

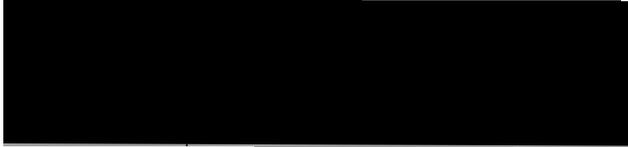
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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Services



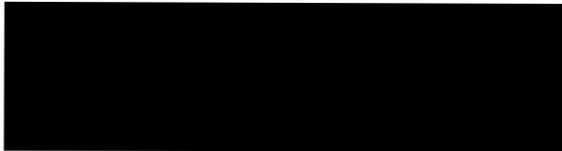
B6

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 22 2009
SRC 07 200 50954

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 a developer of software and computer training. It seeks to employ the beneficiary permanently in the United States as a computer software systems engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. 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 and 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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's original June 11, 2008 decision, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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 or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

The regulation at 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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [U.S. Citizenship and Immigration Services (USCIS)].

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 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is November 12, 2004. The proffered wage as stated on the Form ETA 750 is \$43,763.20 annually.

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.¹

Relevant evidence submitted on appeal includes counsel's brief, copies of payroll records for the beneficiary for the pay periods ending June 6, 2008 and June 13, 2008, and a letter, dated July 3, 2008, from the petitioner's president. Other relevant evidence includes copies of 2004 through 2006 Forms W-2, Wage and Tax Statements, issued by the petitioner on behalf of the beneficiary; copies of payroll records for the beneficiary for the pay periods ending March 28, 2008, April 4, 2008, and April 11, 2008; copies of the petitioner's bank statements for March 1, 2007 through March 31, 2007, June 1, 2007 through June 30, 2007, September 1, 2007 through September 30, 2007, and December 1, 2007 through December 31, 2007; copies of the petitioner's 2004 through 2006 Forms 1120-A, U.S. Corporation Short-Form Income Tax Returns; and copies of contracts dated in 2008. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The 2004 through 2006 Forms W-2, issued by the petitioner on behalf of the beneficiary, reflect wages paid to the beneficiary by the petitioner of \$9,263.20, \$21,715.20, and \$23,204.00, respectively.

The beneficiary's payroll records indicate that she was paid \$846 in each of the pay periods.

The petitioner's bank statements reflect balances ranging from a low of \$1,144.20 to a high of \$4,725.99.

The petitioner's 2004 through 2006 Forms 1120-A reflect taxable income before net operating loss deduction and special deductions or net incomes of -\$24,033.79, -8,697.91, and -\$5,024.73, respectively. The petitioner's 2004 through 2006 Forms 1120-A also reflect net current assets of -\$2,463, \$0, and \$0, respectively.

The letter, dated July 3, 2008, from the petitioner's president states:

¹ 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).

She [the beneficiary] is a very rare specialist with the knowledge that includes unique combination of Btrieve and Pervasive SQL DB which is very vital for the company's success, especially at this time. During the past few months, [the petitioner] executed two major software development and service agreements totaling nearly \$200,000.00 (see attached). Losing [the beneficiary] as a leader of these projects now may cause some delays on deliverables and even possible termination.

On appeal, counsel contends that the petitioner has established its ability to pay the proffered wage of \$43,763.20 based on the wages paid to the beneficiary, its bank statements, its contracts, and on the totality of the circumstances.

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 (USCIS) 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, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750, signed by the beneficiary on November 8, 2004, the beneficiary claims to have been employed by the petitioner from June 2004 to the present (November 8, 2004). In addition, counsel has submitted copies of the 2004 through 2006 Forms W-2, issued by the petitioner on behalf of the beneficiary, which establishes that the petitioner employed the beneficiary in 2004 through 2006.

The petitioner is obligated to show that it had sufficient funds to pay the difference between the proffered wage of \$43,763.20 and the actual wages paid to the beneficiary of \$9,263.20 in 2004, \$21,715.20 in 2005, and \$23,204 in 2006 in 2004 through 2006.² Those differences are \$34,500, \$22,048, and \$20,559.20, respectively.

² The AAO notes that USCIS records indicate that the petitioner has filed 5 nonimmigrant petitions, Forms I-129, since 2007 when the instant petition was filed for this beneficiary. Additionally, USCIS records reflect that the petitioner has filed two other immigrant petitions. The petitioner must demonstrate its ability to pay each sponsored immigrant worker from the respective priority date until each obtains permanent residence. USCIS must also take into account the petitioner's

As an alternative means of determining the petitioner's ability to pay the proffered wage, USCIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by 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. Tex. 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc.*, the court held that USCIS 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. 623 F.Supp at 1084. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to add back to net cash the depreciation expense charged for the year. *See Elatos Restaurant Corp.*, 632 F. Supp. at 1054. 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. [USCIS] 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.

In the years 2004 through 2006, the petitioner was organized as a "C" corporation. For a "C" corporation, USCIS considers net income to be the figure shown on line 28 of the petitioner's Form 1120, U.S. Corporation Income Tax Return or line 24 of the petitioner's Form 1120-A. The petitioner's tax returns demonstrate that its net incomes in 2004 through 2006 were -\$24,033, -\$8,697.91, and -\$5,024.73, respectively. The petitioner could not have paid the difference of \$34,500 in 2004, \$22,048 in 2005, and \$20,559.20 in 2006 between the proffered wage of \$43,763.20 and the actual wages paid to the beneficiary of \$9,263.20 in 2004, \$21,715.20 in 2005, and \$23,204 in 2006 from its net incomes in 2004 through 2006.

ability to pay the petitioner's wages in the context of its overall recruitment efforts. Presumably, the petitioner has filed and obtained approval of the labor condition applications (LCA) on the representation that it requires all five I-129 workers and intends to employ them upon approval of the petitions, and pay the required wages in accordance with each LCA. It is incumbent upon the petitioner to demonstrate that it has the ability to pay the wages of all immigrant beneficiaries it seeks to employ, and to pay each I-129 worker in accord with each LCA.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a 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, USCIS 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, USCIS 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 If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner's net current assets in 2004 through 2006 were -\$2,463, \$0, and \$0, respectively. The petitioner could not have paid the difference of \$34,500 in 2004, \$22,048 in 2005, and \$20,559.20 in 2006 between the proffered wage of \$43,763.20 and the actual wages paid to the beneficiary of \$9,263.20 in 2004, \$21,715.20 in 2005, and \$23,204 in 2006 from its net current assets in 2004 through 2006. Additionally, the petitioner's net income or net current assets would not support paying the respective proffered wages for the other sponsored beneficiaries.

On appeal, counsel claims that the petitioner has established its ability to pay the proffered wage of \$43,763.20 based on the wages paid to the beneficiary, its bank statements, its contracts, and on the totality of the circumstances.

Counsel is mistaken. While USCIS will consider the wages paid to the beneficiary, the petitioner is still obligated to show that it had sufficient funds to pay the difference between the proffered wage and the wages actually paid to the beneficiary in the pertinent years (2004 through 2006). In the instant case, the petitioner has not done so. In addition, the petitioner is obligated to show that it had sufficient funds to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). Again, in the instant case, the petitioner has not established its ability to pay the proffered wage in any of the pertinent years (2004 through 2006).

Counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material

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

“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. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner’s bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner’s taxable income (income minus deductions) or the cash specified on Schedule L that is considered when determining the petitioner’s net current assets.

With regard to the petitioner’s contracts, those contracts are dated in 2008 and do not show the ability to pay the proffered wage from the priority date of November 12, 2004 and continuing to the present. Again, *see* 8 C. F. R. § 204.5(g)(2).

Nevertheless, if the petitioner does not have sufficient net income or net current assets to pay the proffered salary, USCIS may consider the overall magnitude of the entity’s business activities. Even when the petitioner shows insufficient net income or net current assets, USCIS may consider the totality of the circumstances concerning a petitioner’s financial performance. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). In *Matter of Sonogawa*, the Regional Commissioner considered an immigrant visa petition, which had been filed by a small “custom dress and boutique shop” on behalf of a clothes designer. The district director denied the petition after determining that the beneficiary’s annual wage of \$6,240 was considerably in excess of the employer’s net profit of \$280 for the year of filing. On appeal, the Regional Commissioner considered an array of factors beyond the petitioner’s simple net profit, including news articles, financial data, the petitioner’s reputation and clientele, the number of employees, future business plans, and explanations of the petitioner’s temporary financial difficulties. Despite the petitioner’s obviously inadequate net income, the Regional Commissioner looked beyond the petitioner’s uncharacteristic business loss and found that the petitioner’s expectations of continued business growth and increasing profits were reasonable. *Id.* at 615. Based on an evaluation of the totality of the petitioner’s circumstances, the Regional Commissioner determined that the petitioner had established the ability to pay the beneficiary the stipulated wages.

As in *Matter of Sonogawa*, USCIS may, at its discretion, consider evidence relevant to a petitioner’s financial ability that falls outside of a petitioner’s net income and net current assets. USCIS may consider such factors as the number of years that the petitioner has been doing business, the established historical growth of the petitioner’s business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner’s reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems to be relevant to the petitioner’s ability to pay the proffered wage. In this case, the petitioner’s tax returns indicate that it was incorporated on January 1, 2004. The petitioner has provided its tax returns for fiscal years 2004 through 2006 with none of the tax returns establishing the petitioner’s ability to pay the proffered wage of \$43,763.20. Furthermore, the

petitioner has filed additional immigrant and non-immigrant petitions⁴ with similar and subsequent priority dates. Therefore, the petitioner must establish that it had sufficient funds to pay all the wages from the priority date and continuing to the present. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition which it has not done. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 750). *See also* 8 C.F.R. § 204.5(g)(2). In addition, the tax returns are not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. The tax returns also reflect that the petitioner experienced declining gross receipts between 2004 and 2006 and would not warrant approval. Furthermore, there is no evidence of the petitioner's reputation throughout the industry or of any temporary and uncharacteristic disruption in its business activities. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

In examining a petitioner's ability to pay the proffered wage, the fundamental focus of the USCIS' determination is whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). Accordingly, after a review of the petitioner's tax returns and other evidence, we conclude that the petitioner has not established that it had the ability to pay the salary offered as of the priority date of the petition and the additional salaries for the additional petitions and continuing to present.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal do not overcome the decision of the director.

Beyond the decision of the director, the record in this case also lacks conclusive evidence as to whether the beneficiary meets the special requirements of the labor certification. 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).

⁴ While an employer's ability to pay the proffered wage may not be an issue before USCIS in adjudicating nonimmigrant petitions, the instant petition is an immigrant petition and the petitioner's ability to pay is at issue. The number of nonimmigrant and immigrant petitions that the petitioner has filed for other workers does not suggest that the petitioner has the available funds to pay the instant beneficiary the proffered wage or the other sponsored workers.

The regulation at 8 C.F.R. § 204.5(1)(3) states, in pertinent part:

(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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.

(C) *Professionals*. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is November 12, 2004.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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 computer software systems engineer. In the instant case, item 14 describes the requirements of the proffered position as needing four years of college with a Bachelor degree in computer engineering.

Item 14 also lists systems engineering as a related occupation for experience, but does not provide a period of time for experience in that related occupation. The duties of the position 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 reflects that the beneficiary must have Pervasive Btrieve and Pervasive SQL v8! databases; ANSI Common LISP, C/C++ using Yacc and Lex utilities languages, and C-Forge xx for Linux Software.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of computer software systems engineer must have a four-year bachelor degree in computer engineering and Pervasive Btrieve and Pervasive SQL v8! databases; ANSI Common LISP, C/C++ using Yacc and Lex utilities languages, and C-Forge xx for Linux Software.

In the instant case, the beneficiary set forth her employment experience on Form ETA-750B. As signed by the beneficiary under penalty of perjury, the beneficiary claims to have been employed by "AKZENT" Company, Obnisk, Russia as a network engineer from March 1991 to April 1995 and to have been employed by Problem Solution Company, Obnisk, Russia as a computer engineer from May 1995 to October 2000. The beneficiary did not indicate any additional employment experience on the Form ETA-750B.

Regarding the beneficiary's qualifications for the special requirements, listed under item 15 of the labor certification, for the proffered position, the record includes a letter, dated May 21, 2007, from [REDACTED], Executive Director, Problem Solution Company, LLC stating:

It is my pleasure to write a letter of recommendation for [the beneficiary]. [The beneficiary] was employed at Problem Solution Company from May 1995 to October 2000. She worked as a systems engineer under my direct supervision, and I found her to be a hard worker and high quality professional.

During her working with a company, her contributions were: system configuration, server security: logins, troubleshooting, logic, and problem analysis.

[The beneficiary's] projects were the following:

- ❖ Maintenance of all architectural components and standards.
- ❖ Installing, testing, maintaining, monitoring, and controlling network systems.
- ❖ Maintaining secure technical environment to protect critical company information.
- ❖ Responsible for day-to-day maintenance, rollouts of both new system components and upgrades, enforcement of security, monitoring and tuning application installing, and data stored procedure utilizing
- ❖ An implementation and maintenance of the networking system with SQL Server.

- ❖ Execution of recovering processes based on the hardware/software abilities also backup stored data procedures.

As the letter does not specifically indicate that the beneficiary used Pervasive Btrieve and Pervasive SQL v8! databases; ANSI Common LISP, C/C++ using Yacc and Lex utilities languages, and C-Forge xx for Linux Software in her previous position with Problem Solution Company and since there are no other employment letters in the record of proceeding, the beneficiary cannot be deemed to meet the special requirements under item 15 of the labor certification. Therefore, the petitioner has not established that the beneficiary meets the special requirements of the labor certification.

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. The director's decision is upheld, and the visa petition remains denied.