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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 3 2014 Office: TEXAS 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,

Elizabeth McCormack

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted, and the appeal will be dismissed on its merits.

The petitioner describes itself as a technology services company.[1] It seeks to employ the beneficiary permanently in the United States as a systems analyst.[2] 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).

At the outset, which filed the labor certification, is claimed to have a successor-in-interest, which filed the Form I-140 petition and the motion to reopen and motion to reconsider in this matter. As discussed below, the AAO finds that has not established that it is the successor-in-interest to Thus, the labor certification is not valid. To obtain an immigrant visa in this category, professional or skilled worker, the petition must be accompanied by a valid labor certification. Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3). A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). As the petitioner is not the employer on the approved labor certification, and has not established a successor-in-interest relationship with the employer that filed the labor certification, the petition must be denied.

On motion, the movant submitted copies of the following:

- tax return for the year 2002.
- 's tax returns for the years 2003, 2004, and 2005.
- An employment letter from indicating that the beneficiary was employed from February 2002 to April 2006.
- An employment letter from indicating that the beneficiary was employed full-time from January 16, 2001 to January 31, 2002.
- Rental agreement for the beneficiary's apartment lease in

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[1] The indicates the petitioner's name was changed from on May 17, 2012. See (accessed December 19, 2013).

[2] This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution will be permitted.

[3] Although the petitioner claims that the beneficiary was only using his home address in to collect mail while he worked in the rental agreement is insufficient to establish where the beneficiary actually resided during his claimed employment with The petitioner did not provide independent, objective evidence such as

- Purchase and Sale Agreement dated October 30, 2012 between and
- New Form G-325A.

These materials constitute new facts and evidence under 8 C.F.R. § 103.5(a)(2). Therefore, the motion is granted.

Upon reviewing the petition, the director determined that the petitioner had established a successor-in-interest relationship with However, the director also determined that the petitioner had failed to establish its ability to pay the proffered wage. The director denied the petition accordingly.

On appeal, the AAO disagreed with the director's decision with respect to the successor-in-interest issue, and determined that had failed to establish a successor-in-interest relationship with The AAO agreed with the director's determination that the petitioner had failed to demonstrate its ability to pay the proffered wage beginning on the priority date of the visa petition. The AAO also determined that the petitioner, had filed multiple petitions and had failed to demonstrate its ability to pay the proffered wage, as of the priority date, to multiple beneficiaries. *See* 8 C.F.R. § 204.5(g)(2). The AAO further determined that the petitioner had failed to provide sufficient evidence to demonstrate the beneficiary's qualifications to perform the required job duties.

A review of the AAO's decision reveals that the AAO accurately set forth a legitimate basis for the denial with respect to the above noted issues. On motion the issues are whether the petitioner has established a successor-in-interest relationship with the petitioner; its ability to pay the proffered wage beginning on the priority date of the visa petition; whether the petitioner has provided evidence to establish its ability to pay the proffered wage to multiple beneficiaries; and whether the petitioner provided evidence to establish that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying employment experience.

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 evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner indicates that it employs 13 workers. On the Form ETA 750B, signed by the beneficiary on March 20, 2007, the beneficiary claims to have been employed by the petitioner from April 2006 to the date he signed the labor certification. The proffered wage as stated on the Form ETA 750 is $60,000.00 per year. The Form ETA 750 states that the position requires a bachelor's degree or equivalent in computer science,

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utility bills, bank statements, driver's license, or tax returns to corroborate the beneficiary's claimed residence in during his claimed employment with

engineering or a related field and two years of experience in the job offered. The priority date in this matter is May 10, 2002.

As noted in the previous decision, the petitioner must establish that it has the ability to pay the proffered wage to the beneficiary from the priority date until he obtains permanent residence. 8 C.F.R. § 204.5(a)(2).

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a Form ETA 750 establishes a priority date for any immigrant petition later based on the Form 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. Comm. 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. Comm. 1967).

SUCCESSOR-IN-INTEREST

On motion, counsel asserts that and are the successor-in-interest companies of and that USCIS erred in its analysis of the relationship of the companies. The labor certification was filed by and the I-140 petition was filed by Contrary to counsel's claim, there is insufficient evidence in the record to demonstrate a successor relationship.

The petitioner submitted as evidence of a successor relationship a copy of a Purchase and Sale Agreement dated December 1, 2006 between and transferring all of "Technology" and "Immigration related rights and obligations" to the petitioner. No other assets or any liabilities were transferred per the agreement.

The AAO determined on appeal that the petitioner had failed to establish the three conditions of a successor-in-interest relationship in that (1) the Purchase and Sale Agreement did not transfer any essential rights and obligations of to carry on its business; (2) the petitioner failed to submit evidence establishing that it continues to operate the same type of business as operated, that it operates in the same metropolitan statistical area, or that the essential business functions remain substantially the same as before the ownership transfer; and (3) the petitioner failed to demonstrate that its predecessor had the ability to pay the proffered wage from the priority date to December 1, 2006 (the date of the transfer), and that the petitioner had the ability to pay the proffered wage thereafter.

Counsel submits as evidence on motion a copy of a second Purchase and Sale Agreement dated October 30, 2012 which states that formally known as has agreed with for the transfer of all its assets and liabilities to

[redacted] Counsel asserts that this is sufficient evidence to establish a successor relationship.[4]

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

It is not clear from the record that the second Purchase and Sale agreement dated October 30, 2012 cancelled out the first agreement dated December 1, 2006. If so, [redacted] would have to establish [redacted] ability to pay the proffered wage from the priority date through October 30, 2012, the agreement date. If not, [redacted] would have to establish that [redacted] remained in business after the first agreement was executed, that the transfer of rights and obligations happened on October 30, 2012 and not on December 1, 2006, and that [redacted] maintained an interest in employing the beneficiary through October 30, 2012.

If the Purchase and Sale Agreement dated October 30, 2012 is a supplement to the agreement dated December 1, 2006, there is no explanation for the failure to mention the previous agreement in the document dated October 30, 2012. The evidence submitted on appeal raises more questions than it answers, and does not establish a successor-in-interest relationship between [redacted] and [redacted] 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Moreover, the agreement dated October 2012 is dated subsequent to the director's decision, and appears to have been created in response to USCIS' determination that there was no successor-

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[4] On motion, the AAO conducted a database internet search accessing [redacted] which revealed that [redacted] submitted its last Annual Report for Domestic and Foreign Corporations on April 1, 2009. The search also revealed that [redacted] filed its Articles of Voluntary Dissolution, which were verified and adopted by The [redacted] of [redacted], Secretary of the [redacted] examiner and dated April 27, 2009. Therefore, [redacted] was legally dissolved prior to the Purchase and Sale Agreement dated October 30, 2012, and was still listed in the [redacted] of [redacted] as a viable business entity subsequent to the Purchase and Sale Agreement dated December 1, 2006. There has been no explanation given for the inconsistencies and contradictions found in the record. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

in-interest. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

In the instant matter, neither the December 1, 2006 nor the October 30, 2012 Purchase and Sale Agreement is sufficient to demonstrate the transfer of essential rights and obligations of to carry on its business. Neither nor has established that the business continues to operate the same type of business as operated, that it operates in the same metropolitan statistical area, or that the essential business functions remain substantially the same as before the ownership transfer. The record of proceeding does not contain any tax returns or audited financial statements for and as is noted below, the petitioner has failed to demonstrate that its predecessor had the ability to pay the proffered wage from the priority date to December 1, 2006 (the date of the transfer), or that had the ability to pay the proffered wage from December 1, 2006 to October 30, 2012, and that had the ability to pay the proffered wage thereafter.

The evidence in the record does not satisfy all three conditions described above because it does not support counsel's assertion that the agreements transferred ownership, including the essential rights and obligations of the predecessor, does not demonstrate that the job opportunity will be the same as originally offered, and does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods. Accordingly, the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

ABILITY TO PAY THE PROFFERED WAGE

Another issue to be addressed on motion is whether the petitioner has provided sufficient evidence to establish its ability to pay the proffered wage. The director and the AAO determined that the petitioner had failed to establish its ability to pay the proffered wage. On motion, counsel asserts that the previous decisions were in error and submits copies of tax return for 2002, and tax returns for 2003, 2004, and 2005.

The evidence in the record shows that both and are established as S corporations.

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 record of proceeding does not contain any evidence of wages paid to the beneficiary by and as noted in the AAO's initial decision, the Form W-2 submitted by cannot be considered in determining ability to pay the proffered wage in that no successor relationship has been established. Nor can the Forms W-2 indicating that the beneficiary received wages from be used to

establish ability to pay the proffered wage. There is no evidence in the record to demonstrate any affiliation or successor relationship between and

If, as in this case, 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). 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, a 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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[5] has a Federal Employer Identification Number (FEIN) of FEIN is and FEIN is

> 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 petitioner submitted a copy of Forms 1120S tax returns[6] for [redacted] for the 2002, 2003, 2004, 2005, and 2006 tax years. The petitioner also submitted its Forms 1120S for the 2003, 2004, 2005, 2006, 2007, and 2008 tax years.[7] The proffered wage is $60,000.00. Although the petitioner has not established the binding obligation of its business to pay the proffered wage, and thus that its tax returns may be considered, for purposes of this decision only, the AAO will review the relevant tax returns of all companies. The tax returns demonstrate net income from the Forms 1120S as shown in the table below:

- In 2002, [redacted] Form 1120S stated net income of $54,043.00.
- In 2003, [redacted] Form 1120S stated net income of -$20,643.00.
- In 2004, [redacted] Form 1120S stated net income of $32,646.00.
- In 2005, [redacted] Form 1120S stated net income of -$45,652.00.
- In 2006, [redacted] Form 1120S stated net income of -$47,296.00.[8]

The petitioner's tax returns demonstrate its net income as shown in the table below:

- In 2006, [redacted] Form 1120S stated net income of $88,358.00.[9]

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

[7] As noted above, the petitioner has not established any affiliation to or successor relationship with [redacted] Therefore, the petitioner's tax returns have not been established as relevant although the AAO will review the evidence. [redacted] tax returns for 2003, 2004 and 2005, will not be considered by the AAO, in that they cover a time period prior to the signing of the first claimed Purchase and Sales Agreement dated December 1, 2006.

[8] [redacted], the company that filed the labor certification, was dissolved on April 27, 2009, and there is no evidence in the record of proceeding to show its ability to pay the proffered wage from that time forward, nor is there evidence in the record to demonstrate its ability to pay the proffered wage in 2007 and 2008.

[9] In 2006, 2007, and 2008, the movant did not have any additional income, credits, deductions,

- In 2007, [redacted] Form 1120S stated net income of -$207,540.00.
- In 2008, [redacted] Form 1120S stated net income of $77,957.00.

Therefore, for the years 2002 through 2006, the petitioner has failed to establish that [redacted] had sufficient net income to pay the proffered wage. In addition, the petitioner has failed to establish its ability to pay the proffered wage in 2007.

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.[10] 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 demonstrate end-of-year net current assets as shown in the table below:

- In 2002, [redacted] Form 1120S stated net current assets of -$53,942.00.
- In 2003, [redacted] Form 1120S stated net current assets of -$56,650.00.
- In 2004, [redacted] Form 1120S stated net current assets of -$10.415.00.
- In 2005, [redacted] Form 1120S stated net current assets of -$50,413.00.
- In 2006, [redacted] Form 1120S stated net current assets of -$94,869.00.

The petitioner's tax returns demonstrate its net current assets as shown in the table below:

- In 2007, [redacted] Form 1120S stated net current assets of $114,929.00.

Therefore, for the years 2002 through 2006, [redacted] did not have sufficient net current assets to pay the proffered wage. For the year 2007, [redacted] established its ability to pay the proffered wage through its net current assets.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner has not established that its predecessor, [redacted] 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.

ABILITY TO PAY: MULTIPLE BENEFICIARIES

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or other adjustments on its Schedule K; therefore, its net income for those years is found on line 21 of page one of its tax returns.

[10] 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.

The AAO determined on appeal that the petitioner had failed to establish its continuing ability to pay the proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2). The AAO noted that according to USCIS records, the petitioner has filed other Form I-140 and Form I-129 petitions on behalf of other beneficiaries. Therefore, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each Form I-140 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 AAO also noted that the evidence in the record did not document the priority date, proffered wage or wages paid to each beneficiary, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, the AAO concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other immigrant visa petitions. The petitioner does not address this issue on motion. Therefore, the AAO's determination on appeal that the petitioner has failed to establish the continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions remains undisturbed and the petition will also be dismissed for this reason.

BENEFICIARY QUALIFICATIONS: EXPERIENCE

Another issue discussed by the AAO on appeal is whether the petitioner had established that the beneficiary had two years of experience in the job offered as required in the labor certification. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec.158 (Acting Reg'l Comm'r 1977). The priority date of the petition is May 10, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).[11] The Immigrant Petition for Alien Worker (Form I-140) was filed on April 26, 2007.

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).

[11] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

Evidence of qualifying experience shall be in the form of letters from former employers which include the name, address, and title of the writer and a specific description of the duties performed. If such evidence is unavailable, other documentation relating to the experience will be considered. 8 C.F.R. § 204.5(g)(1).

According to the plain terms of the labor certification in the instant matter, the applicant for the position must have two years of experience as a systems analyst. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a systems analyst with located in from January 2001 to January 2002, working 40 hours per week. The beneficiary further claimed to qualify based on his experience as a technical resource specialist for located in from February 2002 to April 2006, and experience with the petitioner as a technical representative from April 2006 to the present.

The AAO determined on appeal that the evidence was contradictory and inconsistent and insufficient to establish that the beneficiary had the two years of work experience as required by the labor certification. The petitioner asserts that the evidence submitted is sufficient to demonstrate the beneficiary's qualified work experience. The record of proceeding contains the following evidence:

- A letter dated January 31, 2002 from the director of human resources of who stated that the company employed the beneficiary from January 16, 2001 to January 31, 2002 as a systems analyst. The declarant described the beneficiary's job duties. The declarant fails to indicate whether the beneficiary's position was part-time or full-time.

- A letter dated December 11, 2000 from the regional manager of who stated that the company employed the beneficiary from August 17, 1997 to December 11, 2000 as a systems analyst. The declarant described the beneficiary's job duties. The declarant fails to specify whether the beneficiary was employed part-time or full-time. In addition, this letter is inconsistent with the beneficiary's signed statement on the labor certification dated March 20, 2007 where he does not list as a former employer. In addition, the beneficiary failed to list as a former employer on his Form G-325A, Biographic Information dated May 24, 2007.

On motion, the petitioner submitted the following documents:

- A letter dated April 12, 2013 from the president of who stated that the company employed the beneficiary, full-time, from February 2002 to April 2006 as a technical resource specialist/systems analyst. The declarant described the beneficiary's job duties. This letter is inconsistent with the beneficiary's signed statement on the labor certifications dated June 26, 2006 and March 20, 2007 where he lists his occupation as a "technical resource specialist" not as a systems analyst.[12] In addition, the beneficiary

[12] As noted in the AAO decision dated March 18, 2013, previously filed a substitution

listed his occupation on his Form G-325A, Biographic Information dated May 24, 2007 as technical resource specialist. There has been no explanation for this inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 591-592.

- The petitioner resubmitted the employment letter from with a P.S. handwritten notation which indicates that the beneficiary's position was a full-time position. The AAO will accept this letter as evidence of the beneficiary's qualifying experience for one year.

Therefore, with respect to this issue, the petitioner has failed to submit sufficient evidence to establish that the beneficiary had all the education, training, and experience specified on the Form ETA 750 as of the priority date, May 10, 2002.

For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The AAO's prior decision, dated March 18, 2013, is affirmed. The petition remains denied.

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request for the beneficiary utilizing the same labor certification. The beneficiary signed the Form ETA 750B for the previous request on June 27, 2006.