

Identifying data deleted to
prevent costly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B6

PUBLIC COPY

FILE: EAC 04 157 54770 Office: VERMONT SERVICE CENTER Date: **DEC 11 2006**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
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 an attorney who seeks to employ the beneficiary permanently in the United States as an assistant interpreter. 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 had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition or that the beneficiary was qualified for the proffered position. He denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and is incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's January 21, 2005 decision denying the petition, there are two issues in this case including whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence and whether or not the beneficiary is qualified to perform the duties of the proffered position.

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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The first issue in this case is whether the evidence establishes that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the petition's priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$19.51 per hour, which amounts to \$40,580.80 annually.

The AAO reviews appeals on a *de novo* basis. *See Dorr v. I.N.S.* 891 F.2d 997, 1002, n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including any new evidence properly submitted on appeal.

In the instant appeal, the petitioner submits two letters and additional evidence.

On the I-290B, signed by the petitioner on February 22, 2005, the petitioner checked the block indicating that he would not be submitting a separate brief or evidence. However, he did subsequently submit a photograph and a partial list of attendee companies from a 1986 meeting with the Greater Miami Chamber of Commerce wherein the beneficiary performed as an interpreter.

The petitioner did not submit any evidence on appeal pertaining to the ability to pay issue. Relevant evidence in the record includes: an affidavit of support from the petitioner; and a letter and tax documents from Mr. [REDACTED]

The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

On appeal, the petitioner states, in part:

I would like to state that at all relevant times, it was presented both to your agency and to the [U.S.] Department of Labor, that [the beneficiary] was to act as an advisor and interpreter to me and my clients regarding the Chinese banking system and the Chinese culture. Therefore I believe that Mr. [REDACTED] and others financial information is relevant.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). For each year at issue, the petitioner's financial resources generally must be sufficient to pay the annual amount of the beneficiary's wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, 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, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, the beneficiary did not claim to have worked for the petitioner.

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 petitioner's 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. Tex. 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).

In this case, the petitioner appears similar to a sole proprietorship. Unlike a corporation, a sole proprietorship is not legally separate from its owner. Therefore the sole proprietor's income and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. A sole proprietor must show the ability to cover his or her existing business expenses as well as to pay the proffered wage. In addition, the sole proprietor must show sufficient resources for his or her own support and for that of any dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

It is noted that the director issued a request for evidence (RFE), dated September 8, 2004, requesting that the petitioner submit his federal income tax returns for 2001, 2002, and 2003. The director requested further that the petitioner submit his corporate tax return if his business is organized as a corporation, or his individual tax return if his business is organized as a sole proprietorship. In response to the director's RFE, the petitioner submitted financial documentation related to Mr. [REDACTED] who states that he is the petitioner's partner in investment projects involving the exportation of surplus food products from the United States to China.

As correctly stated by the director in his decision, the assets and income of Mr. [REDACTED] and his business are not evidence of the petitioner's ability to pay the proffered wage. In his affidavit, dated April 23, 2004, Mr. [REDACTED] states that he is a partner of the petitioner in investment projects that involve the exportation of food products from the United States to China, and that he will participate financially in the beneficiary's employment. Going on record without supporting documentary evidence, however, 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)). Moreover, the petitioner is not listed on Mr. [REDACTED] business taxes. 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." The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). In this case, the petitioner did not comply with the director's request to submit his federal income tax returns for 2001, 2002, and 2003. The 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 record also contains a copy of a bank statement, dated April 9, 2004, addressed to [REDACTED] and [REDACTED]. The statement's beginning balance and the ending balance do not show monthly increases by amounts that would be sufficient to pay the proffered wage. Moreover, only one bank statement was submitted. No bank statements for 2001, 2002, and 2003, or for January, February, and March of 2004, were submitted. The record contains no explanation for the absence of those bank statements. Therefore, the April 9, 2004 bank statement fails to establish the petitioner's ability to pay the proffered wage in 2001, 2002, and 2003, and for January, February, and March of 2004. Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner has not

submitted a list of its personal expenses. Nor has he explained the unavailability of his federal income tax returns or audited financial statements.

The record also contains an Affidavit of Support signed by the petitioner. The petitioner misconstrues the use of the Affidavit of Support. The Affidavit of Support is utilized at the time a beneficiary adjusts or consular processes an approved immigrant visa to provide evidence to CIS that the beneficiary is not inadmissible pursuant to section 212(a)(4) of the Act as a public charge. The beneficiary in this matter has not advanced to a consular processing or adjustment of status phase of the proceeding. At the I-140 immigrant visa filing stage of proceeding, evidence is required of a sponsoring employer's ability to pay a proffered wage as of the priority date, not its guarantee to support the beneficiary in the future. 8 C.F.R. § 204.5(g)(2). There is no provision in the employment-based immigrant visa statutes, regulations, or precedent that permits a personal guarantee or Affidavit of Support to be utilized in lieu of proving ability to pay through prescribed financial documentation. In any event, the Affidavit of Support is a future pledge of payment and does nothing to alter the immediate eligibility of the instant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The record contains no other evidence relevant to the petitioner's financial situation.

Based on the foregoing analysis, the evidence in the record fails to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

In his decision, the director correctly found that the petitioner failed to establish his ability to pay the beneficiary's proffered wage. The decision of the director to deny the petition was correct, based on the evidence in the record before the director.

For the reasons discussed above, the assertions of petitioner on appeal and the evidence submitted on appeal fail to overcome the decision of the director.

The other issue is whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA 750 as of the petition's priority date.

The director determined that the petitioner had not established that the beneficiary had the U.S. educational equivalent of a bachelor's degree in finance, the required three years of training in banking, or two years of experience as an assistant interpreter or international settlement translator, as required on the Form ETA 750, and denied the petition accordingly.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 30, 2001.

On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner. The ETA 750 was certified by the Department of Labor on December 13, 2002.

The I-140 petition was submitted on April 30, 2004. On the petition, the petitioner claimed to be an attorney. With the petition, the petitioner submitted supporting evidence.

In an RFE, dated September 8, 2004, the director requested additional information pertaining to the beneficiary's qualifications. The director specifically requested an advisory evaluation of the beneficiary's formal education, including, in part, a statement of the evaluator's qualifications and experience in providing such evaluations. The director also requested evidence to establish that the beneficiary possessed the required three years of training in banking and two years of experience as an international settlement translator as of the priority date, April 30, 2001.

In response to the RFE, the petitioner submitted the beneficiary's graduation certificate, issued by a Chinese institution upon his completion of a four-year undergraduate program in finance, and employment letters. The petitioner's submissions in response to the RFE were received by the director on December 3, 2004.

In a decision dated January 21, 2005, the director determined that the evaluation of the beneficiary's foreign education was unacceptable because the evaluator did not provide a detailed explanation of the material evaluated, nor did he state his qualifications and experience in providing such evaluations. The director determined further that the petitioner had not established that the beneficiary possessed the requisite training in banking or the requisite experience as an interpreter or translator. The director therefore denied the petition.

On appeal, the petitioner submits a photograph and a partial list of attendee companies from a 1986 conference/meeting with the Greater Miami Chamber of Commerce wherein the beneficiary performed as an interpreter.

The petitioner further states on appeal that the beneficiary's educational credentials, his ten years of employment for the Agricultural Bank of China, and his prior visits to the United States as a representative of the said bank, qualify him for the proffered position.

The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 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). The Application for Alien Employment Certification, Form ETA-750A, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of assistant interpreter. On the ETA 750A submitted with the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

14. Education (number of years)
- | | |
|-------------------------|---------|
| Grade School | 8 |
| High School | 4 |
| College | 4 |
| College Degree Required | B.A. |
| Major Field of Study | Finance |
- Training - yrs 5
Type of training Banking
- Experience
- | | |
|------------------------------|--------------------------------------|
| Job Offered | Yrs 0 |
| Related Occupation | Yrs 2 |
| Related Occupation (specify) | International settlement translation |
15. Other Special Requirements Chinese/English translation/Knowledge of Chinese financial law and international trading settlements

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary states the following:

Schools, Colleges and Universities, etc.	Field of Study	From	To	Degrees or Certificates Received
"Northerneast" Financial University	"Financial"	July 1985	August 1989	"Bachelor"
University of Dalian	Computer	July 1990	August 1993	"02 Grade"
University of Peking	Business Admin	July 1994	August 1995	"Graduated"

On the ETA 750A submitted with the instant petition, block 14 requires three years of training in banking, and two years of experience in the related occupation of international settlement translation. Other special requirements include Chinese and English translation and knowledge of Chinese financial law and international trading settlements. It is noted that although the other special requirements also refer to an addendum, the actual addendum is missing from the record of proceeding.

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 15, for information on the beneficiary's work experience the beneficiary states the following:

Name and Address of Employer	Name of Job	From	To	Kind of Business
Agricultural Bank of China D. L. Branch Dalian Hengpong Economic Trading Co. Dalian, China	treasurer and manager	08/1989	03/1999	Negotiation Coordinator
Dalian International Trading Co., vice president		09/1995	09/1999	International Business

U.S.A.

The record also contains the following evidence regarding the beneficiary's qualifications:

- List of attendee companies at a 1986 meeting with the Greater Miami Chamber of Commerce, and a photograph of the participants, wherein the beneficiary reportedly served as an English/Chinese interpreter;
- G-325A, Biographic Information, signed by the beneficiary on April 27, 2004;
- Graduation Certificate, and translation, dated July 10, 1989, indicating that the beneficiary satisfied all the requirements for and passed all the exams for a four-year undergraduate program in finance at a Chinese university;
- Letter, dated October 18, 1999, from the general manager of the Agriculture Bank of China, Dalian Branch, certifying that the beneficiary was employed as a financial analyst and consultant from August 1989 to March 1999;
- Letter, dated April 16, 2001, from the director of human resources at the Agricultural Bank of China, Dalian Branch, verifying that the beneficiary worked at the Agriculture Bank of China, Dalian Branch, from 1989 to March 1999;
- Certification, and translation, dated March 28, 2001, from the general manager of Dalian Cangning Development Company, certifying that the beneficiary worked at the said company from November 20, 1995 to January 30, 1996; and
- Letter, and translation, dated February 21, 2003, from the president of the [REDACTED] Corporation, addressed to "Mr. [REDACTED]" regarding his assistance to the said corporation's intent to purchase a bankrupt business.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in blocks 14 and 15 of the labor certification as of the day it was filed with the Department of Labor. A review of the documentation listed above finds that the petitioner has not established that the beneficiary has the requisite education, three years of training in banking, or two years of experience in international settlement translation.

On appeal, the petitioner submits a photograph and a partial list of attendee companies at the Greater Miami Chamber of Commerce, asserting that the beneficiary was utilized at a meeting as an English/Chinese interpreter. This documentation, however, does not establish that the beneficiary has the required two years of experience in international settlement translation. Further, the petitioner has not submitted any credible evidence that the individuals photographed at the conference include the beneficiary.

The evaluation and translation of the beneficiary's graduation certificate by He Shen Chang, who asserts that the beneficiary's foreign degree in finance is "equal to the U.S. at least college bachelor degree," is noted. The evaluator, however, does not provide a detailed explanation of the material evaluated, nor does he state his qualifications and experience in providing such evaluations. It is also noted that as the translation of the beneficiary's graduation certificate is not certified, the AAO cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Moreover, the record of proceeding does not contain a copy of the beneficiary's university transcripts. In view of the foregoing, the evidence is not probative and will not be accorded any weight in this proceeding.

Nor does the information provided in the letters from the general manager and the director of human resources of the Agriculture Bank of China (ABC Bank), dated October 18, 1999 and April 16, 2001, respectively, establish that the beneficiary has the required experience or training. The director of human resources verifies the beneficiary's employment with the said company as an associate financial analyst from August 1989 to October 1991, and as a financial analyst from October 1991 to March 1999, but refers to the general manager's October 18, 1999 letter for a description of the beneficiary's duties. The general manager states in his October 18, 1999 letter that the beneficiary worked at the ABC Bank as a financial analyst and consultant from August 1989 to March 1999, describing the beneficiary's duties as completing the following major projects: a report on establishing new bank branches; a financial analysis for the development of a satellite-transmitted TV program; and an analysis on the establishment of a future finance system. Again, this information does not establish that the beneficiary has the required two years of experience in international settlement translation.

The record also contains a certification, dated March 28, 2001, from the general manager of Dalian Cangning Development Company, who certifies that the beneficiary worked with the said company from November 20, 1995 to January 30, 1996. This employment, however, is inconsistent with the employment history reflected on the ETA, which indicates that the beneficiary was working at the Dalian International Trading Co. during this time period. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. 582, 591 (BIA 1988).

The record also contains a letter, and translation, from the president of the Liao Ning Canning Corporation, asserting that the beneficiary worked with the said corporation. The representative, however, does not specify the length of time or the exact nature of the beneficiary's involvement with this corporation. Further, because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

It is also noted that the record does not contain an employment letter from Dalian International Trading Co., U.S.A., corroborating the employment claimed by the beneficiary on the ETA. Nor does the beneficiary claim this employment on Form G-325A, Biographic Information, which he signed on April 27, 2004. 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)).

In view of the foregoing, the petitioner has not overcome this additional portion of the director's decision.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.