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FILE: [Redacted]  
WAC-06-032-50882

Office: TEXAS SERVICE CENTER

Date: NOV 26 2007

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

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

ON BEHALF OF PETITIONER:



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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is the trustee of a revocable living trust. It seeks to employ the beneficiary permanently in the United States as an executive secretary and administrative assistant (administrative assistant). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's July 20, 2006 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, 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.

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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. See 8 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 U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on December 23, 2002. The proffered wage as stated on the Form ETA 750 is \$20.71 per hour (\$43,076.80 per year). The Form ETA 750 states that the position requires two (2) years of experience in the job offered. On the Form ETA 750B, signed by the beneficiary on August 22, 2001, the beneficiary did not claim to have worked for the petitioner. On the petition, the petitioner claimed to have been established in 1991, to have a gross annual income of \$(9,409), and to employ no workers.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*,

NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal<sup>1</sup>. On appeal counsel submits a brief, documents about the petitioner, documents about the real properties of the petitioner, and bank statements for the petitioner's bank accounts covering selected months from 2001 to 2006. Other relevant evidence in the record includes [REDACTED] and [REDACTED] Form 1040 U.S. Individual Income Tax Return for 2002 through 2004. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

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 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, 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, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the beneficiary did not claim to have worked for the petitioner and the petitioner did not submit any W-2 forms, 1099 forms or other documentary evidence showing that the petitioner employed and paid the beneficiary the proffered wage from the priority date in 2002 onwards. Therefore, the petitioner failed to establish its ability to pay the proffered wage through the examination of wages paid to the beneficiary for these years. The petitioner is obligated to demonstrate that it could pay the proffered wage in each relevant year from 2002 to the present.

A trust is an entity created and governed under the state law in which it was formed. A trust involves the creation of a fiduciary relationship between a grantor, a trustee, and a beneficiary for a stated purpose. The grantor is the creator of the trust relationship and is generally the owner of the assets initially contributed to the trust. The trustee obtains legal title to the trust assets and is required to administer the trust on behalf of the beneficiaries according to the express terms and provisions of the trust agreement. The beneficiaries are those entitled to receive benefits from the trust. A revocable trust may be revoked and is considered a grantor trust, which is a term used in the Internal Revenue Code to describe any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. 26 U.S.C. § 676. If a trust is a grantor trust, then the grantor is treated as the owner of the assets, the trust is disregarded as a separate tax entity, and all income is taxed to the grantor on his or her Form 1040, U.S. Individual Income Tax Return. *See* <http://www.irs.gov/businesses/small/article/0,,id=106551,00.html> (accessed October 30, 2007). The petitioner in the instant case is the trustee and the grantor of his revocable living trust. Therefore, like a sole

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<sup>1</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).

proprietor, the petitioner's income, liquefiable assets, and personal liabilities are also considered as part of the petitioner's ability to pay. The petitioner must show that he can cover his existing expenses as well as pay the proffered wage. In addition, he must show that he can sustain himself and his dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7<sup>th</sup> 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 (approximately thirty percent of the petitioner's gross income).

Therefore, for a revocable trust, CIS considers net income to be the figure shown on line 33<sup>2</sup>, Adjusted Gross Income, of the grantor's Form 1040 U.S. Individual Income Tax Return. The record contains copies of the Form 1040 U.S. Individual Income Tax Return of the petitioner for 2002 through 2004. The tax returns demonstrated the following financial information concerning the petitioner's ability to pay the proffered wage:

In 2002, the Form 1040 stated adjusted gross income of \$83,136.  
In 2003, the Form 1040 stated adjusted gross income of \$(11,665).  
In 2004, the Form 1040 stated adjusted gross income of \$(11,409).

The record does not contain any statement of the petitioner's household monthly expenses. Without the statement of the petitioner's household monthly expenses, the AAO cannot determine whether or not the petitioner established his ability to pay the proffered wage as well as to sustain his family's living expenses.

In 2002 the petitioner's adjusted gross income on Form 1040 was sufficient to pay the beneficiary the proffered wage of \$43,076.80 in that year, and it appears likely that the petitioner could cover the living expenses for his family of two with the balance of \$40,059.20 after paying the proffered wage from the adjusted gross income that year although the petitioner did not submit a statement of his household monthly expenses. Therefore, the AAO concurs with counsel's assertion that the petitioner has established its ability to pay the proffered wage in 2002.

In 2003 and 2004, the petitioner had adjusted gross incomes of \$(11,665) and \$(11,409), respectively, which were not sufficient to pay the beneficiary the proffered wage either of the years even without taking into account the petitioner's family living expenses.

CIS will consider the petitioner's income and his liquefiable assets and personal liabilities as part of the petitioner's ability to pay. The petitioner's liquefiable assets may document with evidence of cash balances in accounts of savings, money market, certificates of deposits, or other similar accounts showing extra available funds for the petitioner to pay the proffered wage and/or personal expenses. In the instant case, the record of proceeding contains bank statements for the petitioner's bank accounts covering selected months from 2001 to 2006. The petitioner has established its ability to pay the proffered wage for 2002 as previously discussed and the priority date in the instant case is December 23, 2002. In addition, if the accounts are savings accounts, money market accounts, certificates of deposits, or other similar accounts, such money should be

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<sup>2</sup> The line for adjusted gross income on Form 1040 is Line 33 for 2001, however, it is Line 35 for 2002, Line 34 for 2003 and Line 36 for 2004.

considered to be available for the petitioner to pay the proffered wage and/or personal expenses. The AAO will review and consider the statements of the savings and retirement accounts for 2003 onwards.

The bank statements issued by Bank of America on December 31, 2003 indicate that the petitioner had a total balance of \$17,832.87 in its saving accounts at the end of the year 2003. The petitioner did not submit any other evidence to show the petitioner's extra liquefiable assets in 2003. The liquefiable assets of \$17,832.87 at the end of 2003 were not sufficient to pay the beneficiary the proffered wage that year even without taking into account the petitioner's family living expenses and negative adjusted gross income. Therefore, the petitioner failed to establish its ability to pay the proffered wage for 2003.

For 2004, the record contains the following statements showing the petitioner's liquefiable assets at or around the end of the year: statements from Wells Fargo Bank for the period of December 1-31, 2004 showing that there were balances of \$36,137.80 as of December 31, 2004 in the savings accounts under names of Richard [REDACTED] and The [REDACTED] Family Living Trust, and statements from Bank of America for the period of January 1-31, 2005 showing that there were balances of \$17,810.91 as of January 1, 2005<sup>3</sup> in the savings accounts under the name of [REDACTED] Family Living Trust. It is also noted that counsel submits statements from CitiBank for the period of January 10-February 7, 2005 showing that there were balances of \$40,142.24 as of January 31, 2005 in the individual retirement accounts for [REDACTED] and [REDACTED]. However, counsel did not establish that the balance in the retirement accounts were available to be used to pay the beneficiary the proffered wage at the end of 2004 without penalty or what the amount would be available if there was a penalty to liquidate their retirement funds at that time. Furthermore, counsel did not establish that the petitioner was willing to liquidate his retirement plan to pay the proffered wage, and did not submit any documentary evidence to support his assertions. 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). 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)). Therefore, the petitioner established that he had liquefiable assets of \$54,948.71, which would leave the balance of \$10,871.91 after paying the proffered wage. It is noted that the petitioner had a negative adjusted gross income of \$11,409 in 2004 and the balance of \$10,871.91 would even not be sufficient to cover the loss. It appears likely that the petitioner could not cover the living expenses for his family of two with the balance of \$10,871.91 although the petitioner did not submit a statement of his household monthly expenses. Therefore, the petitioner failed to establish its ability to pay the proffered wage in 2004.

The record before the director closed on July 11, 2006 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence (RFE) dated April 21, 2006. As of that date the petitioner's federal tax return for 2005 should have been available. However, the petitioner did not submit the petitioner's 2005 tax return. On appeal, counsel argues that the director did not request the petitioner submit its 2005 tax return in her RFE dated April 21, 2006. However, counsel does not submit the 2005 tax return on appeal despite the fact that the director expressly indicated in her denial decision that the petitioner failed to submit the 2005 tax return. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The 2005 tax return would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. The record does not

<sup>3</sup> The balance on January 1, 2005 should be the same at the end of the year 2004.

contain any evidence such as bank statements or other similar documents showing that the petitioner had sufficient liquefiable assets to pay the proffered wage and his family living expenses. Nor did the petitioner submit a statement of the monthly expenses for the petitioner's family of two in 2005. Without the evidence for 2005, the AAO cannot determine whether or not the petitioner has sufficient adjusted gross income and/or liquefiable assets to pay the proffered wage as well as his family's living expenses in 2005. The petitioner failed to establish its ability to pay for 2005 because it failed to submit the relevant evidence.

The record does not contain any evidence that the petitioner had sufficient adjusted gross income to pay the proffered wage as well as to cover his living expenses in 2006. Counsel submits some bank statements for the petitioner's accounts in 2006. However, he did not submit any statements showing liquefiable assets the petitioner had in his savings or other liquefiable funds at the end of the year 2006 available to be used to pay the proffered wage as well as to cover the petitioner's living expenses. Counsel did not submit a statement of monthly expenses for the petitioner's family for 2006. Therefore, the petitioner failed to establish its ability to pay the proffered wage in 2006 with regulatory-prescribed evidence.

Counsel also submits documents concerning the petitioner's real estate properties. However, the AAO does not generally accept a claim that the petitioner relies on the value of his rental real property to show his ability to pay because it is not likely that the petitioner will liquidate such assets in order to pay a wage. Therefore, counsel's reliance on the petitioner's real properties to demonstrate his ability to pay is misplaced.

The AAO concurs with counsel's assertion that the petitioner has established his ability to pay the proffered wage in 2002. However, the petitioner had not established that he had the continuing ability to pay the beneficiary the proffered wage and meet his personal expenses through an examination of wages paid to the beneficiary, the petitioner's adjusted gross income or other liquefiable assets in 2003 through the present.

Counsel's assertions cannot overcome the director's decision and the evidence submitted does not establish that the petitioner has the continuing ability to pay the proffered wage beginning on the priority date. The director's July 20, 2006 decision must be affirmed.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified additional grounds of ineligibility and will discuss these issues. 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).

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

administrative assistant. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	8 years
	High School	4 years
	College	0
	Experience	
	Job Offered	2 years
	Related Occupation	0

The duties of the proffered job are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth her credentials on Form ETA-750B and signed her name on August 22, 2001 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary represented that she attended Jiangmen Second High School in Jiangmen, Guangdong, China from September 1977 through July 1980, culminating in the receipt of a "diploma", and also attended Jiangmen Workers Sparetime University in Jiangmen from September 1984 to July 1988, culminating in the receipt of a "diploma." On Part 15, eliciting information of the beneficiary's work experience, she represented that she had been working as a full-time (working 40 hours per week) vice president at Bank of China Beijie Sub-Branch in Jiangmen, Guangdong since September 1999. Prior to that, she worked as a full-time (working 40 hours per week) assistant manager at Bank of China Jianmen Branch from January 1990 to May 1999. The beneficiary did not provide any additional information concerning her education and employment background on that form.

The record does not contain any evidence showing that the beneficiary meets the educational requirements in corroboration of the Form ETA-750B. The petitioner failed to demonstrate that the beneficiary possessed 8 years of grade school and 4 years of high school prior to the priority date, and thus failed to establish that the beneficiary is qualified for the proffered position in the instant case.

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) of 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.

The record contains two experience letters pertinent to the beneficiary's requisite two years of experience in the job offered. The first experience letter submitted with the initial filing was submitted with Chinese version, English translation and certificate from the translator. This experience letter is from [REDACTED] the president of Yinglian Science & Technology Co., Ltd., Yinglian Trade Development Co., Ltd., and Yinglian Estate Property Consulting Co., Ltd. The English translation was dated November 22, 2002 while the Chinese version was not dated. Although the English translation indicates that the letter was sealed by all

three companies and signed by [REDACTED] the Chinese version does not contain any seals or signature. The Chinese version contains an address in English and telephone and fax number but the English translation does not include any address and contact information for the companies. Therefore, the experience letter from [REDACTED] did not comply with the terms of 8 C.F.R. § 103.2(b)(3) and its English translation cannot be considered as a full English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) provides in pertinent part that:

*Translations.* Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The experience letter from [REDACTED] states in pertinent part that:

I am [REDACTED], the president of Yinglian Science & Technology Co., Ltd., Yinglian Trade Development Co., Ltd., Yinglian Estate Property Consulting Co., Ltd. It's my pleasure to introduce [the beneficiary] who was employed as executive director of my three companies in August 2002. Her main duty was to assist president to make decision. She was in charge of companies' management.

... ..

With development of my companies, the board of our three companies made the decision to hire her as executive director to manage these companies. [The beneficiary] started to work in August 2002. During the several months, she worked hard and systematically. ...

The experience letter from [REDACTED] appears to be from the beneficiary's employer, however, this letter verifies the beneficiary's experience as an executive director with the three companies from August 2002. The priority date in the instant case is December 23, 2002 and the petitioner must demonstrate that the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by DOL prior to the priority date. The four months of experience as an executive director cannot qualify the beneficiary for the proffered position, which requires two years of experience as an administrative assistant. Therefore, CIS cannot accept the experience letter from Lu Daosheng as primary evidence to establish the beneficiary's requisite two years of experience in the job offered.

In response to the director's April 22, 2006 RFE, counsel submitted a recommendation dated June 8, 2006 from [REDACTED] the president of Jiangmen Yinglian Estate Property Consulting Co., Ltd. with both Chinese version and English version. Both versions are on the company's letterhead, however, neither the English nor the Chinese version provides the company's address, contact information for the company or the author as required by the regulation. The author signed his name in Chinese on the Chinese version and in English on the English version. However, no evidence was submitted to show that the author is familiar with English language or that the English version was originally written by the author. Instead, the author's signature in English calls into question the authenticity of the English version. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 582. It is noted that the author was described in the Chinese version as the general manager of Jiangmen Yinglian Estate Property Consulting Co., Ltd. while his title was translated as president thereof. The record of proceeding does not contain a certificate from a translator for the complete and accurate translation. Therefore, the letter from [REDACTED] did not comply with the terms of 8 C.F.R. § 103.2(b)(3).

The letter from [REDACTED] also provided inconsistent information. In his experience letter dated November 22, 2002, [REDACTED] called himself the president of all three companies: Yinglian Science & Technology Co., Ltd., Yinglian Trade Development Co., Ltd., and Yinglian Estate Property Consulting Co., Ltd.<sup>4</sup> while the English version of [REDACTED]'s letter titled him as the president of Jiangmen Yinglian Estate Property Consulting Co., Ltd. [REDACTED] letter did not explain how the same company had two presidents or when he replaced Lu Daosheng in the position of the president. [REDACTED] verified that the board of the three companies made the decision to hire the beneficiary as an executive director to manage the three companies and the beneficiary started to work in August 2002, but [REDACTED] stated that from June 2002, the beneficiary began to work full time on a 40-hour-per-week basis as an executive director and colligation manager for Jiangmen Yinglian Estate Property Consulting Co., Ltd. [REDACTED] also stated that the beneficiary served as a part-time deputy colligation manager at his company on a 25-hour-per-week basis from February 1997 to May 2002. However, the beneficiary did not claim any part-time employment for the period from February 1997 to May 2002 on the Form ETA 750B she signed on August 22, 2001, despite that item 15 expressly requests a list of all jobs held during past three (3) years, and a list of any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9. 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. *Matter of Ho*, at 591-592. The record does not contain any independent objective evidence to resolve these inconsistencies. Because of these inconsistencies, the letter from [REDACTED] cannot be considered as primary evidence to meet the requirements set forth at 8 C.F.R. § 204.5(g)(1). Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered prior to the priority date.

In addition, under 20 C.F.R. §§ 626.20(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). Where the petitioner is owned by the person applying for position, it is not a *bona fide* offer. See *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9<sup>th</sup> Cir. 1992) (denied labor certification application for president, sole shareholder and chief cheese maker even where no person qualified for position applied).

The record of proceeding shows that the maiden name of the petitioner's spouse is Lu, who shares the same last name with the beneficiary. [REDACTED] the president of Yinglian Science & Technology Co., Ltd., Yinglian Trade Development Co., Ltd., and Yinglian Estate Property Consulting Co., Ltd., who provided an experience letter on November 22, 2002 as the beneficiary's current employer, also shares the same last name with the beneficiary and the petitioner. If a family relationship exists between the petitioner and the beneficiary, it raises doubt about a *bona fide* job offer, and also raises a question concerning the authenticity and reliability of the experience letters. 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*, at 582. Therefore, without evidence to show that a valid employment relationship exists, the AAO is not persuaded that the petitioner offered a *bona fide* job opportunity which is available to U.S. workers.

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<sup>4</sup> It is noted that the companies' Chinese names are Jiangmen Yinglian Science & Technology Co., Ltd., Jiangmen Yinglian Trade Development Co., Ltd., and Jiangmen Yinglian Estate Property Consulting Co., Ltd.

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.