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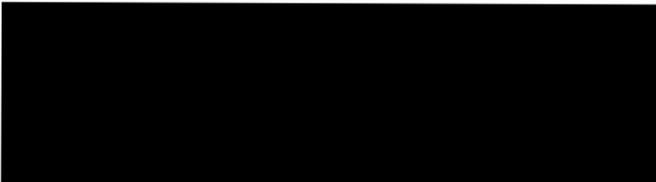


FILE: LIN 06 240 52126 Office: NEBRASKA SERVICE CENTER Date **SEP 22 2008**

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

The petitioner is a consulting marketing firm. It seeks to employ the beneficiary permanently in the United States as a regional training manager.¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. 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 2002 priority date of the visa petition or that the beneficiary had the requisite four years of experience in staff training for all areas of dealership activity, as stipulated on the Form ETA 750. 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.

As set forth in the director's December 21, 2006 denial, the two primary issues in this case are whether or not the petitioner has the ability to pay the proffered wage as of the 2002 priority date and continuing until the beneficiary obtains lawful permanent residence, and whether the beneficiary is qualified to perform the duties of the proffered position. The AAO will first examine whether the petitioner established its ability to pay the proffered wage and then consider whether the beneficiary is qualified to perform the duties of the proffered position.

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

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 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

¹ The I-140 petition provides the following non technical description of the proffered job: "provide marketing services to automotive clients and oversee marketing."

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 October 23, 2002. The proffered wage as stated on the Form ETA 750 is \$180,000 per year. The Form ETA 750 states that the position required four years of experience in the proffered position or four years of work experience in the related occupation of automotive sales manager. Section 15 of the ETA Form 750 indicated that the beneficiary's experience must include staff training for all areas of dealership activity.

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.²

On appeal, counsel submits a brief and the following evidence:

A copy of two documents dated January 16, 2007 and March 28, 2005 respectively. Both are entitled "Stuker And Associates" and list checks paid for consulting fees under account [REDACTED] primarily from the years 2004 to 2006;

A copy of sixteen checks annotated '[REDACTED]' dating from April 2004 to March 2005;³ and

Copies of ten bank statements for S [REDACTED] s, Ontario, from the Royal Bank of Canada for the months April 2004 to February 2004.

The record also contains the petitioner's Forms 1120, U.S. Corporation Income Tax Return, for tax years 2002 to 2005, and copies of the beneficiary's Forms TA, Statement of Remuneration Paid for tax years 2002 to 2005. These government of Canada forms indicate the beneficiary's employer is Stuker & Associates (Canada) Inc. The record contains no further evidence with regard to the petitioner's ability to pay the proffered wage.

On appeal, counsel notes the petition's priority date is October 23, 2002, and stated that between this priority date and December 31, 2002 was a period of approximately ten weeks. Counsel cites to 8 C.F.R. § 204.5(g)(2), and stated that the petitioner is only required to demonstrate ability to pay the proffered wage at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Counsel asserts that the petitioner's owner's \$78,550 in net current assets in tax year 2002 is in

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ The earlier checks identify the surnames [REDACTED] and [REDACTED] in relation to consulting fees, while the January 24, 2005 check indicates that consulting fees for December 1-15 were for three persons.

excess of the funds needed to demonstrate the petitioner's ability to pay the prorated proffered wage. With regard to the director's decision that the beneficiary's Canadian wage statements could not be used to establish the petitioner's ability to pay the proffered wage, counsel states that the petitioner has been transferring funds to the Canadian company for the beneficiary's remuneration since the priority date was established. Counsel states that the petitioner transferred \$215,525 to the Canadian company in 2004 and \$150,700 to the Canadian company in 2005.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1981, to have a gross annual income of \$1,909,508, a net annual income of \$75,482, and fourteen Canadian and American employees. On the Form ETA 750B, signed by the beneficiary on September 16, 2002, the beneficiary, listing a Canadian address, claimed to have worked for the petitioner since September 1992.

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).

With regard to whether the proffered job is a realistic one in the instant petition, the petitioner has to establish that it is the actual employer of the beneficiary. Only a U.S. employer that desires and intends to employ an alien may file a petition to classify the alien under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). *See* 8 C.F.R. § 204.5(c). Based on the record, although the petitioner is a U.S. company, the beneficiary is presently paid by a Canadian business, and pays taxes to the Canadian government. The petitioner provided no explanation as to its business relationship with the Canadian company and why the Canadian company pays the beneficiary, if the beneficiary is a current employee of the petitioner. Further, the beneficiary on the ETA 750, Part B that he plans to reside in Canada upon adjusting status.

Counsel on appeal submits copies of check statements and a list of checks paid ostensibly for consulting fees. The consulting fees appear to be for consulting fees from the U.S. company to the Canadian company for two to three persons working for the U.S. company. Counsel also submits banking statements from the Royal Bank of Canada. If these checks and bank statements were submitted to the record to verify that the U.S. company was transferring funds to the Canadian business' checking account to pay the beneficiary, the AAO notes that the checks document consulting fees for two to three persons, not just the beneficiary. But more importantly, the petitioner provides no rationale for why the consulting fees paid to a Canadian company should be utilized to establish the instant petitioner's ability to pay the proffered wage to the beneficiary.

The petitioner's 2002 tax return in Statement 3, Form 1120, Schedule A, Line 5, Other Cost of Goods Sold lists consulting expenses of \$121,904, while Statement 5, Form 1120, Schedule L, Line 6, Other Current Assets, lists an end of the year figure of \$128,723 as "Due from Affiliates-Stuker Canada." The petitioner's other tax returns reflect entries for these same two items. Such entries suggest that in addition to the U.S. company sending checks to the Canadian company, the Canadian company was submitting monies to the U.S.

company.⁴ Again, the petitioner has provided no further clarification as to the relationship between the claimed affiliate and itself. For this reason, the AAO will not consider the beneficiary's wage statements from the Canadian company as evidence to establish the U.S. petitioner's ability to pay the proffered wage.

On appeal, counsel suggests that the beneficiary's salary can be prorated so that the petitioner only has to establish its ability to pay the proffered wage from the October 23, 2002 priority date to December 31, 2002, the end of the 2002 calendar year. Counsel suggests that the petitioner has to establish its ability to pay a prorated salary of approximately \$34,615.40 during the 2002 priority year. Counsel requests that CIS prorate the proffered wage for the portion of the year that occurred after the priority date. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While CIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

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. As stated previously, the beneficiary's wage statements from the Canadian government cannot be utilized to establish the petitioner's ability to pay the proffered wage. Thus, the petitioner has not established that it employed and paid the beneficiary during the relevant period of time and has to establish its ability to pay the entire proffered wage in tax years 2002 to 2005.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well supported by federal case law. *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 sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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. The court 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

⁴ The petitioner's 2004 tax return indicates that \$121,395 was due from the Canadian company.

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 tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of \$180,000 per year from the priority date:

- In 2002, the Form 1120 stated a net income⁵ of -\$48,342.
- In 2003, the Form 1120 stated a net income of \$8,516.
- In 2004, the Form 1120 stated a net income of -\$4,249.
- In 2005, the Form 1120 stated a net income of \$75,482.

Therefore, for the years 2002 through 2005, the petitioner did not have sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. 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.⁶ 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 2002 were \$78,550.
- The petitioner's net current assets during 2003 were \$126,915.
- The petitioner's net current assets during 2004 were \$89,347.
- The petitioner's net current assets during 2005 were \$171,898.

Therefore, for the years 2002 to 2005, the petitioner did not have sufficient net current assets to pay the proffered wage of \$180,000. From the date the Form ETA 750 was accepted for processing by the U. S.

⁵The petitioner's net income is its taxable income before NOL deduction and special deductions, as reported on Line 28 of the Form 1120.

⁶According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Department of Labor, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel asserts in his brief accompanying the appeal that there is another way to determine the petitioner's continuing ability to pay the proffered wage from the priority date. Counsel asserts that the beneficiary's wages can be prorated from the October 23, 2002 priority date to December 31, 2002, the end of the petitioner's 2002 tax year. However, as previously stated, CIS does not prorate salaries and the petitioner submitted no specific evidence to establish what wages it paid the beneficiary during this period of time.

Counsel's assertions on appeal 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 the Department of Labor. The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The AAO will also examine the second issue raised by the director in his decision, namely, whether the beneficiary had the requisite work experience stipulated on the Form ETA 750.

The petitioner must 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). As stated previously, the Form ETA 750 was accepted on October 23, 2002.

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

(A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Again, 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.⁷

⁷ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which

On appeal, counsel submits a letter dated Februa 1, 2007 and written by [REDACTED] Director, Oscar Motors Limited, Essex, England. In his letter, [REDACTED] states that the beneficiary was employed by Oscar Motors Limited from May 1980 to January 1985 as General Sales Manager. [REDACTED] further states that the beneficiary's duties included control of staff, including staff training for all areas of **dealership activities** and product knowledge, basic selling skills, customer satisfaction and prospecting techniques. [REDACTED] adds that the beneficiary was also responsible for purchasing new and used vehicles. The record also contains an earlier letter of work experience from [REDACTED] dated February 2, 1987. In his letter, [REDACTED] states the beneficiary's title as general sales manager, and that his duties included control of staff and purchasing of new and used vehicles.

The record also contains a letter dated November 13, 1997 from [REDACTED] President, Checkpoint Chrysler, St. Catharines, Ontario, Canada. In his letter, [REDACTED] stated that the beneficiary worked with Checkpoint Chrysler Ltd from December 1987 to February 1991 as New Car Manager responsible for sales and marketing of all new car and trucks sales, as well as fleet sales, for the company. [REDACTED] added that as a member of the senior management team, the beneficiary was also responsible for the ongoing education and training of the sales staff in both the new and used car departments.

In his decision, the director determined that the letters of work experience submitted to the record from Oscar Motors and from Checkpoint Chrysler did not establish that the beneficiary had trained his staff in all dealership activities, as stipulated in Section 15 of the Form ETA 750. The director accordingly denied the petition based on the beneficiary's lack of qualifications for the proffered position.

On appeal, counsel states that although the prior experience letters submitted to the record did not indicate that the beneficiary had trained staff in all areas of dealership activity, the second letter from Oscar Motors did note his duties included training staff for all areas of dealership activity.

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, Madany 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 printing machine operator. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|---------|
| 14. Education | |
| Grade School | (Blank) |
| High School | (Blank) |
| College | (Blank) |
| College Degree Required | None |
| Major Field of Study | |

are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

The applicant must also have four years of experience in the job offered or four years in the related occupation of automotive sales manager. The duties of the proffered job, delineated at Item 13 of the Form ETA 750A, are as follows: "Will prepare and manage the training sales activities to automotive dealerships of training staff for all areas of dealership activity including product knowledge, basic selling skills, customer satisfaction and prospecting techniques. Will spend 100 % of time in employer reimbursed travel throughout the United States." As stated previously, Item 15 of Form ETA 750A reflects other special requirements that state "experience must include staff training for all areas of dealership activity."

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has worked for the petitioner as a regional training manager from 1992 to the date he signed the Form ETA 750 on September 16, 2002. The job duties listed by the beneficiary for the petitioner include "prepare and manage the training sales activities to automotive dealerships of training staff for all areas of dealership activity including product knowledge, basic selling skills, customer satisfaction and prospecting techniques."

The beneficiary also stated that he had worked for Checkpoint Chrysler, St. Catharines, Ontario, Canada, from December 1987 to February 1991. The duties of this position included:

Trained all staff in Product Knowledge, Selling Skills and all aspects of dealership sales activity including product knowledge, basic selling and customer satisfaction and prospecting techniques. Performed market analysis for effective use of advertising revenue. Organized all dealership promotions and ensured market penetration of product using compiled [sic] data for inventory controls and sales categories."

Finally the beneficiary indicated he had worked for W.H. Perry Ltd, Edgware Road, Middlesex, England, as Director of Sales and Marketing from March 1986 to December 1987 and as General Sales Manager/Trainer from May 1984 to March 1986. With regard to job duties at W.H. Perry Ltd, as director of Sales and Marketing, the beneficiary indicated the following: "Responsible for all Ford dealership group departments including sales, parts, service, body shop and finance. Organized and liaised on all group marketing with department managers to determine advertising and sales data to institute dealership service, marketing and revenue goals." With regard to his earlier employment with W.H. Perry Ltd, from May 1984 to March 1986 as General Sales Manager/Trainer, the beneficiary reiterated the job duties outlined in his job description for Checkpoint Chrysler that included training all staff in all aspects of dealership sales activity. The beneficiary provided no information on the Form ETA 750 with regard to any employment with Oscar Motors Limited, Essex, England.

The AAO notes that, as correctly noted by the director in his denial of the petition, the petitioner did not submit its own letter of work experience to corroborate the beneficiary's claimed previous employment with the petitioner from 1992, although the job description for this employment contained in the Form ETA 750, Part B, indicates the beneficiary's experience in training staff in all dealership activity. The AAO also notes that the second letter from Oscar Motors, Essex, England that was intended to corroborate the beneficiary's previous experience in training staff in all dealership activity is from an employer not identified on the Form ETA 750, with no further explanation provided by the petitioner for the submission of this evidence. *See Matter of Leung*, 16 I&N 12 (BIA 1976). This decision was decided on other grounds, but the court deemed the applicant's testimony concerning employment omitted from the labor certification to be not credible.

Further, the record contains contradictory information with regard to the beneficiary's claimed employment in the period of time of May 1984 to January 1985. The AAO notes that based on the letters from [REDACTED] the beneficiary's claimed employment with Oscar Motors from May 1980 to January 1985 would have overlapped with his employment with W.H. Perry Ltd, from May 1984 to January 1985. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "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* also states: "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." *Id.*

Although the Form ETA 750, Part B reflects the beneficiary's extensive claimed work experience in staff training in all dealership activity, the petitioner has not provided any corroborating evidence with regard to this claimed work experience. Thus, the petitioner has not established the beneficiary's qualifications for the proffered position. Therefore, the AAO affirms the director's determination that the petitioner had not established the beneficiary's qualifications to perform the proffered position.

Thus, the petitioner has not established its ability to pay the proffered wage as of the 2002 priority date and until the beneficiary obtains lawful permanent residency nor has it established the beneficiary's qualifications for the proffered position. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.