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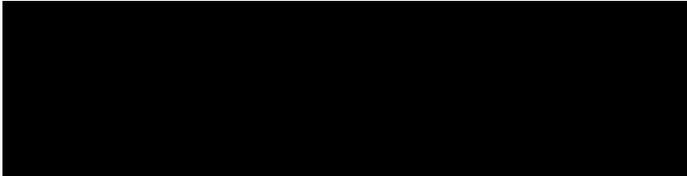
IN RE:

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:

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a martial arts school. It seeks to employ the beneficiary permanently in the United States as a Master Instructor/Sports Instructor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also determined that the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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 first issue to be discussed in this case is whether or not the petitioner has established its continuing ability to pay the proffered wage beginning on the priority date.

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. See 8 CFR § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor (DOL) 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 April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$565 per week (\$29,380 per year). The Form ETA 750 states that the position requires five years experience in the related occupation of Tae Kwon Do instructor.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1991¹, to have a gross annual income of \$27,137,

¹ Correspondence from the petitioner's owner dated August 15, 2004, contradicts the represented

and to currently employ 1 worker. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 18, 2001, the beneficiary did not claim to have worked for the petitioner².

With the petition, the petitioner submitted no evidence of its continuing ability to pay the proffered wage beginning on the priority date.

On April 28, 2003, because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the director requested additional evidence pertinent to that ability. In accordance with 8 C.F.R. § 204.5(g)(2), the director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. The director specifically requested the petitioner's 2001 and 2002 corporate federal income tax returns and any evidence of wages actually paid to the beneficiary during 2001 and 2002.

In response, the petitioner submitted its 2001 and 2002 corporate income tax returns.

The director denied the petition on August 18, 2003, finding that the evidence submitted with the petition and in response to its Request for Evidence did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. The director noted that the record of proceeding did not contain the original Form ETA certified by DOL, that the petitioner did not submit proof of wages actually paid to the beneficiary, and that the petitioner's net income failed to establish its continuing ability to pay the proffered wage beginning on the priority date.

On appeal, counsel asserts that the director erred because the petitioner was paying the proffered wage to the beneficiary. She submits a statement from [REDACTED] the petitioner's owner, dated September 8, 2003, who states that despite showing losses, the beneficiary was paid in 2001 and 2002.

establishment date. The petitioner's owner, [REDACTED] states that he started the business in April 2001 specifically to sponsor the beneficiary and investment his retirement savings. The petitioner's tax returns also reflect an April 2001 incorporation date.

² The August 15, 2004 letter from [REDACTED] states that the beneficiary started working for the petitioner since its date of establishment in April 2001. Counsel's appellate arguments are premised upon the beneficiary actually working and receiving wages from the petitioner since April 2001. The AAO also notes that the beneficiary's Form G-325, Biographic Information sheet submitted with his application to adjust status to lawful permanent resident, signed by the beneficiary on October 21, 2002, provides conflicting employment history information than the employment history represented on the Form ETA 750B. For example, the beneficiary indicated that he worked for Young Churl Kwon in South Korea from February 1992 through October 1997 on the Form G-325. However, the beneficiary represented that he worked for Chong Hyo Kwon Do at what appears to be separate locations from May 1992 through May 1992 and from April 1995 through May 1999 on the Form ETA 750B. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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." *Matter of Ho*, 19 I&N Dec. at 591-592 also states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

also states that the beneficiary contributes to the revenue generation of the petitioner that is demonstrated by the existing student contracts. states that he renegotiated a lease for the business premises as the landlord is "anxious to see the business succeed." Finally, stated that he did not know what happened to the original Form ETA 750.

submitted a subsequent letter, dated August 15, 2004, in which he explained that the beneficiary was brought to the United States illegally and promised sponsorship from a different martial arts academy which later terminated the employment relationship. He stated that he invested his entire retirement savings in the petitioning entity and relies upon the beneficiary for its financial success, as he would run the academy under supervision and eventually become a full partner with him.

At the outset, the AAO notes that an original Form ETA 750 is in the record of proceeding. A note on the first page of the Form ETA 750A states that the "original was submitted with an I485 motion on 4-4-03. EAC0314351376. 11-4-03." The Form ETA 750 substantially matches the copy of the Form ETA 750 submitted with counsel on appeal except for the years of experience required in box 14. The copy of the Form ETA 750 is illegible but the original clearly reflects "5" as the years of related experience required for the proffered position.

In determining the petitioner's ability to pay the proffered wage during a given period, Citizenship and Immigration Services (CIS) 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. In the instant case, despite assertions made to the contrary on appeal by counsel and and the director's request for such evidence, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during 2001 or 2002. The record of proceeding does not contain any evidence of wages paid to the beneficiary with any employer, and the beneficiary's own employment representations on various immigration forms do not comport with the appellate assertions of employment with the petitioner³. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

³ See note 2, *supra*.

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 the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] 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.

(Emphasis in original.) *Chi-Feng* at 537.

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of \$29,380 per year from the priority date.

In 2001, the Form 1120S stated net income⁴ of -\$18,084.

In 2002, the Form 1120S stated net income of -\$4,411.

Therefore, for the years 2001 and 2002, the petitioner did not have sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁵ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner's net current assets during 2001 were \$2,711.

⁴ Ordinary income (loss) from trade or business activities as reported on Line 21.

⁵ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

The petitioner's net current assets during 2002 were -\$4,295.

The petitioner's net current assets are insufficient to pay the proffered wage in 2001 or 2002.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel urges the consideration of the beneficiary's proposed employment as an indication that the petitioner's income will increase. In this instance, no detail or documentation has been provided to explain how the beneficiary's employment will significantly increase profits for the petitioner. If the beneficiary has in fact been employed by the petitioner, which has not been established despite being asserted, then the petitioner's tax returns do not show that the beneficiary has facilitated revenue generation since the petitioner has reported losses each relevant year. This hypothesis cannot be concluded to outweigh the evidence presented in the corporate tax returns. If the beneficiary has not been employed by the petitioner, then the petitioner is alleging that the beneficiary has the ability to generate income in the future. However, against the projection of future earnings, *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) states:

I do not feel, nor do I believe the Congress intended, that the petitioner, who admittedly could not pay the offered wage at the time the petition was filed, should subsequently become eligible to have the petition approved under a new set of facts hinged upon probability and projections, even beyond the information presented on appeal.

Additionally, 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. 1971).

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Even considering the totality of circumstances in this case, the petitioner's business began at the same time of the priority date, so it does not illustrate longevity. Additionally, the petitioner's gross revenues in 2001 were less than the proffered wage and only approximately \$50,000 in 2002. No evidence of any wages paid to any employee is in the record of proceeding.

Mr. Connors' appellate assertions about the renegotiation of the petitioner's lease and existing employment contracts are also without merit. The renegotiation of the lease occurred on August 1, 2004, which is subsequent to the priority date⁶ and the newly negotiated monthly charge of \$500.00 cannot be compared against the past rental rate, since the record of proceeding does not contain any evidence pertaining to that. Additionally, an unaudited list of the petitioner's students and their monthly and test fees was submitted on appeal⁷. However, no evidence corroborates that the petitioner actually receives payment from these students,

⁶ As noted above, see *Matter of Katigbak*, 14 I&N Dec. at 49.

⁷ It is noted that the regulation at 8 C.F.R. § 204.5(g)(2) requires audited financial statements not self-serving management representations.

and cannot outweigh the evidence presented in the tax returns since the revenue from these students would be reported on the petitioner's tax returns.

The appellate record also contains a letter from the petitioner's landlord, [REDACTED] who owns the martial arts training facility which he now leases to the petitioner. [REDACTED] states that he used to run a martial arts school at the premises, which were established in 1991, the date of establishment indicated on the petitioner's I-140 form, but his enrollment decreased to less than 15 students. He stated that the petitioner, since establishing its school in 2001, has "extended the class hours, offered more programs, broadened their student base and increased enrollment to more than 50 students." [REDACTED] finds the petitioner's students to be satisfied and committed to the petitioner's school. Again, the assertions made in this letter, which was unnotarized and cannot be considered sworn testimony⁸, are uncorroborated by evidentiary submissions and cannot outweigh the evidence presented in the tax returns.

Finally, an unaudited and unsworn page titled "Business Information for Saratoga Academy of Tae Kwon Do" is in the record of proceeding. The Saratoga Academy of Tae Kwon Do was the name of [REDACTED] martial arts academy and the information appears to relate to 2000, prior to the date of the priority date, which in addition to being a separate legal entity unaffiliated to the petitioner⁹, would not have any probative value or relevant nexus to the petitioner's continuing ability to pay the proffered wage beginning on the priority date since the evidence precedes the priority date¹⁰.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The second issue to be discussed in these proceedings is whether or not the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it

⁸ The declarations that have been provided on appeal are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion, or appeal, are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

⁹ 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). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

¹⁰ *See* 8 C.F.R. § 204.5(g)(2).

impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany 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).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of Master Instructor/Sports Instructor. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	Blank
	High School	Blank
	College	Blank
	College Degree Required	Blank
	Major Field of Study	Blank

The applicant must also have five years of experience in the job offered in order to perform the job duties listed in Item 13 of the Form ETA 750 A: "The alien will be responsible for management and operation of a Tae Kwon Do School, including scheduling, training instructors, some teaching." Additionally, Item 15, which lists "Other Special Requirements," requires applicants to have "5th Degree Black Belt or higher rank, and certified as "Master," sufficient knowledge of Korean to communicate with certifying organization[.]"

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information about the beneficiary's education, he represented that he obtained a 5th Degree Blackbelt from the Chong Hyo Taekwondoo [sic] School, studying Taekwondo from 1983 to 1999. On Part 12 and 13, which elicits special qualifications and supporting documents, the beneficiary indicated that he has a teaching certificate issued by the World Taekwondoo [sic] Headquarters as well as a certificate for attaining "5th degree Dan certificate" on February 13, 2000 from the world Taekwondo Headquarters. The beneficiary also represented that he is bilingual¹¹. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked as a Master Instructor for Chong Hyo Kwon Do, Kyung Gi Do Ui Jung Bu Kanunmk/DONG (South Korea) from April 1995 through May 1999 for a martial arts instruction business "instructing classes in Tae Kwon Do." Prior to that, the beneficiary represented that he worked as an Instructor for Chong Hyo Tae Kwon Do School, Chong Hyo (South Korea) from May 1992 through May 1993 for an martial arts instruction school "instructing classes in Tae Kwon Do." As noted above, the beneficiary also represented that he worked as a Master Instructor at Young Churl

¹¹ The AAO notes that the beneficiary required an interpreter upon arrest and questioning pertaining to his illegal status according to sworn testimony contained in the record of proceeding. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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." *Matter of Ho*, 19 I&N Dec. at 591-592 also states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

Kwon, [REDACTED] from February 1992 through October 1997 on a separately filed Form G-325 under an item eliciting information about the beneficiary's employment for the past five years.

With the initial petition, the petitioner did not submit any evidence pertaining to the beneficiary's qualifications for the proffered position.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary's qualifications on April 28, 2003. The director requested a letter verifying the beneficiary's prior employment experience or alternative evidence that "may be considered" if a letter was unavailable.

In response to the director's request for evidence, the petitioner submitted a business license for The Kyung Gi Do Tae Kwon Do Association and reflecting that Kwon Young Churl has a 5th Degree Dan/Black Belt, in Korean with an English translation¹², and documentation pertaining to instructor training courses offered by The World Taekwondo Academy, Kukkiwon.

The director's denial noted that the petitioner failed to submit evidence insufficient to establish that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, [REDACTED] states that the evidence previously submitted reflects that the beneficiary "was a Taekwondo instructor in South Korea from May 1992 to May 1993 and a Master Instructor, also in South Korea, from May 1995 to May 1999, a total of seven years." The evidence [REDACTED] references is the business license for The Kyung Gi Do Tae Kwon Do Association and reflecting that [REDACTED] a 5th Degree Dan/Black Belt, in Korean with an English translation¹³, and documentation pertaining to instructor training courses offered by The World Taekwondo Academy, Kukkiwon, none of which specifically identifies the beneficiary as an employee of any martial arts academy or recipient of a certificate or Black Belt. The only individual identified in those documents is [REDACTED] who is not the beneficiary, and is listed as the beneficiary's employer on the Form G-325 but not the Form ETA 750B.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

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.

¹² The translation did not comply with the terms of 8 C.F.R. § 103.2(b)(3): "*Translations.* Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Thus, this evidence is given less weight based on a defective translation.

¹³ See note 12, *supra*.

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification” as clearly directed by the plain meaning of the regulatory provision.

Additionally, the regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

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

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The AAO affirms the portion of the director’s decision finding that the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. The petitioner failed to submit evidence required by 8 C.F.R. § 204.5(1)(3). The alternative evidence submitted does not identify the beneficiary or establish that he has worked as a Master Instructor, both managing and instructing for five years at a martial arts school, has a 5th Degree Black Belt or higher rank, and is certified as “Master.”

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.