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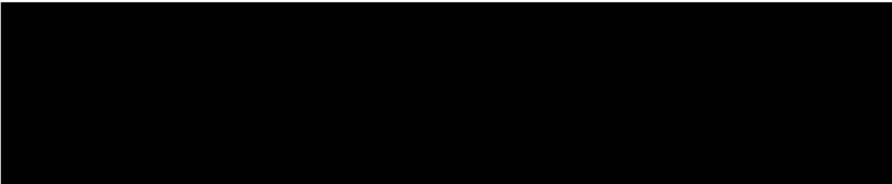
Petitioner:

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, 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 a ceramic tile manufacturer. It seeks to employ the beneficiary permanently in the United States as a mold shop supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's October 9, 2003 denial, 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 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 in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

On October 6, 2006, the AAO issued a request for evidence (RFE) to the petitioner to obtain additional information regarding the petitioner's organization, the petitioner's ability to pay, the minimum education/training requirements for the proffered position, and the beneficiary's qualifications. The AAO noted discrepancies between the characterizations of the position of mold shop supervisor on the instant petition and on a Form I-129, Petition for a Nonimmigrant Worker, filed by the petitioner on September 19, 2002. The petitioner's response to the AAO's RFE was received by the AAO on January 26, 2007.¹

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.

Petitioner's Organization

The AAO noted in the RFE that the Form I-140 filed on July 1, 2002 in the instant case indicates that the petitioner employs six individuals, and that the petitioner's August 7, 2003 brief appealing the denial of the petitioner's prior Form I-129 indicates that the petitioner's workforce numbered 32. Therefore, we asked the petitioner to provide an organizational chart identifying its employees by name and position and the quarterly wage reports filed for these employees from July 2002 to the present. In response to the AAO's RFE, the petitioner submitted a graph evidencing the number of individuals it employed between 1998 and 2005. The petitioner also submitted its New York State Quarterly Combined Withholding and Wage Reporting Returns, for 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005. The documents indicate that the petitioner's workforce increased from two employees in 1998 to over 40 employees in 2005. However, the petitioner failed to provide the requested organizational chart identifying its employees by name and position. The failure to submit requested evidence that precludes a material line of inquiry may be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

¹ This office notes that the petitioner did not submit a brief with its response to the AAO's RFE. Instead, the petitioner submitted copies of briefs submitted to the AAO in connection with other petitions/applications filed by the petitioner. These documents are not relevant to the instant case.

Petitioner's Ability to Pay

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 DOL. *See* 8 C.F.R. § 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 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 March 31, 1997. The proffered wage as stated on the Form ETA 750 is \$20.02 per hour (\$41,641.60 per year).

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.² In response to the AAO's RFE, the petitioner provided transcripts of its IRS Forms 1065, U.S. Partnership Income Tax Returns, for 2002, 2003, 2004 and 2005, its New York State Quarterly Combined Withholding and Wage Reporting Returns, for 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005, and its New York State Quarterly Combined Withholding and Wage Reporting Returns, for 1998, 1999, 2000 and 2001, U.S. Individual Income Tax Returns, for [redacted] and [redacted] for 1998, 1999, 2000 and 2001, documents relating to the petitioner's Small Business Administration loan request in 1996, a property settlement statement and deed for property located in Port Chester, New York and transcripts of IRS Forms 1040, U.S. Individual Income Tax Returns, for [redacted] and [redacted] for 2002, 2003, 2004 and 2005. On appeal, counsel submits documents relating to the petitioner's Small Business Administration loan requests in 1996 and 2001, a loan application for [redacted] and [redacted] dated August 8, 1989, a deed for property located at [redacted] Bronxville, NY, property settlement statements for property located at [redacted] Bronxville, New York, a sale contract for property located at [redacted] Bronxville, New York, a property settlement statement for property located at [redacted] Bronxville, New York, a property settlement statement for property located in Port Chester, New York, an appraisal for the [redacted] New York property, a personal financial statement dated December 31, 2001 for [redacted]; [redacted] brokerage account statements for [redacted] and [redacted] Citibank statements for [redacted] and [redacted] Citicorp Investment statements for [redacted] and [redacted] [redacted] the petitioner's checking account statement for November 1999, a property settlement statement for property located in Mt. Vernon, New York, and financial statements for the petitioner for 1999, 2000, 2001

² 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).

and 2002. Other relevant evidence in the record includes IRS Forms 1040, U.S. Individual Income Tax Return, for [REDACTED] and [REDACTED] for 1997, 1998, 1999, 2000, 2001 and 2002. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

On appeal, counsel asserts that the petitioner is not an entity such as a partnership, corporation, limited liability company (LLC) or limited liability partnership (LLP). Instead, counsel asserts that the petitioner is a sole proprietorship and that the assets of its individual owners should be considered in the determination of the petitioner's ability to pay the proffered wage. Counsel states that no wages have been paid by the petitioner to the beneficiary since the priority date. Counsel cites *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988), which held that Citizenship and Immigration Services (CIS) should consider the pledges of parishioners in determining a church's ability to pay. Counsel states that there is not a necessity to pledge funds in the instant case, as the owners of the petitioner have sufficient personal assets to pay the proffered wage.

Despite counsel's assertions regarding the petitioner's entity status, the evidence in the record of proceeding shows that the petitioner was structured as a sole proprietorship from the priority date in 1997 until December 30, 2002, and was structured as an LLC from December 30, 2002 to the present.³ On the petition, the petitioner claimed to have been established in 1993, to have a gross annual income of \$390,728.00, to have a net annual income of \$116,579.00 and to currently employ six workers. On the Form ETA 750B, signed by the beneficiary on March 17, 1997, the beneficiary did not claim to have worked for the petitioner.

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).

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, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date in 1997 or subsequently.

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).

³ In response to the AAO's RFE, the petitioner submitted the Articles of Organization of [REDACTED] effective December 30, 2002 evidencing its organization as an LLC. The petitioner also submitted a Business Certificate of Partners dated April 12, 1996 indicating that the petitioner operated as a partnership in the State of New York in 1996.

The petitioner was a sole proprietorship from the priority date in 1997 through December 30, 2002, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets 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 return 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. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor supports himself and his wife. The proprietor's IRS Forms 1040, U.S. Individual Income Tax Returns, reflect that his adjusted gross income was \$4,657.00 in 1997, \$14,061.00 in 1998, \$54,601.00 in 1999, \$80,563.00 in 2000, \$103,995.00 in 2001, and \$35,417.00 in 2002.⁴ Therefore, the sole proprietor's adjusted gross income fails to cover the proffered wage of \$41,641.60 in 1997, 1998 and 2002. The AAO requested in its RFE that the petitioner provide a sworn and notarized statement detailing the sole proprietor's personal expenses from 1997 to 2005. The petitioner declined to provide the statement. Therefore, this office cannot determine if the sole proprietor could have supported himself and his wife on what remains after reducing the adjusted gross income by the proprietor's personal expenses and the amount required to pay the proffered wage in 1999, 2000 and 2001. The failure to submit requested evidence that precludes a material line of inquiry may be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).⁵

The petitioner was structured as an LLC from December 30, 2002 to the present.⁶ For a partnership, where a partnership's income is exclusively from a trade or business, CIS considers net income to be the figure shown on Line 22 of the Form 1065, U.S. Partnership Income Tax Return. In the instant case, the petitioner declined to provide copies of its 2003, 2004 and 2005 federal income tax returns. Instead, the petitioner provided

⁴ In the RFE, the AAO requested that the petitioner provide the sole proprietor's complete and IRS-certified individual income tax returns or, in the alternative, audited financial statements or annual reports. The petitioner did not submit the sole proprietor's IRS-certified tax returns, audited financial statements or annual reports for any relevant year.

⁵ The petitioner submitted evidence of the proprietor's personal assets, including real estate and stock holdings. However, we do not generally consider the proprietor's real estate in our determination of a petitioner's ability to pay the proffered wage, as employers generally do not encumber or liquidate real estate to pay wages of employees.

⁶ An LLC is an entity formed under state law by filing articles of organization. If an LLC has two or more owners, it will automatically be considered to be a partnership for federal income tax purposes unless an election is made to be treated as a corporation. See 26 C.F.R. § 301.7701-3. The petitioner filed IRS Form 1065, U.S. Partnership Income Tax Return, after organizing itself as a limited liability company in the State of New York. Therefore, from the date of its organization as an LLC, the petitioner is considered to be a partnership for federal tax purposes.

transcripts of its IRS Forms 1065 for 2002, 2003, 2004 and 2005. The transcripts stated net income of \$0 in 2002, \$11,765.00 in 2003, \$291,582.00 in 2004, and \$377,778.00 in 2005. It appears that the petitioner's 2002 partnership tax return may have been filed to cover the final day of the year after its organization as a limited liability company. Therefore, for the year 2002, the petitioner's IRS Form 1040 was examined above in our determination of the petitioner's ability to pay the proffered wage. For the year 2003, the petitioner did not establish that it had sufficient net income to pay the proffered wage of \$41,641.60. For the years 2004 and 2005, the transcripts indicate that the petitioner had 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. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ A partnership's year-end current assets are shown on Schedule L, lines 1(d) through 6(d) and include cash-on-hand, inventories, and receivables expected to be converted to cash within one year. Its year-end current liabilities are shown on lines 15(d) through 17(d). If the total of a partnership'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. In 2003, the transcript of the petitioner's IRS Form 1065, Schedule L, does not list the petitioner's end-of-year net current assets. Therefore, for the year 2003, the petitioner did not establish that it had sufficient net current assets to pay the proffered wage.

On appeal, counsel submitted the petitioner's financial statements for 1999, 2000, 2001 and 2002. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statements submitted by the petitioner are not persuasive evidence. The accountant's report that accompanied those financial statements makes clear that they were produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Further, on appeal, counsel cites *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988) which held that CIS should consider the pledges of parishioners in determining a church's ability to pay. The decision in *Full Gospel* is not binding here. Although the AAO may consider the reasoning of the decision, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

The AAO also requested in the RFE that the petitioner provide evidence of the sole proprietor's assets and liabilities from 1997 through 2005,⁸ a detailed listing of any other immigrant petitions the petitioner has filed on behalf of any other alien,⁹ confirmation if there is a familial relationship between the beneficiary and any

⁷ 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.

⁸ The proprietor's assets must be balanced by the proprietor's liabilities. Otherwise, they cannot be properly considered in the determination of the petitioner's ability to pay the proffered wage.

⁹ Where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending

of the business owners,¹⁰ confirmation if the proffered job is a new or formerly existing position and, if the position was already in existence at the time of the priority date, confirmation of who was holding or is holding the position.¹¹ The petitioner declined to provide these documents. The failure to submit requested evidence that precludes a material line of inquiry may be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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

Minimum Education/Training Requirement for the Proffered Position

The AAO noted in the RFE that the duties for the proffered job and the duties for the job of mold shop supervisor listed on the petitioner's prior Form I-129 are nearly identical; however, the educational requirements for the jobs are different. The petitioner's prior Form I-129 requested H-1B nonimmigrant status, which requires the petitioner to show that the occupation of mold shop supervisor is a specialty occupation requiring a bachelor's degree or its equivalent in the specific specialty. On the instant petition, however, the petitioner requested that the position of mold shop supervisor be classified in the skilled worker category, which does not require a bachelor's degree or its equivalent. Therefore, we asked the petitioner to explain the positions' differing educational requirements and to provide any evidence that would distinguish the positions from one another. 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). The petitioner declined to explain the positions' differing educational requirements and to provide any evidence that would distinguish the positions from one another.¹² The failure to submit requested evidence that precludes a material line of inquiry may be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Beneficiary's Qualifications

simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750). *See also* 8 C.F.R. § 204.5(g)(2).

¹⁰ Under 20 C.F.R. § 656.20(c)(8) and § 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart* 374, 00-INA-93 (BALCA May 15, 2000).

¹¹ In general, wages already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. However, in the case where the petitioner has established that the beneficiary will be replacing another worker performing the duties of the proffered position, the wages already paid to that employee may be shown to be available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present.

¹² In response to the AAO's RFE, the petitioner provided an excerpt from the *Dictionary of Occupational Titles*, but did not explain the relevance of the evidence.

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 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 mold shop supervisor. In the instant case, item 14 describes the requirements of the proffered position as follows:

| | | |
|-----|-------------------------|------|
| 14. | Education | |
| | Grade School | 9 |
| | High School | 3 |
| | College | none |
| | College Degree Required | none |
| | Major Field of Study | N/A |

The applicant must also have three years of experience in the job offered or three years of experience as a handmade ceramic tile and mold maker. The duties of the proffered job are delineated at Item 13 of the Form ETA 750A and since this is a public record, the duties will not be recited in this decision. Item 15 of Form ETA 750A reflects the following special requirements:

- 1-Knowledge through training &/or experience in hand sculpting.
- 2-Knowledge in hand painting with ceramic glazes[.]
- 3-Knowledge in mixing ceramical Plaster and clay.
- 4-Knowledge in glazing tile.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, she represented that she worked as an assistant to the ceramic tile production manager for Bellissima Corporation in the Philippines from 1981 to 1985. She does not provide any additional information concerning her employment background on that form.

The regulation at 8 C.F.R. § 204.5(l)(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.

With the petition, the petitioner submitted a letter dated March 14, 1997 from Bellissima Corporation in the Philippines which stated that the beneficiary was employed by the company as an assistant to the ceramic tile production manager. The beneficiary's responsibilities included handcrafting original tile sample molds, making the first ceramic tile samples from the original mold and handpainting ceramic tiles. The AAO noted in the RFE that with the exception of the letter from Bellissima Corporation, the record contains no independent and objective evidence of Bellissima Corporation's existence or operations. Therefore, the AAO requested in the RFE that the petitioner provide documentation to establish the beneficiary's employment by Bellissima Corporation for 1981 to 1985. In response, the petitioner submitted an affidavit from [REDACTED], a former officer and shareholder of Bellissima Corporation. The affidavit states that the beneficiary was employed by Bellissima Corporation from 1981 to 1985 as an Assistant Production Manager, that she was involved in the entire process of tile production, that all documents and employment records of Bellissima Corporation were lost during the eruption of a volcano in Pampanga, Philippines in 1991, and that Bellissima Corporation terminated its operations on August 16, 2002. The petitioner also submitted a certificate dated December 6, 2006 from the Office of the Treasurer of the City of Angeles in the Philippines indicating that Bellissima, Inc. general merchandise located at Sto. Rosario St. ceased and retired its business on August 16, 2002. The certificate from Angeles City indicates only that Bellissima, Inc. (not Bellissima Corporation) was a general merchandise business (not a tile production company) and that it terminated its business on August 16, 2002. While the employment records of Bellissima Corporation may have been destroyed, the petitioner has not explained why other evidence, such as governmental documents establishing the company's date of organization and tax filings, is not available. The documentation provided by the petitioner does not establish that Bellissima Corporation existed between 1981 and 1985 or that it was in the tile production business.¹³

The AAO also noted in the RFE certain deficiencies in the experience letter provided by Bellissima Corporation on behalf of the beneficiary. Specifically, the AAO noted that the letter fails to state whether the beneficiary's employment was part-time or full-time and that the letter fails to demonstrate that the beneficiary has experience in the itemized list of duties required by the proffered position, such as making prototype sample tiles, using Pugmill and Rampress machines and a pressure air gun, supervising other employees, mixing ceramical plaster and clay, and glazing tile. Thus, the AAO requested that the petitioner provide additional evidence to establish that the beneficiary is qualified for the proffered position. In response, the petitioner submitted an affidavit from [REDACTED] a former officer and shareholder of Bellissima Corporation. The affidavit states that the beneficiary was employed by Bellissima Corporation from 1981 to 1985 as an Assistant Production Manager and that she was involved in the entire process of tile production. However, the letter does not address the deficiencies noted by the AAO.

The AAO also noted in the RFE that the proffered position requires completion of nine years of grade school and three years of high school, and that the record of proceeding does not contain evidence that the beneficiary attended or completed education at any educational institution. The petitioner submitted no

¹³ If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

evidence in response to the AAO's RFE to establish that the beneficiary completed nine years of grade school and three years of high school.

For the reasons set forth above, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.¹⁴ 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.

¹⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews cases on a de novo basis).