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U.S. Citizenship  
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Services

PUBLIC COPY

*Bob*

[Redacted]

MAY 18 2005

FILE: [Redacted]  
WAC 03 148 53481

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petition states that the petitioner is a chain of health care facilities and seeks to employ the beneficiary permanently in the United States as a bookkeeper. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that it is a United States employer within the meaning of 8 C.F.R. 204.5§(1)(1), that it had not established that it has had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and that it had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

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

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

The regulation at 8 C.F.R. § 204.5(l)(1) *Skilled workers, professionals, and other workers* states:

Any United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(3) as a skilled worker, professional, or other (unskilled) worker.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets

the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

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 Department of Labor. The petitioner must demonstrate that it is a United States employer within the meaning on 8 C.F.R. § 204.5(l)(1). 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 U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on September 1, 1999. The proffered wage as stated on the Form ETA 750 is \$12.64 per hour, which equals \$26,083.20 per year. The Form ETA 750 states that the position requires two years of experience in the job offered.

On the petition, the petitioner stated that it was established during 1993 and that it employs six workers. On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since April 1998. Both the petition and the Form ETA 750 indicate that the petitioner is Tessie-Pacific Corporation and will employ the beneficiary in Torrance, California. Instead of providing the petitioner's Taxpayer Identification Number on the petition, the petitioner provided the social security numbers of its owners.

With the petition, counsel submitted (1) the 1999, 2000, and 2001 Form 1040 U.S. Individual Income Tax Return of [REDACTED] (2) licenses issued by the California Department of Social Services to [REDACTED] operate residential care facilities at four addresses, including the address given as the petitioner's, (3) a printout of web content showing that the petitioner filed for incorporation on June 18, 1993 and that it is currently suspended, and (4) 1997, 1998, and 1999 Form W-2 Wage and Tax Statements.

Each of the income tax returns provided includes a Schedule C, Profit or Loss from Business, showing that [REDACTED] operate [REDACTED] a board and care home at 2451 W. 230<sup>th</sup> Street, in Torrance, California, as a sole proprietorship.

The 1999 Schedule C shows that [REDACTED] earned a profit of \$25,709 during that year. The 2000 tax return shows that during that same year [REDACTED] had adjusted gross income of \$184,472 and had no dependents.

The 2000 Schedule C shows that [REDACTED] earned a profit of \$230 during that year. The 2000 tax return shows that during that same year [REDACTED] had adjusted gross income of \$113,450 and had no dependents.

The 2001 Schedule C shows that [REDACTED] earned a profit of \$1,375 during that year. The 2001 tax return shows that during that same year [REDACTED] had adjusted gross income of \$109,367 and had no dependents.

The W-2 forms submitted show that J's Family Home, of Los Angeles, paid the beneficiary wages during 1997, that [REDACTED] of West Hills, California paid the beneficiary wages of \$1,990 during 1998, and that the petitioner paid the beneficiary wages of \$14,238.69 during 1999.

In a letter, dated January 25, 2003, submitted with the petition, [REDACTED] the petitioner's Administrator/Licensee, stated that "[the petitioner] was suspended [as a corporation] and . . . was reduced to a sole proprietorship."

As to the beneficiary's claimed employment history, the petitioner submitted an undated letter from [REDACTED] the owner/licensee of J-J Children's Home, stating that the beneficiary worked for that company as a bookkeeper from December 1995 to March 1998, for which she was paid \$3,000 per month.

Because the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date and insufficient to show that the beneficiary has the requisite two years work experience, the California Service Center, on July 25, 2003, requested evidence pertinent to both of those issues. Consistent with 8 C.F.R. § 204.5(g)(2) the director requested copies of annual reports, federal tax returns, or audited financial statements to show that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The Service Center also requested copies of the beneficiary's 1998, 2000, 2001, and 2002 W-2 forms. The Service Center noted that although the 1999 W-2 form submitted indicates that the corporate petitioner, Tessie Pacific Corporation, employed the beneficiary, the Schedule C submitted was for [REDACTED]. The Service Center requested a detailed explanation of that discrepancy.

The Service Center noted that the petitioner claims to have worked for J-J Children's Home during all 12 months of 1997 and until March of 1998 and that the employment letter states that she was paid \$3,000 per month. The Service Center observed that, therefore, the beneficiary should have been paid \$36,000 during 1997 and at least \$6,000 during 1998, but that the W-2 forms submitted do not confirm those amounts, thereby calling into question the accuracy of the beneficiary's claim of qualifying employment. The Service Center asked that the petitioner submit additional evidence pertinent to that employment claim, including pay statements for each period from December 1995 to March 1998.

The Service Center also specifically requested the petitioner's (1) IRS Federal Employer Identification Number, (2) documentary proof that the petitioner still exists as a viable United States company, and (3) a copy of the petitioner's current valid business license.

In response, counsel submitted the (1) 1998 Form 1040 U.S. Individual Income Tax Return of [REDACTED] and additional copies of the returns previously provided, (2) a Form 7004 Application for Automatic Extension of Time to file the 2002 Form 1120A corporate tax return of the petitioner, Tessie Pacific Corporation, (3) computer printouts showing that during 2000 the petitioner paid the beneficiary wages of \$18,420, and that during 2001 it paid the beneficiary wages of \$24,000, (4) 2001 and 2002 W-2 forms showing that the petitioner, Tessie Pacific Corporation, paid the beneficiary \$24,000 during both of those years, (5) a Business Tax Certificate, issued July 1, 2003 showing that [REDACTED] operate [REDACTED] at an address in Carson, California, (6) a Fictitious Business Name Statement filed by the

petitioner on June 30, 1993 for use of the name [REDACTED] (7) 1996, 1997, and 1998 W-2 forms showing that J-J Children's Home paid the beneficiary \$36,625.45, \$10,409.82, and \$1,990 during those years, respectively (8) a 1997 W-2 form showing that [REDACTED] paid the beneficiary \$1,050 during that year, (9) an undated employment verification letter from the Government Printing Office in Manila, Philippines, and (10) a document from the GPO verifying the beneficiary's employment.

The petitioner failed to provide the requested (1) copies of annual reports, federal tax returns, or audited financial statements demonstrating the petitioner's continuing ability to pay the proffered wage beginning on the priority date, (2) detailed explanation of why, although the W-2 forms show that the petitioner, Tessie Pacific Corporation, employed the beneficiary, the tax data submitted pertains to [REDACTED] a sole proprietorship, (3) 1998 and 2000 W-2 statements showing wages the petitioner paid to the beneficiary during those years, and (4) pay statements from J-J Children's Home for each period from December 1995 to March 1998. Further, counsel did not explain those omissions.

The 1997 W-2 form from [REDACTED] that it paid the beneficiary \$10,409.82 during that year, and does not, therefore, support the claim that the beneficiary worked for that company as a full-time bookkeeper for the entire year at \$3,000 per month.

The 1998 W-2 form from [REDACTED] shows that it paid the beneficiary \$1,990 during that year, and does not, therefore, support the claim that the beneficiary worked for that company as a full-time bookkeeper from the beginning of that year until March of 1998 at \$3,000 per month.

The 1998 Schedule C, Profit or Loss from Business, shows that during that year [REDACTED] Manor returned a profit of \$21,187. The tax return shows that the petitioner's owners declared adjusted gross income of \$164,531 during that year.

The employment verification letter from the Philippine Government Printing Office [#9 in the list of submissions in response to the Request for Evidence, above] states that the beneficiary worked for that office as a financial Analyst/Bookkeeper from March 20, 1980 to July 1982. The other document from the same office [#10 in the list of submissions in response to the Request for Evidence, above], however, states that the petitioner worked as a bookbinder until November 13, 1980, when she became a Cost Accounting Aide, a position in which she continued until March 31, 1988.

The Form 7004, the 2000 computer printout, and the 1999, 2001, and 2002 W-2 forms all show that the petitioner's Employer Identification Number is 95-4430517.

In a cover letter dated October 11, 2003 counsel characterizes the adjusted gross income of [REDACTED] as the "Adjusted Gross Income of the petitioner, TESSIE-PACIFIC CORPORATION." [Emphasis in the original], and states that the adjusted gross income, together with the wages the petitioner paid to the beneficiary during the salient years, shows the petitioner's ability to pay the proffered wage.

<sup>1</sup> Because [REDACTED] have different addresses and issue separate W-2 forms, this office believes them to be different companies. Counsel neither alleges nor demonstrates that [REDACTED] employed the beneficiary as a bookkeeper. The beneficiary's employment with that company has not, therefore, been shown to be related to the proffered position, is not qualifying employment experience, and will not be further addressed.

Counsel cites the Business Tax Certificate showing that [REDACTED] operate [REDACTED] Manor at an address in Carson, California as evidence that the petitioner, Tessie-Pacific Corporation, is still in operation.

Counsel cites the employment verification letter from [REDACTED] as evidence that the beneficiary worked full-time for that company from December 1995 through March 1998, but does not address the W-2 forms, which appear to contradict details of that employment claim.

Counsel cites the employment verification letter from the Philippine GPO as evidence that the beneficiary worked for that office as a full-time bookkeeper from March 1980 through July 1982, but without addressing the other document from the GPO, which appears to contradict details of that employment claim.

As to the petitioner's Employer Identification Number, counsel stated that the petitioner now operates as a sole proprietorship, and its owners' social security numbers suffice for tax purposes.

The director denied the petition on November 20, 2003, finding that the evidence submitted did not establish (1) that the petitioner, Tessie-Pacific Corporation, continues to be a United States employer, (2) that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, and (3) that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, counsel asserts that the evidence demonstrates that the petitioner, Tessie Pacific Corporation, continues in business as a United States employer, that the evidence demonstrates that the petitioner has had the continuing ability to pay the proffered wage beginning on the priority date, and that the evidence demonstrates that the beneficiary has the requisite two years of experience.

As evidence that the petitioner, Tessie Pacific Corporation, continues in business, counsel again cites the Business Tax Certificate issued to [REDACTED] the state licenses issued to [REDACTED] and the Fictitious Business Name Statement issued to the petitioner on June 30, 1993.

As evidence that the petitioner has had the continuing ability to pay the proffered wage beginning on the priority date, counsel submits copies of the petitioner's 2000, 2001, and 2002 Form 1120A, U.S. Corporation Short-Form Income Tax Returns. Those returns show that the petitioner reports taxes pursuant to the calendar year, and confirm that its Employer Identification Number is 95-4430517.

The 2000 return shows that the petitioner declared gross receipts of \$3,200 and taxable income before net operating loss deduction and special deductions of \$2,400 during that year. Part III of that return shows that at the end of the year the petitioner had current assets of \$54,792 and no current liabilities, which yields net current assets of \$54,792.

The 2001 return shows that the petitioner declared gross receipts of \$2,400 and taxable income before net operating loss deduction and special deductions of \$2,400 during that year. Part III of that return shows that at the end of the year the petitioner had current assets of \$57,192 and no current liabilities, which yields net current assets of \$57,192.

The 2002 return shows that the petitioner declared gross receipts of \$2,400 and taxable income before net operating loss deduction and special deductions of \$2,400 during that year. Part III of that return shows that at the end of the year the petitioner had current assets of \$59,592 and no current liabilities, which yields net current assets of \$59,592.

In his brief, counsel asserts that the sum of the petitioner's income and its net current assets, together with the wages the petitioner actually paid the beneficiary during the salient years, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

As to the beneficiary's claim of qualifying employment experience, counsel again cites the employment verification letter from [REDACTED]. Counsel states, "In reiteration, [the beneficiary's] full-time work experience with [REDACTED] was only for one (1) year."

Counsel's assertion, however, is not a reiteration of his previous assertion pertinent to the beneficiary's employment with [REDACTED]. In counsel's most recent previous submission, his October 11, 2003 cover letter sent in response to the July 25, 2003 Request for Evidence, counsel stated that, "[The beneficiary] was employed [REDACTED] as a full-time BOOKKEEPER from December 1995 until March 1998. Counsel did not attempt to reconcile that assertion with his current assertion, that the beneficiary has only one year of full-time experience with [REDACTED]."

Counsel also cites the employment letter from the Philippine GPO. Counsel now asserts, consistent with the GPO employment record, that the beneficiary worked at that office as an accounting aide from November 14, 1980 to 1988. Counsel did not attempt to reconcile that statement with the previous assertion that the beneficiary worked for that office as a full-time bookkeeper from March 1980 through July 1982.

Counsel asserts that the beneficiary need not list all qualifying experience on the Form ETA 750, Part B. As support for that assertion counsel cites a non-precedent decision of this office, the facts of which he asserts are substantially similar to the instant matter. Counsel mischaracterizes that decision as a published decision. Although 8 C.F.R. § 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel's citation of a non-precedent decision is of no effect.

This office will first address whether the petitioner has demonstrated that it is a United States employer within the meaning of 8 C.F.R. § 204.5(l)(1). The petitioner named on the Form I-140 petition and the Form ETA 750 is Tessie Pacific Corporation. The record, however, contains evidence that the petitioner's status as a corporation has been suspended. Therefore, the Service Center requested, in the July 25, 2003 Request for Evidence, that the petitioner provide evidence that it continues in business and is, within the meaning of 8 C.F.R. § 204.5(l)(1), a United States employer.

In response, the petitioner submitted ample evidence that [REDACTED] operate [REDACTED]. The only evidence linking the petitioner to that enterprise, however, is the June 30, 1993 Fictitious Business Name Statement. Although the record does not make clear the date upon which the petitioner's corporate status was suspended, the 1993 Fictitious Business Name Statement was filed only a few weeks after the petitioner's

incorporation and is not evidence that it continues to operate the care homes in question. Further, the petitioner's 2000, 2001, and 2002 tax returns, which show gross receipts of \$3,200, \$2,400, and \$2,400, respectively, make clear that the petitioner does not, in fact, operate those rest homes. Further, those returns make clear that the petitioner employs no workers. The evidence demonstrates that the petitioner, Tessie Pacific Corporation, is not a United States employer within the meaning of 8 C.F.R. § 204.5(l)(1), and the petition was correctly denied on that ground.

As to the petitioner's continuing ability to pay the proffered wage beginning on the priority date, this office observes that the petitioner is a corporation. A corporation is a legal entity separate and distinct from its owners or stockholders. *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958; AG 1958). 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. 1980). Nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage. *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003). The income and assets of the petitioner's owners shall not be further considered.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will examine whether the petitioner employed the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

In the instant case, counsel has submitted W-2 forms purporting to show that the petitioner, Tessie Pacific Corporation with the Employer Identification Number [REDACTED] paid the beneficiary wages of \$14,238.69 during 1999, and \$24,000 during both 2001 and 2002. The 2001 and 2002 tax returns of Tessie Pacific Corporation with the Employer Identification Number [REDACTED] however, show that the petitioner paid no wages during those years, paid no compensation to officers during those years, and had no labor expenses during those years. Further, no other entry appears on those tax returns that could include the \$24,000 wage expense shown on the W-2 forms.

Clearly, either the information on the W-2 forms or the information on the tax returns submitted is incorrect. The petitioner, however, has submitted no evidence with which this office can determine which of those documents is accurate, or if, in fact, either of them is. Because the figures on the petitioner's tax returns and the figures on the petitioner's W-2 forms are mutually contradictory, however, this office finds that they are not reliable evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. In the instant case, the petitioner did not establish that it employed and paid the beneficiary.

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, the AAO will, in addition, examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. CIS may rely on federal income tax returns to assess a petitioner's ability to pay a proffered wage. *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); [REDACTED] 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).

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 CIS, 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 CIS should have considered income before expenses were paid rather than net income. Finally, no precedent exists that would allow the petitioner to add back to net cash the depreciation expense charged for the year. *Chi-Feng Chang* at 537. See also *Elatos Restaurant*, 623 F. Supp. at 1054.

The petitioner's net income, however, is not the only statistic that may be used to show the petitioner's ability to pay the proffered wage. If the petitioner's net income, if any, during a given period, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, the AAO will review the petitioner's assets as an alternative method of demonstrating the ability to pay the proffered wage.

The petitioner's total assets, however, are not available to pay the proffered wage. The petitioner's total assets include those assets the petitioner uses in its business, which will not, in the ordinary course of business, be converted to cash, and will not, therefore, become funds available to pay the proffered wage. Only the petitioner's current assets, those expected to be converted into cash within a year, may be considered. Further, the petitioner's current assets cannot be viewed as available to pay wages without reference to the petitioner's current liabilities, those liabilities projected to be paid within a year. CIS will consider the petitioner's net current assets, its current assets net of its current liabilities, in the determination of the petitioner's ability to pay the proffered wage.

This office emphasizes, however, that because of the nature of net current assets, demonstrating the ability to pay the proffered wage with net current assets is truly an alternative to demonstrating the ability to pay the proffered wage with income and wages actually paid to the beneficiary. Net current assets are not cumulative with income, but must be considered separately. This is because income is viewed retrospectively and net current assets are viewed prospectively. That is; a 2001 income greater than the amount of the proffered wage indicates that a petitioner could have paid the wages during 2001 out of its income. Net current assets at the end of 2001 which are greater than the proffered wage indicate that the petitioner anticipates receiving roughly one-twelfth of that amount each month, and that it anticipates being able to pay the proffered wage out of those receipts. A petitioner's net income may not correctly be added to its net current assets in determining the petitioner's ability to pay the proffered wage.

The priority date is September 1, 1999. The proffered wage is \$26,083.20 per year.

The petitioner did not demonstrate that it paid any wages to the beneficiary and is obliged, therefore, to show the ability to pay the entire proffered wage during each of the salient years with copies of annual reports, federal tax returns, or audited financial statements. The petitioner did not submit copies of annual reports or audited financial statements. The petitioner's tax returns, some of which are contradicted by the W-2 forms submitted, are not reliable evidence. The petitioner has submitted no reliable evidence of its ability to pay the proffered wage during 1999, 2000, 2001, or 2002. The petition was correctly denied on that ground.

The final basis of the decision of denial is the asserted failure of the petitioner to demonstrate that the beneficiary has the requisite two years of employment experience required to perform in the proffered position.

The beneficiary initially claimed that she received more than the requisite two years of experience at J-J Children's Home. The W-2 forms submitted demonstrate that the beneficiary was not employed full-time at [REDACTED] for more than two years, as she initially claimed. Counsel admits as much on appeal.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In response to the Request for Evidence and on appeal, counsel sought, and still seeks, to supplement the inadequate work experience the beneficiary demonstrated with [REDACTED] Home with a claim of qualifying employment for the Philippine GPO. Initially, counsel claimed that the beneficiary worked as a bookkeeper for that office from March 1980 through July 1982. On appeal, counsel asserts that the evidence demonstrates that the beneficiary worked for the Philippine GPO from November 14, 1980 to 1988.

A petitioner raises serious questions of credibility when asserting a new claim to eligibility in response to evidence adverse to the original claim. Counsel, the petitioner, and the beneficiary provide no explanation for the beneficiary's failure to advance his claim or employment for the Philippine GPO on the Form ETA Application for Labor Certification, or with the initial petition. The instructions for the Form ETA 750B clearly states that the beneficiary is to report not only all employment within the past three years, but also all previous employment related to the occupation for which labor certification is sought. In response to those clear instructions, the beneficiary did not list any prior employment for the Philippine GPO.

The regulation at 8 CFR § 204.5(l)(3)(ii) does not encourage petitioners to hold supplementary employment evidence in abeyance to counter evidence adverse to its initial claim. Rather, it clearly states that evidence of the beneficiary's experience **must accompany** the petition.

In this case, the experience claimed when the petition was submitted does not qualify the beneficiary for the proffered position. In response to that finding, counsel has submitted evidence of other, previous employment, never before mentioned in conjunction with this application. That subsequently submitted claim is not credible.

The petitioner has not demonstrated that the beneficiary has the requisite two years of qualifying employment experience. The petition was correctly denied on that additional ground.

The evidence submitted does not establish that the petitioner is a U.S. employer within the meaning of 8 C.F.R. § 204.5(g)(2). The evidence does not demonstrate that the petitioner has had the continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. For all three reasons, the petition in the instant case may not be approved.

The record in this matter raises additional issues beyond those cited by the director in the decision of denial. The petitioner never submitted (1) a detailed explanation of why, although the W-2 forms show that the petitioner, Tessie Pacific Corporation, employed the beneficiary, the tax data submitted pertains to [REDACTED]

Manor, a sole proprietorship, (2) 1998 and 2000 W-2 statements showing wages the petitioner paid to the beneficiary during those years, and (3) pay statements from [REDACTED] for each period from December 1995 to March 1998, although those items were requested in the July 25, 2003 Request for Evidence. Counsel has submitted no explanation for those omissions. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petition should have been denied for this additional reason.

Further, counsel has indicated that the petitioning business, a chain of four residential health care facilities, was a corporation but is now a sole proprietorship. If the petitioning corporation no longer owns the business that would employ the beneficiary, then the substituted beneficiary, the sole proprietorship, is obliged to show that it is a true successor-in-interest within the meaning of *Matter of Dial Repair Shop* 19 I&N Dec. 481 (Comm. 1981).

Pursuant to *Matter of Dial Repair Shop, supra*, the successor-in-interest must submit proof of the change in ownership and of how the change in ownership occurred. It must also show that it assumed all of the rights, duties, obligations, and assets of the original employer and continues to operate the same type of business as the original employer. See *Matter of Dial Repair Shop* 19 I&N Dec. 481 (Comm. 1981).

The petitioner submitted no evidence pertinent to the change in ownership or how it occurred and no evidence that the sole proprietorship assumed all of the rights, duties, obligations, and assets of the corporation. Because the petitioner was not apprized of this shortcoming in the evidence, however, and accorded an opportunity to correct it, today's decision does not rely, even in part, on that deficiency.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.