



U.S. Citizenship
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EAC-02-266-51407

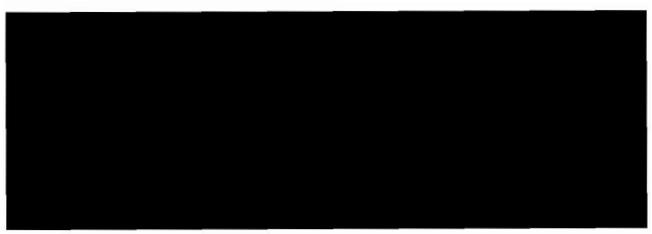
Office: VERMONT SERVICE CENTER

Date: AUG 04 2008

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 Acting Director (Director), Vermont Service Center on December 17, 2003. The appeal from the denial was summarily dismissed by the Administrative Appeals Office (AAO) on June 29, 2005. The subsequent motion to reopen was rejected by the AAO as untimely filed on October 11, 2006. The matter is again before the AAO on a motion to reopen. The instant motion to reopen will be dismissed as untimely filed.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The record indicates that the AAO issued the decision on October 11, 2006. Although counsel dated his motion to reopen November 17, 2006, it was received by CIS on November 20, 2006, or 40 days after the decision was issued. Counsel asserts on motion that the beneficiary received a copy of the AAO's October 11, 2006 decision at a Master hearing in Immigration Court on October 18, 2006. However, counsel does not submit any 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)). Thus, the motion was not timely filed and must be dismissed on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The AAO notes that if the motion would not be dismissed for being untimely, it would otherwise be dismissed based on that the motion was not properly filed because it does not meet the requirement of a motion. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The instant motion to reopen was filed from the AAO's October 11, 2006 decision in which the AAO rejected the motion to reopen as untimely filed. On the instant motion to reopen, counsel does not state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence, nor does counsel submit state any reasons why the AAO's October 11, 2006 decision was in error and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy. Therefore, the instant motion to reopen does not meet the requirement of a motion to reopen and thus must be dismissed as improperly filed.

The AAO also notes that if the motion would not be dismissed for being untimely or improperly filed, it would otherwise be dismissed because counsel's assertions on appeal with evidence submitted do not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The petitioner is a taxicab company. It seeks to employ the beneficiary permanently in the United States as a cab supervisor (taxicab supervisor). 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). 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.

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 either 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 DOL. See 8 C.F.R. § 204.5(d).

Here, the Form ETA 750 was accepted on April 27, 2001. The proffered wage as stated on the Form ETA 750 is \$14.50 per hour (\$26,390 per year¹). On the Form ETA 750B signed on October 11, 2001, the beneficiary did not claim to have worked for the petitioner. On the petition, the petitioner claimed to have been established in 1993, to have a gross annual income of \$244,731, to have a net annual income of \$15,929, and to currently employ sixteen employees.

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 did not submit any evidence to show that the petitioner paid the beneficiary any amount of compensation in the relevant years. Thus, the petitioner failed to establish its ability to pay the proffered wage through wages paid to the beneficiary from 2001 onwards.

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

¹ It is based on \$14.50 per hour x 35 hours per week x 52 weeks.

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. See *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

Reliance on the petitioner's gross income and gross profit is misplaced. Showing that the petitioner's total income exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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. In response to the director's request for evidence (RFE) issued on June 2, 2003, counsel submitted a letter dated August 13, 2003 from [REDACTED]

CPA who asserted that the petitioner's depreciation of \$9,579 in 2001 should be added back to net income of the corporation and that with the depreciation added back to net income, the petitioner established its ability to pay the proffered wage for that year. Counsel's reliance on the petitioner's depreciation in determining its ability to pay the proffered wage is misplaced. The court in *K.C.P. Food Co., Inc. v. Sava* specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng Chang* 719 F. Supp at 537.

The petitioner submitted its Form 1120S U.S. Income Tax Return for an S Corporation for 1999 through 2001 as evidence of the petitioner's ability to pay the proffered wage. According to the tax returns in the record, the petitioner is structured as an S corporation, and its fiscal year is based on a calendar year. However, the priority date in the instant case is April 27, 2001, and therefore, the tax returns for 1999 and 2000 are not necessarily dispositive. The tax return for 2001 demonstrates the following financial information concerning the petitioner's ability to pay the proffered wage of \$26,390 per year from the priority date:

- In 2001, the Form 1120S stated a net income² of \$15,929.

² Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on

Therefore, for 2001, the petitioner did not have sufficient net income to pay the proffered wage, and thus failed to establish its ability to pay the proffered wage with its net income that year.

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

Net current assets are the difference between the petitioner's current assets and current liabilities.³ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 2001 were \$13,488.

Therefore, for 2001, the petitioner did not have sufficient net current assets to pay the proffered wage, and thus, it failed to establish its ability to pay the proffered wage with its net current assets for the year of the priority date.

The record before the director closed on August 26, 2003 with the receipt by the director of the petitioner's submissions in response to the RFE. As of that date the petitioner's federal tax return for 2002 should have been available. However, the petitioner did not submit its tax return, annual report, audited financial statements or

the Form 1120S U.S. Income Tax Return for an S Corporation state on page one, "Caution: Include only trade or business income and expenses on lines 1a through 21."

Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120S states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on line 23 or line 17e of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. For example, an S corporation's rental real estate income is carried over from the Form 8825 to line 2 of Schedule K. Similarly, an S corporation's income from sales of business property is carried over from the Form 4979 to line 5 of Schedule K. See Internal Revenue Service, Instructions for Form 1120S (2003), available at <http://www.irs.gov/pub/irs-prior/i1120s--2003.pdf>; Instructions for Form 1120S (2002), available at <http://www.irs.gov/pub/irs-prior/i1120s--2002.pdf>.

³According 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 as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

other regulatory-prescribed evidence for 2002. Nor did counsel submit any evidence to establish the petitioner's ability to pay the proffered wage in 2002 through the present on appeal and motions. 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). Without the regulatory-prescribed evidence, CIS cannot determine whether the petitioner had the ability to pay the proffered wage in the relevant years. The petitioner failed to establish its ability to pay the proffered wage for 2002 through the present because it failed to submit these documents.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had continuing ability to pay the beneficiary the proffered wage as of the priority date in 2001 to the present through an examination of wages paid to the beneficiary, its net income or net current assets.

The record contains the petitioner's statement of cash flow as of December 31, 2001 from Howard R. Dias, CPA. 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 accountant's report that accompanied the financial statement makes clear that it is a reviewed statement, as opposed to audited statements. The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. Reviews are governed by the American Institute of Certified Public Accountants' Statement on Standards for Accounting and Review Services (SSARS) No.1., and accountants only express limited assurances in reviews. As the account's report makes clear, the accountant expresses no opinion pertinent to their accuracy. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Counsel cited a DOL Bureau of Alien Labor Certification Appeals (BALCA) case, *Ohsawa America*, 1988-INA-240 (BALCA 1988), which stands for the proposition that the \$4 million personal assets of the corporate owner were sufficient and should have been considered in determining the ability to pay the proffered wage in that case. However, counsel did not state how the *Ohsawa* rules applied to labor certification applications by BALCA are applicable to the instant petition before the Department of Homeland Security's AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, BALCA decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). While the regulation at 8 C.F.R. § 204.5(g)(2) allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner.

The record also contains a letter dated August 13, 2002 from [REDACTED] and his 2001 individual income tax return. In the letter, [REDACTED] stated that as the sole owner of this company he is willing to make his personal funds available to pay the beneficiary the proffered wage in the future. Contrary to the petitioner's

assertion, since the petitioner in the instant case is structured as a corporation,⁴ CIS may not “pierce the corporate veil” and look to the assets of the corporation’s owner to satisfy the corporation’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Thus, the assets of its shareholders cannot be considered in determining the petitioning corporation’s ability to pay the proffered wage. Consequently, in the instant case, [REDACTED] personal funds cannot be used to establish the petitioner’s ability to pay the proffered wage.

However, the sole shareholder of a corporation has the authority to allocate expenses of the corporation for various legitimate business purposes, including for the purpose of reducing the corporation's taxable income. Compensation of officers is an expense category explicitly stated on the Form 1120S U.S. Corporation Income Tax Return. For this reason, the petitioner's figures for compensation of officers may be considered as additional financial resources of the petitioner, in addition to its figures for ordinary income. The documentation presented here indicates that [REDACTED] holds 100 percent of the company’s stock. According to the petitioner’s 2001 IRS Form 1120S line 7 Compensation of officers, [REDACTED] elected to pay himself \$36,400 in 2001. [REDACTED] Form 1040 U.S. Individual Income Tax Return for 2001 shows that he had adjusted gross income of \$330,802 for his family of two. However, counsel did not document that the sole shareholder is willing to forgo his compensation of officers to pay the beneficiary the proffered wage and did not submit [REDACTED] W-2 forms from the petitioner for 2001 to support the figure reflected on line 7 of the Form 1120S. Therefore, the petitioner failed to submit sufficient evidence to establish its ability to pay the proffered wage in 2001 by forgoing the officer’s compensation. In addition, the record does not contain any evidence regarding the petitioner’s net income, net current assets or compensation of officer in 2002 through the present. Therefore, the petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date until the beneficiary obtains lawful permanent residence by forgoing officer compensation.

Counsel claimed that the ratio of total assets to total liabilities shows that the petitioner has the ability to pay the proffered wage. Financial ratio analysis is the calculation and comparison of ratios that are derived from the information in a company’s financial statements. The level and historical trends of these ratios can be used to make inferences about a company’s financial condition, its operations, and attractiveness as an investment. The AAO notes that there is no single correct *value* for a current ratio, rendering it less useful for determinations of an entity’s ability to pay a specific wage during a specific period. In isolation, a financial ratio is a useless piece of information.⁵

⁴ See <http://www.corporations.state.pa.us/corp/soskb/Corp.asp?1289681> (accessed on June 17, 2008).

⁵ The observation that a particular ratio is high or low depends on the purpose for which the ratio is being observed. In context, however, a financial ratio can give a financial analyst an excellent picture of a company’s situation and the trends that are developing. A ratio gains utility by comparison to other data and standards, such as the performance of the industry in which a company competes. Ratio Analysis enables the business owner/manager to spot trends in a business and to compare its performance and condition with the average performance of similar businesses in the same industry. Important balance sheet ratios measure liquidity and solvency (a business’s ability to pay its bills as they come due) and leverage (the extent to which the business is dependent on creditors’ funding). Liquidity ratios indicate the ease of turning assets into cash

Counsel and the petitioner argued that the petitioner's project net income for 2002 would be about \$100,000. Reliance on the petitioner's projected income in determining its ability to pay the proffered wage is misplaced. Regarding the projection of future earnings, *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) states:

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

Counsel's assertions on appeal and motions cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by DOL.

Beyond the director's decision and counsel's assertions on appeal and motions, 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).

The first issue beyond the director's decision is whether or not the petitioner demonstrated that the beneficiary possessed the requisite two years of experience in the job offered prior to the priority date. 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. 8 C.F.R. § 204.5(1)(3)(ii)(B). 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 food service manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

and include the current ratio, quick ratio, and working capital. *See Financial Ratio Analysis*, <http://www.finpipe.com/equity/finratan.htm> (accessed March 21, 2006); *Financial Management, Financial Ratio Analysis*, <http://www.zeromillion.com/business/financial/financial-ratio.html> (accessed March 21, 2006); *Industry Financial Ratios, Financial Ratio Analysis*, <http://www.ventureline.com/FinAnalindAnalysis.asp> (accessed March 21, 2006).

14.	EXPERIENCE	
	Job Offered	2 years
	Related Occupation	0

Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on October 11, 2001 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, he represented that he worked as a full time taxicab supervisor for United Cab Association from May 1996 to December 1998. He did not provide any additional information concerning his employment background on that form.

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

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The only experience letter in the record was a letter dated April 25, 2001 from [REDACTED] as the former treasurer of United Cab Association. This letter verifies that the beneficiary worked for United Cab Association as a taxicab supervisor from April of 1994 until the company went out of business in September of 1997 and includes a specific description of the duties the beneficiary performed during the employment period. However, this letter did not include addresses, telephone numbers or other contact information for the company and the author, and therefore, CIS cannot verify the employer's business and the beneficiary's employment with that company during the claimed period. The letter also provided inconsistent information regarding the starting date of the beneficiary's employment with that company. While the experience letter stated that the beneficiary started the employment in April 1994, the record indicates that the beneficiary arrived in the United States in May 1994. Without further supporting evidence, the experience letter dated April 25, 2001 from [REDACTED] cannot be considered as primary evidence to establish the beneficiary's requisite two years of experience in the job offered in the instant case.

The director issued a RFE on June 2, 2003 requesting to explain the apparent discrepancies and provide additional documentary evidence, such as copies of Form W-2 or pay stubs from the employer, to establish the dates the beneficiary actually worked for United Cab Association. In the response letter dated August 22, 2003, counsel corrected this letter and the beneficiary's statement on the Form ETA 750B stating that the beneficiary worked at United Cab from May 1994 until September of 1997. Counsel also apologized for his oversight. However, counsel did not submit any revised letter or statement from the author and the beneficiary. Nor did counsel submit any additional evidence expressly requested in the director's RFE to establish the beneficiary's employment with United Cab Association. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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. at 165 (citing *Matter of Treasure Craft*

of California, 14 I&N Dec. at 190). The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). In addition, counsel admitted that the error resulted from his oversight. That raises a question whether the experience letter is initiated and from someone named Alex Fishel and whether the beneficiary really worked for the taxicab company United Cab Association. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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.*

Therefore, the petitioner failed to demonstrate with regulatory-prescribed evidence that the beneficiary possessed the requisite two years of experience as a taxicab supervisor prior to the priority date, and thus failed to establish the beneficiary's qualifications for the proffered position.

The second issue beyond the director's decision is whether the petitioner demonstrated that the job offer to the beneficiary is *bona fide*. The petitioner must establish that its job offer to the beneficiary was a realistic one at the time of filing the labor certification application and has been a realistic one since then. The proffered position in the instant case is a supervisory position. The certified Form ETA 750 indicates that the job offered is a taxicab supervisor and the beneficiary will supervise 25 employees in the proffered position. However, the record does not contain any documentary evidence of the petitioner's number of employees. The petitioner did not submit any evidence to show it had at least 25 employees to be supervised by the beneficiary when it filed the underlying labor certification application on April 27, 2001. The petitioner's tax return for 2001 shows that the petitioner paid salaries and wages of \$54,400 without any cost of labor and other costs reported in Schedule A of the Form 1120S. It appears that it is impossible that the petitioner had at least 25 employees during the year of 2001. The petitioner claimed on the petition that it currently had 16 employees when it filed the instant petition on August 19, 2002. The petitioner did not have at least 25 employees to be supervised by the beneficiary in 2002. Therefore, the record does not contain any evidence that the petitioner ever had at least 25 employees to be supervised by the beneficiary in the proffered position. That raises a doubt whether the job offered to the beneficiary has ever been a realistic and *bona fide* one. The AAO finds that the petitioner failed to establish that the job offered to the beneficiary is a realistic one in the instant case.

The petition would be denied for the above stated reasons, with each considered as an independent and alternative basis for denial if the instant motion to reopen were not dismissed for being untimely or improperly filed.

As the motion to reopen was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed as untimely filed.