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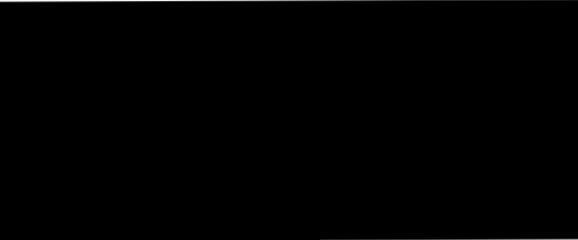
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**U.S. Citizenship  
and Immigration  
Services**

*B6*

FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 24 2007**

EAC-04-170-52731

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.

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

Robert P. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the preference visa petition. The petitioner filed a Motion to Reopen and Reconsider. The director reopened the petition, but then affirmed the prior decision to deny the petition related to the petitioner's ability to pay. The director found that the petitioner overcame the second ground for denial in its Motion to Reopen related to the beneficiary's experience. The petitioner filed a second Motion to Reopen and Reconsider related to the petitioner's ability to pay. The director again reopened the petition, but then affirmed the prior decision to deny the petition. The petitioner appealed and the matter is now before the Administrative Appeals Office ("AAO"). The appeal will be dismissed.

The petitioner is a restaurant and seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition was filed with Form ETA 750,<sup>1</sup> Application for Alien Employment Certification, approved by the U.S. Department of Labor ("DOL"). As set forth in the October 14, 2005 decision, the director affirmed the prior decision to deny the petition on the basis that the petitioner had not established its ability to pay the beneficiary the proffered wage from the priority date continuing until the beneficiary obtains lawful permanent residence.

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<sup>2</sup>.

The record shows that the appeal is properly and timely filed, 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.

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

The regulation 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.

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<sup>1</sup> The petitioner's original counsel, who represented the petitioner in all other filings except for the instant appeal, submitted a copy of the ETA 750, not the original ETA 750 as required. 8 C.F.R. § 204.5(l)(3). Counsel provided that the original labor certification was "lost" and that Citizenship and Immigration Services ("CIS") could verify the labor certification with the Department of Labor ("DOL").

<sup>2</sup> 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 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 DOL. *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 and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

In the case at hand, the petitioner<sup>3</sup> filed Form ETA 750 with the relevant state workforce agency on November 29, 2001. The Form ETA 750 was initially filed on behalf of a different beneficiary.<sup>4</sup> The proffered wage as stated on the Form ETA 750 is \$650 per week, 40 hours per week, for an annual salary of \$33,800 per year. The labor certification was approved on March 31, 2004, and the petitioner filed the I-140 on the beneficiary's behalf on May 13, 2004. On the I-140, the petitioner listed the following information: date established: February 1, 2001; gross annual income: \$511,143; net annual income: \$10,625; and current number of employees: four.

On January 24, 2005, the director denied the petition on the basis that the petitioner failed to demonstrate its ability to pay the beneficiary the proffered wage from the time of the priority date until the beneficiary obtains permanent residence. Further, the director found that the petitioner failed to establish that the beneficiary had obtained the required experience by the time of the priority date, and, therefore, failed to establish that the beneficiary had the experience required in the certified ETA 750.

The petitioner filed a Motion to Reopen and Reconsider. The petitioner submitted additional documentation related to the beneficiary's experience, and related to the petitioner's ability to pay. The director reopened the petition, but then on June 20, 2005, affirmed his prior decision related to the petitioner's ability to pay. The director did conclude, however, that based on the new evidence submitted, the petitioner could document that the beneficiary had the required experience listed on the certified ETA 750, and the ground for denial on

The petitioner listed on Form ETA is \_\_\_\_\_ In handwriting after \_\_\_\_\_ is listed \_\_\_\_\_  
\_\_\_\_\_ The petitioner has signed the change on the form, however, as the document is a copy, it is not clear that the DOL stamped or accented the handwritten changes. Further, DOL's final determination page lists the petitioner only as \_\_\_\_\_. The petitioner filed the I-140 listing: \_\_\_\_\_

<sup>4</sup> We note that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was permitted by the DOL at the time of this petition. DOL had published an interim final rule, October 23, 1991, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 CFR §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to Citizenship and Immigration Services ("CIS") based on a Memorandum of Understanding, which was recently rescinded. However, based on the date of filing the instant petition, the substitution request is valid.

that basis had been overcome. We do not agree, and will discuss this issue following an examination of the petitioner's ability to pay.

The petitioner filed a second Motion to Reopen and Reconsider seeking to establish the petitioner's ability to pay the proffered wage. The director again reopened the petition, but on October 14, 2005, issued a decision affirming the director's prior decision finding that the petitioner did not establish its ability to pay. The petitioner appealed and the matter is now before the AAO.

We will examine information contained in the record and then consider the petitioner's additional arguments on appeal. The petitioner must establish that its job offer to the beneficiary is a realistic one. 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 evaluating whether a job offer is realistic, Citizenship and Immigration Services ("CIS") requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages.

First, in determining the petitioner's ability to pay the proffered wage during a given period, CIS will 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 case at hand, on Form ETA 750B, signed by the beneficiary on April 29, 2004, the beneficiary did not list that he was employed with the petitioner.<sup>5</sup> The petitioner did not claim to have employed the beneficiary,<sup>6</sup> and did not provide any evidence of payment to the beneficiary. Accordingly, the petitioner cannot demonstrate that it can pay the beneficiary the proffered wage based on prior wage payment.

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. 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).

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.

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<sup>5</sup> The beneficiary listed on Form G-325 filed with his I-485 Adjustment of Status application that he was employed with [REDACTED] from November 2001 to the present (signed on April 24, 2004). 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further, 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. *Id.* at 591-592.

<sup>6</sup> The President of [REDACTED] Cuisine of India, provided a letter (undated) that it would employ the beneficiary as soon as he obtained permanent residence.

The petitioner is formed and operates as a limited liability company (LLC). Although structured and taxed as a partnership, the owners of an LLC enjoy limited liability similar to corporation owners. An LLC, like a corporation, is a legal entity separate and distinct from its owners. The company's debts and obligations are generally not the owner's debts and obligations.<sup>7</sup> An investor's liability is limited to his or her initial investment. As the owners and others only are liable to his or her initial investment, the owners' individual total income and assets cannot be utilized to demonstrate the petitioner's ability to pay the proffered wage. The petitioner must show the ability to pay the proffered wage out of the petitioning company's funds.<sup>8</sup>

Where a LLC's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 22 of page one of the petitioner's Form 1065. The instructions on the Form 1065 U.S. Income Tax Return of Partnership Income state on page one, "Caution: Include only trade or business income and expenses on lines 1a through 22 below." Where a LLC has income from sources other than from a trade or business, net income is found on Schedule K, Form 1065, page 4, Analysis of Net Income (Loss), line 1. The petitioner's Form 1065<sup>9</sup> line 22 reflects the following:

<u>Tax year</u>	<u>Net income or (loss)</u>
2003	\$10,652
2002	-\$13,230
2001	-\$31,589

<sup>7</sup> This general rule might be altered in some cases by contract or otherwise, however, no evidence appears in the record to indicate that the general rule would not apply in the instant case.

<sup>8</sup> In contrast, a sole proprietor is 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 (7<sup>th</sup> Cir. 1983).

<sup>9</sup> The tax returns list "[redacted]". The tax returns do not list "[redacted]" or "[redacted]". The petitioner provided no documentation to establish that "[redacted]" does business as "[redacted]" such as Articles of Incorporation, or other documentation. Absent such evidence, we are not convinced that "[redacted]" and "[redacted]" are related. 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)). Further, no documentation was submitted to show that "[redacted]" is the successor-in-interest to "[redacted]". To show that the new entity qualifies as a successor-in-interest to the original petitioner requires documentary evidence that the new entity has assumed all of the rights, duties, and obligations of the predecessor company, and has the ability to pay from the date of the acquisition. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

Based on the foregoing, the petitioner cannot demonstrate its ability to pay the beneficiary the proffered wage in any of the above years.

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are a LLC taxpayer's current assets less its current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A LLC's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 15(d) through 17(d). If a LLC's net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The net current assets would be converted to cash as the proffered wage becomes due. Thus, the difference between current assets and current liabilities is the net current assets figure, which if greater than the proffered wage, evidences the petitioner's ability to pay.

<u>Tax year</u>	<u>Net current assets</u>
2003	\$8,337
2002	\$14,979
2001	\$8,681

The petitioner cannot demonstrate its ability to pay the beneficiary the proffered wage based on its net current assets either.

The petitioner additionally submitted three bank statements for \_\_\_\_\_ for the time period January 1, 2004 through March 2004. First, we note that bank statements are not among the three types of evidence listed in 8 C.F.R. § 204.5(g)(2) as required to establish a petitioner's ability to pay a proffered wage. This regulation allows for consideration of additional material such as bank accounts "in appropriate cases." As a fundamental point, the petitioner's tax returns are a better reflection of the company's financial picture, since tax returns address the question of liabilities. Bank statements do not reflect whether the petitioner has any outstanding liabilities. Further, cash assets in the petitioner's bank account should already have been accounted for as cash on the petitioner's Form 1065 Schedule L and included in net current assets analysis above. The petitioner did not provide evidence to show that the funds listed in the bank statements represent funds beyond those listed on the petitioner's Forms 1065 federal tax returns. Further, the bank statements only cover a three-month time period in 2004, and represent funds that the petitioner had in the year 2004. The statements would not demonstrate the petitioner's ability to pay from the time of the priority date onward.

With the petitioner's second Motion to Reopen and Reconsider, the petitioner submitted personal bank statements for a \_\_\_\_\_ and \_\_\_\_\_ Counsel provides that \_\_\_\_\_ is the managing partner of the business and has significant funds in his account to "subsidize his business and pay the pro-offered [sic] salary to the employees, if needed." First, 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." Further, we note \_\_\_\_\_'s position or relationship, if any, to the petitioning entity is entirely unclear from the record. He is not listed on any tax returns, or other corporate information to confirm his position or status with the petitioning entity. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel<sup>10</sup> contends that CIS failed to consider that “the LLC as an entity is a Partnership and is taxed as such. In this situation, the principal’s personal income has to be considered.” Further, counsel provides that “[CIS] admits that the principal does possess the ability to pay, however, denies the petition because the petitioning entity is a LLC.” Counsel contends that this is an “incorrect application of the law.”

As addressed above, the owners of an LLC enjoy limited liability similar to corporation owners. An LLC, like a corporation, is a legal entity separate and distinct from its owners. Therefore, an owner’s personal assets are not considered. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). Further, while personal assets are not considered, [REDACTED]’s relationship to the petitioner has not been documented, and it is not clear that he has any relationship to the petitioner.

Counsel provided no further documentation or arguments on appeal. Accordingly, based on the foregoing, the petitioner has failed to demonstrate its ability to pay the beneficiary the proffered wage from the priority date until the beneficiary obtains permanent residence.

Further, as noted above, we disagree with the director that the petitioner has adequately documented the beneficiary’s prior experience to show that he meets the requirements of the certified ETA 750. 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*, 299 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 appeals on a de novo basis).

In evaluating the beneficiary’s qualifications, Citizenship and Immigration Services (“CIS”) must look to the job offer portion of the alien 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 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981). 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).

On the Form ETA 750A, the “job offer” position description provides:

Supervise and coordinate activities of cooks, quality control of Indian specialty dishes, select and develop recipe for meal; fish, poultry and vegetable dishes such as chicken curry, lamb vindaloo, shrimp, goat curry, malai kofta, chicken tikka masala and fish curry, etc.: plan menu, portion cooked food and give instructions to workers as to size of portion and method of garnishing.

The ETA 750 listed that the position required two years of prior experience in the job offered.

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<sup>10</sup> As noted above, different counsel took over representation of the petitioner on appeal.

On the Form ETA 750B, signed by the beneficiary on April 29, 2004, the beneficiary listed his relevant experience as: Palace of Asia, Lawrenceville, New Jersey, from January 2000 to June 2002, cook.

A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(1)(3), which 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.

To document the beneficiary's experience, the petitioner submitted the following letter:

Letter from [redacted] Chief Executive Officer, Palace of Asia, Lawrenceville, New Jersey, dated May 1, 2004;  
Position title: Indian Specialty Cook;  
Dates of employment: January 12, 2000 to June 4, 2002;  
Description of duties: preparation of exotic Indian dishes such as Tandoori Chicken, Lamb Biryani, Chicken Tikka Masala, Seekh Kabab and several other vegetarian and non-vegetarian delicacies.

The director's initial decision noted that, based on the letter provided, the beneficiary would not be able to document the required two years of experience by the original priority date of November 29, 2001. As the petitioner submitted only one letter to document the beneficiary's experience, the evidence was deficient to show that the beneficiary had the required two years of experience.

With the petitioner's first Motion to Reopen and Reconsider, the petitioner submitted a second letter to document the beneficiary's work experience:

Letter from [redacted] [no position listed], [redacted], Ledgewood, New Jersey, undated;  
Position title: Cook;  
Dates of employment: December 19, 1997 to December 29, 1999;  
Description of duties: prepare poultry and vegetable dishes, chicken, lamb, shrimp, and goat curry, and tandoori dishes.

Counsel provided that the beneficiary had not previously listed this experience on the ETA 750B, since when the beneficiary completed the Form ETA 750B in 2004, he believed that his experience with Palace of Asia was sufficient to document his prior experience.

The director in his June 20, 2005 decision, determined that the letter above overcame the reason for the denial related to the beneficiary's experience, and that the petitioner could document that the beneficiary had the required two years of prior experience as a cook.

We disagree. If we examine the initial letter provided by Palace of Asia, and the beneficiary's Form ETA 750B, the dates are in accordance, but as raised in the director's initial decision, this experience equates to less than two years of experience prior to the November 29, 2001 priority date. However, in examining the beneficiary's Form G-325 filed with the beneficiary's I-485 Adjustment of Status application, signed and dated on April 29, 2004, the beneficiary has listed his employment history as: [REDACTED] Cook, from November 2001 to the present. He does not list that he was employed with Palace of Asia, and his employment listed with [REDACTED] from November 2001 conflicts with the dates that he asserts he was employed with Palace of Asia, from January 12, 2000 to June 4, 2002. Further, on Form G-325, the beneficiary lists that he resided in Richmond Hill, New York from June 1999 to October 2001, covering much of the time period that he reportedly was working in Lawrenceville, New Jersey. While it may be commutable by several trains or buses, the length and time in transit between the two areas makes it questionable that he worked in New Jersey during this time period. The G-325 reflects that the beneficiary moved to Jersey City, New Jersey in November 2001, the same time that the beneficiary lists that he began employment with the petitioner.

As the information on the G-325 conflicts with the experience listed on Form ETA 750B, and with the experience letter provided, this raises concerns regarding the veracity of the beneficiary. See *Matter of Ho*, 19 I&N Dec. 582, 591 (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." Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 592.

As the initial letter provided is in question, we find that the second letter provided is equally questionable based on *Matter of Ho*. Further, the beneficiary failed to list the experience documented in the second letter on Form ETA 750. Despite counsel's explanation, based on the conflict in the beneficiary's documented experience, we would not accept either of the letters absent persuasive secondary documentation in support.

Based on the foregoing, the petitioner has failed to demonstrate its ability to pay. Further, we find that the petitioner has not documented the beneficiary's experience, and the petition should be denied on this basis as well.

Accordingly, 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.