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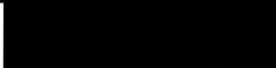
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JAN 29 2009

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IN RE:

Petitioner:



Beneficiary:

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 initially approved the employment-based petition. In relationship to a review of the record based on the beneficiary's pending I-485 Adjustment of Status application, on June 9, 2004, the director issued a Notice of Intent to Revoke (NOIR), and by decision of September 22, 2004 revoked the petition. The petitioner filed a late appeal, which the Administrative Appeals Office (AAO) subsequently dismissed on July 24, 2006. The matter is now before the AAO as a motion to reconsider, and/or reopen. The motion to reopen is granted. The appeal will be dismissed.

The petitioner is a dry cleaning business. It seeks to employ the beneficiary permanently in the United States as a tailor. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.¹ The petitioner failed to respond to the director's NOIR and the director revoked the petition accordingly. On appeal, the petitioner states that it never received the director's NOIR dated June 9, 2004 and thus was unable to respond to the notice in a timely manner. On appeal, the petitioner submitted additional documentation. The AAO dismissed the appeal stating that the petitioner had not overcome the issues raised by the director in his revocation. The petitioner then filed a motion to reopen the AAO decision.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The petitioner has submitted a brief with two additional affidavits from the petitioner's owner and the beneficiary. This evidence is viewed as sufficient to reopen the proceedings.

Since the record of the appeal proceeding involves both issues of fraud and a new issue of successor-in-interest, the AAO will describe the previous appeal. The AAO determined that the documentation submitted by the petitioner on appeal, including an updated Part B, ETA 750 that further described the beneficiary's work history, only further confused the record. It also noted that the sole proprietor stated that it had sold the initial business, [REDACTED], Libertyville, Illinois. [REDACTED] submitted the initial labor certification. The AAO noted that the record contained no evidence as to the date of claimed sale and present ownership of the Libertyville Business. The AAO noted that the certified Form ETA 750 was not transferable to the petitioner listed on the I-140, and the labor certification remained with the original dry cleaning company based in Libertyville, Illinois. The AAO further stated that if the current owner chose to pursue its identity as a success-in-interest to the original petitioner it would require documentary evidence that

¹ The applicant on Form ETA 750 is [REDACTED] with an address of [REDACTED] Milwaukee, Libertyville, IL, while the petitioner on the I-140 petition is [REDACTED] Inc., with an address of [REDACTED], Naperville, Illinois. USCIS noted the petitioner's address on November 9, 2004, and annotated that the change was based on the address that the petitioner listed on its Form I-290B appeal.

the petitioner is a successor-in-interest. In order to maintain the original priority date, a successor-in-interest must demonstrate the predecessor company had the ability to pay the proffered wage.²

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

On June 9, 2004,³ the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that a secondary review of the record revealed inconsistencies and inaccuracies that had to be resolved prior to any further processing of the relating I-485 Adjustment of Status application. The director noted differences between the work locations and job titles identified on the I-140 petition and accompanying Form ETA 750 Labor Certification Application, and the beneficiary's G-325 Biographic Information, submitted with her I-485 petition.

Specifically the director stated that the I-140 petition for a tailor indicated the beneficiary would work in Libertyville, Illinois, while the G-325 form indicated that she lived in Mokena, Illinois and was currently employed as a manager of a beauty shop in Country Club Hills, Illinois. The director stated that it was not understandable why the beneficiary would terminate a managerial position to work as a tailor in Libertyville, Illinois, a location in North Chicago far removed from her residence. The director also noted that the beneficiary's prior employment at [REDACTED] in Shorewood, Illinois was also a short drive from the beneficiary's residence. The director requested that the petitioner explain these inconsistencies and discrepancies. The director also noted that Form ETA

² This status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage as of the priority date. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

³ In its decision, the AAO incorrectly identified the date of the NOIR as April 7, 2003 in the text of the decision. Further in the decision, it incorrectly identified the actual revocation date as January 30, 2004. The actual date of the NOIR, as described above is June 9, 2004, and the correct date for the Notice to Revoke (NOR) is September 22, 2004.

750, Part B indicated that the beneficiary was employed with [REDACTED] in Shorewood, Illinois from July 1996 to April 12, 2001, while the G-325 form indicated she was only employed with [REDACTED] through September 2000. The director asked for an explanation of this discrepancy.

The director then requested evidence of the petitioner's continuing ability to pay the proffered wage. Among evidence requested were copies of the beneficiary's 1999, 2000, 2001, 2002, and 2003 federal income tax returns; a copy of the beneficiary's most recent pay voucher that identifies the beneficiary's and the petitioner's name and specifies the beneficiary's gross and net pay, the beneficiary's income received year to date, income tax deductions withheld and the length of the pay period. The director also requested copies of the petitioner's 2000, 2001, 2002, and 2003 federal income tax returns; a copy of the petitioner's annual balance sheets through December 31 for the years 2000 to 2003 indicating the petitioner's accumulative net income or losses for the year. The director also requested a copy of the petitioner's monthly balance sheets through March 31, 2004, as well as copies of the petitioner most recent Form 941, Employers Quarterly Federal Tax Form, or comparable form for the petitioner's state for the first quarter of calendar year 2003.

The director requested that the documents be accompanied by a quarterly wage and withholding supplement which identifies all employees by name and social security number. The director also noted that the petitioner had apparently filed a second employment-based petition for an individual identified as [REDACTED], and asked for an explanation of why both beneficiaries are not on the petitioner's payroll, and documentation to demonstrate the petitioner's ability to pay both beneficiaries. The director finally stated that if the petitioner could not demonstrate the ability to pay both individuals, it could identify which petition it desired to withdraw.

On January 30, 2004, the director revoked the petition. In his decision to revoke the petition's approval, the director noted that the petitioner's attorney of record was [REDACTED] and/or [REDACTED]. The director stated that on October 22, 2003, [REDACTED] pled guilty to criminal counts of money laundering and conspiracy to commit immigration fraud and [REDACTED] pled guilty to conspiracy to commit immigration fraud. [REDACTED] and [REDACTED] both consented to the revocation of their licenses to practice law in Virginia on October 24, 2003. The director noted that the conspiracy committed by the petitioner's former counsel involved the submission of fraudulent Forms ETA 750 and fraudulent Forms I-140. The director further stated that it appeared in many cases, the beneficiaries named on the Forms ETA 750 and I-140 were fictitious, or that the petitioner may not have intended to hire the beneficiary named on the form.

The director in the revocation notice stated that the petitioner was provided with a detailed list of documentation to be submitted and thus granted an opportunity to submit any evidence it thought would overcome the grounds of revocation. The director stated that the petitioner failed to submit a response. The director then determined that the grounds of revocation listed in the notice of intent to revoke the petition had not been overcome, and the petition was revoked.

On appeal, the petitioner's owner, [REDACTED] submitted a sworn affidavit that states he signed the Form ETA 750, Part A as the petitioner. Further, he states that he also signed the Form I-140 as the petitioner, and that there was a bona fide intent to employ the beneficiary as a tailor at [REDACTED]s. Mr. [REDACTED] stated that the signatures shown on Form I-140 and the Form ETA 750 were his and that he was authorized to sign such documents on behalf of the petitioner/employer. In a second document, [REDACTED] identified the employees of the new business located in Naperville, Illinois as follows: [REDACTED], his wife and the beneficiary. [REDACTED] described the duties of each employee. [REDACTED] also submits the beneficiary's Form W-2 for the years 2002 and 2003. These documents indicated the beneficiary earned \$8,500 in 2002 and \$26,000 in 2003. The employer listed on these documents is identified as [REDACTED] Naperville, Illinois, the I-140 petitioner, not the entity listed on the labor certification.

The petitioner also submitted a statement from the beneficiary dated November 2, 2004, that states her residential address in Mokena, Illinois, and her residential address abroad in Seoul, Korea. The beneficiary also affirmed that the all the information listed on Part B of ETA 750 was true and correct and provided an update of her employment. The updated Form ETA 750 indicates that beneficiary worked for [REDACTED] in Naperville, Illinois from September 2002 to the present. The document also identified the beneficiary's former employment with [REDACTED] but describes the job title as Owner/Director. This document is dated December 5, 1998 and the signature appears to be identical to the beneficiary's signature on her passport.

The petitioner also submitted monthly bank statements form LaSalle Bank, Chicago, Illinois for the Naperville dry cleaning company for January 2003 and 2004. The petitioner submitted Forms 941 for the first quarter of 2003 and the second quarters of the years 2003 and 2004, as well as Illinois quarterly Employer's Contribution and Wage Report for the first and second quarters of 2003 and the second quarter of 2004. All three quarterly reports indicated that the beneficiary earned \$6,500 in each quarter.

In addition the petitioner submitted a signed lease for the Naperville, Illinois dry cleaning company's building. The petitioner, who is presently a sole proprietor, also submitted his IRS Forms 1040 for tax years 1997, 1998, 1999, and 2001 with corresponding Schedules C for the Libertyville dry cleaning store, the initial labor certification applicant, as well as Forms 1040 for tax years 2002 and 2003 that include Schedules C for the Naperville dry cleaning company. The sole proprietor also submitted IRS Forms 1120S for tax years 2000 and 2001 for the Libertyville dry-cleaning business that indicated the sole proprietor was structured as an S corporation for these years, and had net income of \$86,579 in 2000 and \$130,216 in tax year 2001.⁴ The sole proprietor also submitted photographs of two dry cleaning stores, as well as two pages from two telephone directories that includes both dry cleaning companies' telephone listing.

⁴ The petitioner's 2001 Form 1120S indicates that the return covered the time period January 1, 2001 to March 31, 2001. It is unclear whether the petitioner sold his business in March 2001 or why the return is only for a three-month time period.

The sole proprietor also stated that since the time it submitted the I-140 petition, it had sold the dry cleaning business and had started another one in a different location. The sole proprietor states that he had provided this information to [REDACTED] his former counsel, but that this information was withheld. The sole proprietor also stated that he only received director's letter with the revocation decision dated September 22, 2004 because he happened to drop by the previous business. The petitioner states that the lack of response to the director's notice was not because the petition is fraudulent or fictitious but rather because of former counsel's fraudulent activities and his failure to receive the notice. The petitioner's owner identified his current business location as [REDACTED] Naperville, Illinois.

In its decision, the AAO determined that the director's NOIR and his final decision to revoke the petition's approval were both based on the fact that the petitioner's attorney of record was [REDACTED], an attorney convicted of visa petition fraud in December 2002. The director revoked the petition because the petitioner did not provide the required documentation outlined in the NOIR and thus, the petitioner did not establish that the visa petition submitted by [REDACTED] was not fraudulent. The record contains no evidence that the initial notice was sent to an incorrect address, or that the petitioner had moved from the address listed on the initial petition. The AAO also noted that the director's initial notice to revoke the petition contained no explicit explanation of former counsel's fraudulent activities, and did not address the question of fraudulent signatures. The AAO then noted that the documentation provided by the sole proprietor on appeal, which included assertions that documents were indeed signed by the petitioner and by the beneficiary, suggested that the sole proprietor was aware of the underlying fraud issues examined by U.S. Citizenship and Immigration Services (USCIS) in all petitions submitted by the former counsel.

With regard to any fraud issues involving whether the proffered position was indeed a bona fide position, the AAO noted that the documentation provided by the sole proprietor on appeal only further confused the record. First, the AAO noted that the record reflected no documentation that the beneficiary was ever employed at the [REDACTED] cleaning company, and that the W-2 Forms submitted on appeal were for the Naperville dry cleaning company. In addition, the update provided by the beneficiary submitted on appeal does not reflect any work performed at the [REDACTED] cleaning company. It also did not reflect any tailoring duties performed by the beneficiary at the [REDACTED] business, as it described the beneficiary's job duties as "direct and develop the dry cleaning business." The AAO noted that the updated information would call into question the contents of the ETA 750 submitted with the initial petition that indicated management and tailoring responsibilities. The AAO also noted that the signatures on these two ETA 750 forms differed, which called into question whether both were indeed signed by the beneficiary.⁵ *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any

⁵ For example, the beneficiary's signature on Part B of the ETA 750 initially submitted with the instant petition by former counsel does not conform to her signature in her passport. The beneficiary's signature on the later ETA 750B does appear to conform to her passport signature. The fraudulent signing of Forms ETA 750s is a part of the immigration conspiracy to which former counsel pled guilty.

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.” The AAO stated that the director was well within his authority to revoke the petition based on the discrepancies noted, and cited *Matter of Estime*, 19 I&N 450; and *Matter of Ho*, 19 I&N Dec. 582.

In its decision, the AAO noted that the director in the NOIR questioned the beneficiary’s commute between her residence and the [REDACTED] dry cleaning store, and stated that her commuting behavior was inconsistent with her prior employment in Shorewood, Illinois. The director described the beneficiary’s commute as evidence of inconsistencies and discrepancies in the petition. The AAO regarded the director’s comments as speculative and immaterial to the underlying regulatory criteria for the petition, namely, whether the petitioner has the ability to pay the proffered wage, and whether the beneficiary is qualified to perform the duties of the position. The AAO withdrew the director’s remarks with regard to the beneficiary’s commute.

Finally, the AAO noted that the sole proprietor stated that it sold its original business that is the [REDACTED] dry cleaning company, and that the sole proprietor had not provided any evidence as to the date of the claimed sale, and present ownership of the [REDACTED] business. The AAO stated that the [REDACTED] dry cleaning business is viewed as the petitioner, and not the present sole proprietor of the dry cleaning business located in Naperville, Illinois. The AAO noted that the certified Form ETA 750 was not transferable to the new petitioner, and remained with the original dry cleaning company in Libertyville, Illinois, whose owner might choose to pursue its identity as a successor-in-interest to the original petitioner. The AAO stated that this status required documentary evidence that the petitioner had assumed all of the rights, duties, and obligations of the predecessor company, and that the fact that a petitioner is doing business at the same location as the predecessor does not establish that the petitioner is a successor-in-interest. In addition, the AAO noted that in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. The AAO determined that since the record is devoid of any information as to the present ownership of the original labor certification applicant, the petitioner has not established that it has the ability to pay the proffered wage. The AAO regarded the selling of the original business as an additional reason the director’s decision to revoke the petition should be sustained.

On motion, counsel states that although the petitioner’s former counsel [REDACTED] was convicted of immigration fraud, the instant petition is not a fraudulent petition. Counsel states that the petitioner notified former counsel that the petitioner’s business location had changed from Libertyville, Illinois to Naperville, Illinois, and was told by [REDACTED] that this change would be fine and would not affect the petition. Counsel states that while neither the beneficiary nor the petitioner committed fraud, they did not receive adequate and effective legal counseling from their former counsel. Counsel states that the petitioner was not provided a fair opportunity to respond to the NOIR as the petitioner did not receive the notice. Counsel states that the petitioner did receive a NOIR for a separate I-140 (LIN 02 099 51570) that the petitioner filed for [REDACTED]. Counsel states that in this NOIR the director did question the authenticity of the petitioner’s and beneficiary’s

signatures, which is why the petitioner was aware of the underlying fraud issues when filing its appeal for the instant beneficiary. Counsel notes that the petitioner has discontinued the petition filed on behalf of [REDACTED], and only wishes to petition for the instant beneficiary.

With regard to the lack of documentation as to the beneficiary's employment with the [REDACTED] dry cleaning company, counsel states that the petitioner changed locations and after the beneficiary received her first Employment Authorization Document in 2002, she began to work for the petitioner that was located at Naperville, Illinois. With regard to the lack of tailoring duties described on the updated ETA 750 that conflicted with the duties claimed by the beneficiary at the [REDACTED] business, which were described on the initial ETA 750, counsel states that [REDACTED] was the business through which the beneficiary obtained her nonimmigrant E-2 Investor visa status. The beneficiary invested money into the Clean II Cleaners and as owner/investor, directed and developed the dry cleaning business, which included all other relevant duties to carry on the business, including tailoring duties.

Counsel also states that with regard to the issue of signatures on the two ETA 750 forms, the beneficiary admits that her signatures may look somewhat different each time she signed but that the Forms ETA 750 were true and not fraudulent.⁶

With regard to the issue of the claimed sale and present ownership of the [REDACTED] business, counsel states that the petitioner's change in location was provided to [REDACTED] and due to the attorney's negligence, the director was never notified of this change. Counsel requests that the AAO view the [REDACTED] as the petitioner. Counsel states that the petitioner's business simply changed its location to [REDACTED] which is within the Metropolitan Statistical Area (MSA) and within the same commuting area as the former [REDACTED] dry cleaning business. Counsel requests that in light of the unique, unfavorable circumstance surrounding the I-140 petition and the apparent confusion, that the ETA 750 filed by the petitioner on behalf of the beneficiary be determined to be bona fide and not fraudulent. Counsel also requests that the I-140 petition approval be reinstated, and that if this cannot be done as a successor-in-interest case, that the previously revoked I-140 petition be determined to be unapprovable rather than fraudulent. Counsel also requests that the petitioner be given the opportunity to file a new I-140 petition with the petitioner's new information.

⁶ The AAO notes that the record of proceeding additionally contains conflicting letters of work experience. One certificate of employment from Seoul, Korea, lists the beneficiary's dates of employment as February 20, 1990 to March 25, 1995, and states that the beneficiary was an alteration tailor. A second letter of work experience from [REDACTED], Seoul Korea, lists the beneficiary's dates of employment as March 15, 1991 to December 30, 1995. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (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."

Counsel also submits an affidavit from [REDACTED] dated August 18, 2006. In his affidavit, [REDACTED] stated that he is currently the owner of [REDACTED] Naperville, Illinois, and that prior to this location, he operated his business at [REDACTED] Libertyville, Illinois. Mr. [REDACTED] states that he offered the proffered position to the beneficiary because of her years of work experience in South Korea, and that in April 2001, he relocated his business from Libertyville, Illinois to Naperville, Illinois. [REDACTED] states that he informed [REDACTED] his counsel at that time, of his intent to relocate his business who assured him that everything was fine and that he would let USCIS know of this change. [REDACTED] then stated that the beneficiary began working for him in September 2002 at the Naperville, Illinois business. [REDACTED] notes that the petitioner did petition for another employee [REDACTED] at about the same time, but that the petitioner no longer wishes to hire this person.⁷

[REDACTED] then states that in October 2004, while in the general area of Libertyville, Illinois, he decided to stop by his previous business location to check on how the new owners were doing. At this time, [REDACTED] picked up the letter from USCIS revoking the I-140 petition approval for the beneficiary. [REDACTED] states that he strongly believes that he did not get a fair chance to follow-up and respond to the USCIS instructions and requests due to circumstances out of his control. He states that the job offered to the beneficiary as well as her employment with him is not fraudulent or fictitious. [REDACTED] states that the petitioner is the same employer that wishes to hire the same alien who will work in the same job position in the same general area of business.

Counsel also submits an affidavit from the beneficiary dated August 18, 2006. In her affidavit, the beneficiary explained that during the time the foreign labor certification was filed for her, she was in an nonimmigrant E-2 investor status. She also stated that as the principal investor in the business, [REDACTED], she had to perform all ownership duties that included not only directing, developing, managing, and overseeing business sales but also participating in the services provided by the business, such as alterations, tailors, and dry cleaning services. The beneficiary states that her job duties as the owner of [REDACTED] naturally included tailoring duties. The beneficiary also noted that she started working for [REDACTED] in Naperville, Illinois, and that although she wanted to work for [REDACTED] earlier at the Libertyville, Illinois location she was not authorized to work until September 2002. The beneficiary states that the job offered by [REDACTED] and her employment with him was not fraudulent or fictitious. She states that she is the beneficiary named on the I-140 petition, and that "I did sign the Form ETA 750 part B" of the labor certification.

Upon review of the record, neither counsel nor the beneficiary nor the claimed petitioner provide any evidentiary documentation for any of their assertions made on motion. First, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

⁷ The petitioner would need to demonstrate that it could pay the proffered wage for both sponsored workers from the respective priority date until its request not to pursue the petition on [REDACTED] behalf.

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 claimed petitioner provides no further evidence as to the claimed relocation of ██████'s business from Libertyville to Naperville, Illinois. The petitioner did not submit any documents related to the establishment of the second business to establish that it was the successor-in-interest to the original business.⁸

Furthermore, statements made by ██████ the beneficiary and counsel are contradictory to earlier statements made by ██████ on appeal. For example, with regard to the identity of the actual petitioner, the petitioner and counsel now claim that the petitioner in Libertyville, Illinois that filed the initial I-140 petition relocated to its present location in Naperville, Illinois, rather than selling the business as claimed by ██████ in a previous letter dated October 5, 2004 submitted to the record on appeal.⁹ *Matter of Ho*, 19 I&N Dec. 582, 591-592 (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." Further, the AAO notes that the initial petitioner, ██████, on its IRS Form 1120S indicated an Employer Identification Number of ██████, while the W-2 Forms and Form 1040 Schedule C tax filings submitted to the record by ██████ Naperville, Illinois indicate an Employer Identification Number of ██████. These two distinct employer identification numbers suggest that each of the dry cleaning business is a distinct business operation, not that the original business merely changed locations.

With regard to ██████'s assertions on motion, he claims that he received the approval notice for the instant petition after he relocated his business from Libertyville, Illinois to Naperville, Illinois in 2002, but did not receive the director's revocation of the petition dated 2004. However, the record contains no evidence of any correspondence being returned to USCIS. The AAO can make no further comment.

Finally, although ██████ asserts on motion that his signature is the same as the person who signed the I-140 petition, his signature on any of the letters or forms that he signed on appeal or on motion is distinct from the signature on the I-140, which shows the word '█████' written out in letters. This signature which is also on the ETA 750, Part A, does not resemble ██████'s signature at all. This fact supports the director's determination that the I-140 petition and the ETA Form 750 were fraudulently signed. The AAO concurs with the director on this issue.

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 this burden.

⁸ Additionally the alleged successor has not established its ability to pay the proffered wage in all the relevant years.

⁹ The petitioner's 2001 Form 1120S, which only covers the first three months of tax year 2001 suggests that ██████ sold his original business.



ORDER: The motion to reopen is granted. The AAO's decision of July 24, 2006 is affirmed.