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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 24 2014 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motions to reopen and reconsider. The motions will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner describes itself as an information technology firm. It seeks to permanently employ the beneficiary in the United States as a mid-level programmer analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director determined that the beneficiary did not possess the minimum qualifications required to perform the offered position by the priority date. The director denied the petition accordingly.

On February 4, 2014, we dismissed the appeal, holding that the petitioner failed to demonstrate that the beneficiary has the required 36 months of experience in the proffered position as of the priority date and that the petitioner failed to demonstrate that it had the ability to pay the proffered wage to the beneficiary and all other sponsored workers. The petitioner then submitted the instant motion to reopen and reconsider. We will accept the motions to reopen and reconsider the matter based on the new information submitted and arguments made by counsel. Thus, the motions to reopen and reconsider are granted. 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 record shows that the motion is properly filed, timely and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal or motion.[1]

As set forth in the director's September 4, 2013 denial and our February 4, 2014 decision, the issue in this case is whether or not the petitioner submitted evidence to establish that the beneficiary had the 36 months of experience as a mid-level programmer analyst prior to the priority date.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor

[1] The submission of additional evidence on appeal or motion 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 or motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in Engineering, Science or Math.
H.5. Training: None required.
H.6. Experience in the job offered: 36 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: The job may require weekly travel or extended temporary relocation to client sites on project-related work. The Mid-Level Programmer Analysts will use technologies that have been developed by top tier software vendors from either of the platforms listed below: Java/J2EE Technology Platform: Java, J2EE, SOA, ESB, OOD, XML, UNIC, SQL, UML, MySQL, TOMCAT, WEBSPHERE, SVN, ETL, AJAX, CSS, SOAP, RET, WSDL, XSD, UML, PRD, UNIT TESTING. .Net/C# Technology Platform: .Net, Visual Studio 2008, MOSS, SharePoint Services, InfoPath, C#, XML, OOD, WCF, WPF, ADO.NET, SOA, ESB, MS SQL, MS BizTalk, ETL, AJAX, CSS, SOAP, REST, WSDL, XSD, UML, PRD, UNIT TESTING.

The labor certification also states that the beneficiary was employed in the offered position with the petitioner from October 1, 2008 through June 30, 2009, July 1, 2009 through December 31, 2010, February 1, 2011 through September 30, 2011, October 1, 2011 through December 31, 2011, and January 1, 2012 through August 3, 2012. The labor certification indicates the beneficiary's employment as a programmer analyst with [redacted] from June 1, 2006 through

September 30, 2008; as a software developer for from July 1, 2005 through August 31, 2005; and as a systems developer for from January 1, 2005 through June 30, 2005. No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> 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.

Our previous decision specifically considered experience letters from of stating that he worked with the beneficiary at from January 10, 2005 to June 10, 2005 with the beneficiary serving as a workstation architect; a June 7, 2013 letter from Employee Services Specialist with stating that the beneficiary worked for the company between June 12, 2006 and August 2, 2008; a November 26, 2007 letter from general counsel for stating that the beneficiary worked for the company from June 12, 2006 through December 7, 2007 as a plant floor systems developer for Anheuser-Busch and that the beneficiary intended to return to that position on January 4, 2008; a July 25, 2008 letter from director for offering the beneficiary a systems developer position along with documents filed with the DOL concerning the position for purposes of obtaining a labor certification; and a December 23, 2010 letter from manager of the IT support center of thanking the beneficiary for his 18 months service to the company.

The director noted in his decision that the letter from Mr. does not state specific dates of employment and the letter from demonstrates work experience of 24 months with (considering the month on leave noted in Mr. letter) and the letter from established an additional five months of experience. The director did not accept the evidence submitted from because it was an offer of employment instead of a letter verifying past dates of employment.

Our previous decision considered evidence that the petitioner's former name was so that the letter submitted concerned the beneficiary's work with the petitioner. Representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary's experience with the petitioner or experience in an alternate occupation cannot be used to qualify the beneficiary for the certified position.[2]

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[2] 20 C.F.R. § 656.17 states:

> (i) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).

Specifically, the petitioner indicates on the labor certification that questions J.19 and J.20, which ask about experience in an alternate occupation, are not applicable. In response to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?," the petitioner answered "no." The petitioner specifically indicates in response to question H.6 that 36 months of experience in the job offered is required and in response to question H.10 that experience in an alternate occupation is not acceptable. In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary

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(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

> (i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
> (ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

> (i) The term ''employer'' means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.
> (ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

to qualify for the proffered position if the position was not substantially comparable[3] and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, H.10 indicates experience in an alternate occupation is not acceptable and the beneficiary indicates in response to question K.1. that his position with the petitioner was as a programmer analyst and the job duties are the same duties as the position offered.[4] Therefore, the experience gained with the petitioner was in the position offered and is substantially comparable as he was performing the same job duties more than 50 percent of the time. According to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position. Additionally, as the terms of the labor certification supporting the instant Form I-140 petition do not permit consideration of experience in an alternate occupation, and the beneficiary's experience with the petitioner was in the position offered, the experience may not be used to qualify the beneficiary for the proffered position.

On motion, counsel asserts that in answering "no" to H.10 on the ETA Form 9089, the petitioner only intended to exclude candidates with experience in a "different occupational field." Counsel asserts that, because the term "alternate occupation" is not defined on the Form 9089 or by regulation, it was reasonable for the petitioner to conclude that "alternate occupation" meant an "occupation in a different field," rather than a profession outside of the occupation title found in SOC/O*NET. Counsel states that the positions of "computer systems analyst" and "software developer, applications" have an overlap in job description and duties because they are both in the information technology field. Counsel further asserts that the petitioner did not limit the type of experience required in its recruitment for the offered position, nor did it refuse to consider candidates with experience other than that of the offered position.

In support of his assertions, counsel submits copies of advertisements recruiting for the petitioner's position of mid-level programmer analyst. The ads state that the position requires "three (3) years of progressive experience in computer programming using one or more of the [specified] platforms." No alternate occupation is listed, nor is there any indication that one might qualify for the position with experience as a systems developer. The petitioner submitted no evidence, such as resumes or the DOL recruitment report, to support counsel's assertion that all types of experience were considered. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N

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[3] *See* Footnote 2.

[4] The job duties stated in question H.11 are: "The Mid-Level Programmer Analyst will be required to write computer code in accordance with [the petitioner's] design specifications to solve business problems or enhance existing business processes." In addition, as noted above, question H.14 lists a number of different programs which the mid-level programmer analyst must use. Section K lists the beneficiary's job duties on different projects with the petitioner, including "creating new, modifying, and supporting existing software applications that are moderately complex with full competency . . . code, test, debug, document, and implement software applications . . . provide expert level programming and abilities in database design, development, and enhancement within MS SQL, Server DBMS." Section K also lists the use of some of the same programs listed in H.14.

Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

Counsel on motion states that the beneficiary's positions with [redacted] ("systems developer") and [redacted] ("plant floor systems developer") are in the same field as the proffered position of programmer analyst and, thus, there was no need to specify alternate professions on the labor certification. In contradiction, counsel stated in its response to the director's request for evidence (RFE)[5] and on appeal that the positions of "systems developer" and "programmer analyst" are not substantially comparable and that more than 50% of the duties of a systems developer differ from the duties of a programmer analyst.

Further, the advertisements required experience with certain technologies. Specifically, the advertisements state that the position required three years of experience using one or more of the following technologies:

> Java/J2EE Technology Platform: Java, J2EE, SOA, ESB, OOD, XML, UNIC, SQL, UML, MySQL, TOMCAT, WEBSPHERE, SVN, ETL, AJAX, CSS, SOAP, RET, WSDL, XSD, UML, PRD, UNIT TESTING. .Net/C# Technology Platform: .Net, Visual Studio 2008, MOSS, SharePoint Services, InfoPath, C#, XML, OOD, WCF, WPF, ADO.NET, SOA, ESB, MS SQL, MS BizTalk, ETL, AJAX, CSS, SOAP, REST, WSDL, XSD, UML, PRD, UNIT TESTING.

The petitioner fails to demonstrate that the beneficiary had the required three years of experience with any of these technologies.

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). As stated above, the petitioner stated in question H.10 that experience in an alternate occupation would not qualify any U.S. worker for the proffered position. As a result, the beneficiary's experience described by counsel as a systems developer does not qualify the beneficiary for the proffered position of mid-level programmer analyst because it is not experience in the offered position. The beneficiary cannot qualify for the position based on terms not available to U.S. workers.

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[5] The response to the RFE included a document titled "Memo Systems Developer vs. Programmer Analyst." This document describes the beneficiary's experience prior to joining the petitioner, as well as his work for the petitioner while assigned to work with [redacted] The memo distinguishes the two roles, stating, "Where we classified him as a programmer analyst . . . he was actually developing code artifacts unlike his previous role as a systems developer."

We affirm the director's decision 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 under section 203(b)(3)(A)(iii) of the Act.

Our prior decision also found, beyond the decision of the director, that the petitioner 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).

Our February 4, 2014 decision noted that the petitioner filed five I-140 petitions on behalf of other beneficiaries and that no evidence had been submitted to demonstrate the petitioner's ability to pay the proffered wage to all sponsored workers.[6]

On motion, counsel provides the details for six of its pending or approved petitions, including the priority date and proffered wage for each. Counsel states that five of the petitions have priority dates in 2012 and one has a priority date in 2010. Counsel states that the petitioner's ability to pay the proffered wage for the petition with the 2010 priority date is established based upon the petitioner's 2010 tax return and the 2010 Form W-2 for that beneficiary. The 2010 Form W-2 submitted on motion was issued by a business other than the petitioner and is not relevant in determining whether the petitioner has the ability to pay the proffered wage. As the petitioner submitted no evidence of any wages paid to the beneficiary of the petition with a 2010 priority date, the petitioner has not demonstrated its ability to pay that beneficiary, or the instant beneficiary, the proffered wage from the priority date onward.

The total proffered wages for 2012 is $546,139. The petitioner submits Forms W-2 demonstrating that it paid the beneficiaries of its petitions $323,681 in 2012.[7] The difference between the proffered wage and wages already paid to the beneficiaries is $222,458 in 2012. On motion, the petitioner submits a 2012 Form 1120 federal tax return demonstrating net income of -$60,485 and net current assets of -$10,081. However, the Form 1120 states the same petitioner's corporate name, but a different Employer Identification Number (EIN) than the number listed on the ETA Form 9089, on the petition, and on the Forms W-2 the petitioner claims it issued to beneficiaries in 2012.[8] No

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[6] The petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

[7] The petitioner did not include a 2012 Form W-2 for the beneficiary of the petition with a 2010 priority date, stating that the ability to pay that beneficiary had been established in 2010. However, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition onwards. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). As the petitioner submitted no evidence of wages paid in 2012 to the 2010 beneficiary, we must consider his proffered wage in its entirety when considering the petitioner's wage obligations for the year.

[8] See 20 C.F.R. § 656.3 (defining an employer for labor certification purposes requires a valid

explanation for the discrepancy in the EIN was submitted. With any further filings, the petitioner must demonstrate its correct EIN and explain the discrepancies in the tax returns and the Forms W-2.[9] 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).

Counsel acknowledges a shortfall between the proffered wages to each of the six sponsored workers, the wages paid to the sponsored workers, and the petitioner's net income and net current assets. Counsel thus urges a finding that the petitioner has demonstrated the ability to pay the proffered wage through an analysis of the totality of the circumstances.

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 and 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 submitted an accountant's compilation report for 2009 through 2011[10] in addition to the IRS Forms 1120 for 2010, 2011, and 2012. Even if we were to accept the

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Federal Employer Identification Number).

[9] The record also includes 2010 and 2011 Forms 1120 listing the same EIN as listed on the 2012 Form 1120. Both the 2010 and 2011 tax returns include Form 851, Affiliations Schedule, listing the petitioner as a subsidiary (with an EIN that matches the labor certification, the petition, and the Forms W-2). No Form 851 was submitted with the 2012 tax returns.

[10] The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be

tax returns with the inconsistent EIN and the unaudited financial report, the petitioner's net income in each year was lower than the proffered wage to the beneficiary. The trajectory of earnings is downward, as 2012 showed the lowest net income of all years submitted. Counsel states that the petitioner's future is bright because of the prospects of its software product, The petitioner submitted a marketing analysis of the product and a technology audit report indicating a favorable reception and market for the product. Counsel further states that the petitioner has placed "a significant portion of [its] financial resources into the research and development of the product, reducing [its] assets and net income." Counsel also notes that the expenses concerning the product are non-recurring.

The evidence submitted on motion appears to indicate that is owned by , and not the petitioner. Although the agreement for technical trial states that the petitioner is doing business as , no evidence in the record supports that the petitioner operates under this name. The petitioner states that it expects increased revenue due to its new product. Even if we were to accept that the petitioner owns the petitioner submitted no evidence concerning any aspects of the product. For example, the petitioner did not submit evidence of the actual costs incurred, an accountant's statement concerning the relationship between costs associated with and the petitioner's overall financial situation, an explanation of how fits into the petitioner's overall business plan, or other evidence to support counsel's claims. 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). 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)). Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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). Here, that burden has not been met.

ORDER: The motions to reopen and reconsider are granted. Our previous decision is affirmed. The petition remains denied.

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audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. Unaudited financial statements are not persuasive evidence. The accountant's report that accompanied those financial statements makes clear that they were produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.