date. In addition, the beneficiary's Form ETA 750B lists employment with [redacted] as an Indian Specialty Cook from April 2004 until present. Therefore, this experience cannot be considered as it was with the petitioner in the same job being offered and it was obtained after the April 23, 2001 priority date.[6]

[6] The AAO notes that the beneficiary does not list his employment with the petitioner, or any other employment, on his Form G-325A, Biographic Information, dated March 12, 2009. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states, "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile

The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury. The petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date.

The AAO affirms the director's and its decision that the petitioner failed to establish that it had the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

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 motion to reopen is granted, and the petition was reconsidered. The previous decision of the AAO dated May 13, 2010 is affirmed. The petition remains denied.

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such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."