

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B6



FILE: [REDACTED]  
SRC-07-148-51200

Office: TEXAS SERVICE CENTER Date:

**JAN 09 2009**

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.

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 Director, Texas Service Center (“director”), denied the preference visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner operates an investigation service, and seeks to employ the beneficiary permanently in the United States as a security consultant. As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director’s October 2, 2007 decision, the case was denied based on the petitioner’s failure to demonstrate that it was the successor-in-interest to the original petitioner on the labor certification, and further that the petitioner failed to demonstrate its ability to pay the proffered wage from the priority date of the labor certification until the beneficiary obtains permanent residence.

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).<sup>1</sup>

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(2).

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.

---

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on December 4, 2000. The proffered wage as stated on the Form ETA 750 is \$20.00 per hour for an annual salary of \$41,600 per year based on a 40 hour work week. The labor certification was approved on August 26, 2002. The petitioner filed an I-140 Petition for the beneficiary on April 13, 2007.<sup>2</sup> The petitioner listed the following information on the I-140 Petition: date established: 1977; gross annual income: "N/A;" net annual income: "N/A" and current number of employees: 3.

On July 17, 2007, the director issued an RFE for the petitioner to submit evidence of its ability to pay from the year 2000 priority date through 2005. In response to the RFE, counsel explained that the petitioner operated as a sole proprietor, and its prior owner, [REDACTED] died of a massive heart attack in April 2005. The present owner took over subsequent to [REDACTED] death, and the new owner submitted his 2006 individual Form 1040 federal tax return. The new owner was unable to submit prior tax returns as he "was living in the United Kingdom and did not file taxes."

On October 2, 2007, the director denied the petition. In the director's decision, he cited to a U.S. Citizenship & Immigration Services (USCIS) Memo, HQ 204.24-P/HQ,<sup>3</sup> which states in pertinent part:

---

<sup>2</sup> On November 15, 2004, the petitioner filed a prior Form I-140 on the beneficiary's behalf based on the same labor certification. On December 8, 2004, the director issued a Request for Evidence ("RFE"), which requested that the petitioner submit evidence of its ability to pay the proffered wage as well as evidence that the beneficiary had the required two years of experience necessary for the position offered. The petitioner responded to the RFE and submitted additional evidence related to the beneficiary's work experience, but not the petitioner's ability to pay the proffered wage. The director denied the petition based on abandonment as the petitioner failed to respond to the director's subsequent Notice of Intent to Deny ("NOID"), which similarly requested evidence of the petitioner's ability to pay the proffered wage. The petitioner filed an untimely Motion to Reopen, which was rejected because it was filed late.

<sup>3</sup> USCIS memoranda merely articulate internal guidelines for its personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

If the petitioner has been bought out, merged, or had a significant change in ownership, the successor in interest must file a new I-140 petition. In order to reaffirm the validity of the initial I-140 petition and the labor certification, the petitioner must establish that it is a successor in interest.

If the petitioning employer changes its location, the validity of the labor certification may be affected. A non-Schedule A labor certification is valid only in the area of intended employment. See 20 C.F.R. § 656.30(c)(2).

The director further cited to *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986) for the premise that the petitioner must establish the predecessor organization's ability to pay the proffered wage. As the petitioner in the instant matter failed to establish the predecessor's ability to pay, it, therefore, failed to establish a valid successor-in-interest relationship as outlined in *Matter of Dial*. The petitioner appealed and the matter is now before the AAO.

To show that a new entity qualifies as a successor-in-interest to the original petitioner requires documentary evidence that the new entity has assumed all of the rights, duties, and obligations of the predecessor company, and has the ability to pay from the date of the acquisition. *Matter of Dial*, 19 I&N Dec. at 481. Moreover, the petitioner must establish that the predecessor enterprise had the financial ability to pay the certified wage at the priority date. *Id.*

The applicant listed on the Form ETA 750 labor certification was: [REDACTED] North Hollywood, California 91601. Counsel identified the owner as [REDACTED] and that the entity operated as a sole proprietorship until [REDACTED] April 2005 death, after which time in 2006, the present owner, took over operation of the company. The petitioner listed on Form I-140 was: [REDACTED] Riverside, CA 92509.

The petitioner did not submit the initial entity's tax returns from 2000 to 2005, but instead indicated that it did "not have access to the tax returns of the prior owner."

Based on 8 C.F.R. § 204.5(g)(2), a petitioner must demonstrate its ability to pay from the time of the priority date onward, which in this matter is December 4, 2000. Further, as required by precedent in a successor-in-interest case, the petitioner is required to demonstrate the original petitioner had the ability to pay the proffered wage, which here would be from 2000 to 2005. As the petitioner is unable to submit any evidence of the initial organization's ability to pay, the petitioner cannot establish its ability to pay from the time of the priority date continuing until the beneficiary obtains permanent residence. Additionally, the new entity has failed to establish that it "assumed all of the rights, duties, and obligations of the predecessor company," rather than just operating under a similar name. The petitioner provided no evidence that it purchased the assets of the initial business, or other evidence to establish successorship. The pages that the petitioner submitted from its website, which reference the prior owner, as well as the current owner are insufficient to document that the petitioner assumed all the rights, duties and obligations of the initial petitioner.

Related to the petitioner's ability to pay the proffered wage, first, in determining the petitioner's ability to pay the proffered wage during a given period, USCIS will examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. On Form ETA 750B, signed by the beneficiary on November 30, 2000, the beneficiary did not list that he was employed with the petitioner. Counsel stated in response to the director's RFE that the beneficiary has never worked for the petitioner. Accordingly, the petitioner cannot establish its ability to pay the proffered wage based on prior wages paid to the beneficiary.

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, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner is a sole proprietor,<sup>4</sup> a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7<sup>th</sup> Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

---

<sup>4</sup> The petitioner listed a federal tax identification number on Form I-140, which would imply that the petitioner is organized as a corporation or partnership, and would file either a Form 1120 federal tax return, or Form 1065 rather than filing Form 1040 as a sole proprietorship. See <http://www.irs.gov/businesses/small/article/0,,id=97872,00.html> (accessed December 29, 2008).

In the instant case, the sole proprietor supports himself and resides in Studio City, California.<sup>5</sup> The tax returns reflect the following information:

<b>Tax Year</b>	<b>Sole Proprietor's AGI (1040)</b>	<b>Petitioner's Gross Receipts (Schedule C)</b>	<b>Petitioner's Wages Paid (Schedule C)</b>	<b>Petitioner's Net Profit from business (Schedule C)</b>
<b>2006</b>	\$2,250	\$185,505	\$0	\$3,005

If we reduced the sole proprietor's adjusted gross income (AGI) by \$41,600, the proffered wage that the petitioner must demonstrate that it can pay the beneficiary, the owner would be left with negative adjusted gross income of: -\$39,350, and would not be able to demonstrate that he could pay the beneficiary the proffered wage and support himself.<sup>6</sup>

In response to the director's RFE, the sole proprietor stated that, "I can only reiterate now that I have enough work and income to support [the beneficiary] now!"

A petitioner must establish its ability to pay from the priority date onward. See 8 C.F.R. § 204.5(g)(2). The petitioner has failed to establish its ability to pay in the years 2000, 2001, 2002, 2003, 2004, 2005, or 2006. The fact that the petitioner asserts that it now has sufficient work is not relevant.<sup>7</sup> A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, counsel asserts in response to points raised in the decision that it properly re-filed the I-140 to reflect the petitioner's new ownership interest in the initial labor certification applicant. Further, counsel states that the successor company does business outside of the Los Angeles, California area, which is near the initial location listed on the labor certification application.

While the petitioner's physical location may be in the same area and not present an issue with 20 C.F.R. § 656.30,<sup>8</sup> as addressed above, the petitioner has failed to demonstrate that it assumed "all of

<sup>5</sup> The sole proprietor stated that in prior years, he resided in the United Kingdom, and did not file taxes.

<sup>6</sup> Further, we note that the sole proprietor did not provide an estimate of monthly household expenses with supporting documentation for USCIS to determine the amount the sole proprietor would need to support himself after paying the proffered wage.

<sup>7</sup> The petitioner submitted no evidence with the sole proprietor's statement to establish its assertion that it now has sufficient work or money to employ the beneficiary. 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)).

<sup>8</sup> A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(C)(2).

the rights, duties, and obligations of the predecessor company” in accordance with the *Matter of Dial* standard. *Matter of Dial*, 19 I&N Dec. at 481.

Additionally, related to the petitioner’s ability to pay the proffered wage, counsel states that [REDACTED] “who has in the past had a business relationship with [REDACTED] and the principal owner of [REDACTED] . . . will commit an annual contractual amount of \$200,000 if [the beneficiary] is able to perform the worked assigned by his company to [the petitioner].”<sup>9</sup> In support, counsel attaches the letter from [REDACTED], owner of [REDACTED]. [REDACTED] states his interest in the beneficiary’s work as, “we are personally familiar with [the beneficiary’s] background and work experience. Our matters are highly confidential . . . and because of our personal knowledge of him, we are able to rely upon his confidentially [sic] as to our client matters.”

Financial information related to one company, cannot be used to satisfy the petitioner’s need to demonstrate that it can pay the proffered wage. 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). *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, “nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage.” Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation’s ability to pay the proffered wage. Therefore, the “future contractual”

---

<sup>9</sup> Counsel references “bank statements, 941 and 940 quarterly returns” in support of [REDACTED] letter, however, none are attached. Further, such documentation would not be dispositive to establish the petitioner’s ability to pay the proffered wage as they pertain to an unrelated corporation.

Regarding the bank statements, which were not attached, we note that bank statements are not among the three types of evidence listed in 8 C.F.R. § 204.5(g)(2) as required to establish a petitioner’s ability to pay a proffered wage. This regulation allows for consideration of additional material such as bank accounts “in appropriate cases.” As the petitioner has not established that the bank balances represent the petitioner’s funds, such documentation would not show the instant petitioner’s ability to pay the proffered wage. See *Matter of M*, 8 I&N Dec. at 24, *Matter of Aphrodite*, 17 I&N Dec. at 530, *Matter of Tessel*, 17 I&N Dec. at 631, and *Sitar v. Ashcroft*, 2003 WL 22203713. Further, as a fundamental point, a petitioner’s tax returns are a better reflection of the company’s financial picture, since tax returns address the question of liabilities. Bank statements do not reflect whether the petitioner has any outstanding liabilities, and only reflect the amount of cash available on the date of the statement. Additionally, while Forms 941 would exhibit quarterly wage payments, payments made to other workers generally cannot be considered to demonstrate the petitioner’s ability to pay the proffered wage. Further, even if the Forms 941 exhibited wages paid to the beneficiary, Forms 941 for The 67 Group, an entity other than the petitioner, would not demonstrate the petitioner’s ability to pay the proffered wage. *Id.*

promise by \_\_\_\_\_ to pay the petitioner if the beneficiary can perform their work will not satisfy the petitioner's ability to pay the proffered wage.

The petitioner submitted no further documentation to establish either the valid successor-in-interest relationship, or its ability to pay the proffered wage for the years 2000 to 2006. Accordingly, the petitioner has failed to establish that it is the valid successor-in-interest to the applicant on the labor certification, or that it can pay the beneficiary the proffered wage.

Further, although not raised in the director's denial, the petitioner has failed to show that the beneficiary met the experience requirements of the certified ETA 750. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the alien 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). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

On the Form ETA 750A, the "job offer" position description for a Security Consultant states:

Plans, directs, and oversees implementation of comprehensive security systems for protection of individuals and business. Investigates various crimes against client; Inspects premises to determine security needs. Studies physical conditions, observes activities, and confers with client's staff to obtain data regarding internal operations. Plans and directs personal security and safety of individual, family or group for contracted period. Investigates crimes committed against client, such as fraud, robbery, arson, and patent infringement. Notifies client of security weaknesses and implements procedures for handling, storing, safekeeping, and destroying classified materials. Reports criminal information to authorities and testifies in court.

Further, the job offer listed that the position required:

Education: None:

Experience: 2 years in the job offered, Security Consultant;

Other special requirements: None listed.

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

(ii) *Other documentation*—

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

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

The Form ETA 750B lists the beneficiary's prior experience as: (1) "not employed," from: February 2000 "to the present" (date of signature, November 30, 2000); and (2) "See Amendment," dated February 15, 2001. The beneficiary signed a letter amendment addressed to the California State Workforce Agency, which states: "I had my own Security Consulting business while living in Denmark. My company's name was [REDACTED] and I was in business from August 1992 to January 1998." The beneficiary further states that, "Here in the U.S. I work as a Security Consultant for [REDACTED] § . . . Glendale, CA. I have been working on and off for them from January 1998 to the present (date of signature, February 15, 2001)."

The petitioner did not document the beneficiary's experience in accordance with 8 C.F.R. § 204.5(l)(3). The beneficiary's self-statement of business ownership and employment, absent other independent objective documentation is insufficient to establish that the beneficiary has the required experience in accordance with 8 C.F.R. § 204.5(l)(3). 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)).

The petitioner did not submit any further documentation to evidence that the beneficiary had the required two years of prior experience to meet the requirements of the certified labor certification.<sup>10</sup>

---

<sup>10</sup>With the first I-140 petition filed, the petitioner submitted a letter dated January 14, 2005, and signed by [REDACTED], which stated that the beneficiary "has been working

Accordingly, the petitioner has failed to submit adequate documentation to evidence that the beneficiary has the required prior experience to qualify for the labor certification and the petition should have been denied on this basis as well. Further, as set forth above, the petitioner has failed to establish that it is the valid successor-in-interest to the initial applicant on the labor certification, or that it has the ability to pay the proffered wage from the time of the priority date until the beneficiary obtains permanent residence.

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.

---

for [REDACTED] as a Security Consultant on and off since the year 1998.” The letter listed the beneficiary’s duties as, “oversee and direct the implementation of Security Procedures for Events, private residences and corporate functions.”

The petitioner failed to resubmit this letter with the second I-140 filing, however, even if it had resubmitted the letter, the letter is insufficient to document that the beneficiary has the required two years of experience. The letter fails to define how frequent “off and on” is, and how many hours such assignments would entail. Therefore, we are unable to determine whether the off and on work would establish the required two years of prior experience as a security consultant. Additionally, the beneficiary does not list this experience on Form G-325 submitted with his I-485 Adjustment of Status application. 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*, 19 I&N Dec. 582, 591-592 (BIA 1988).