

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

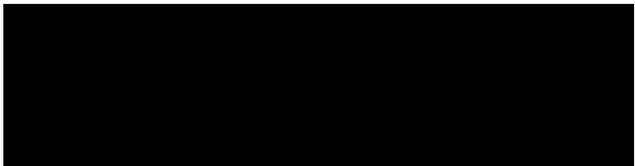
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **MAR 10 2009**
SRC 07 174 51739

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)

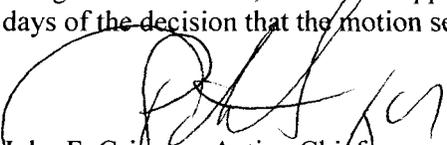
ON BEHALF OF PETITIONER:



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 janitorial service business. It seeks to employ the beneficiary permanently in the United States as a janitorial services supervisor. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.¹ The director determined that the petitioner had not established that it had the continuing ability to pay the proffered wage from the priority date. The director denied the petition accordingly.

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

As set forth in the director's January 12, 2008 denial, the issue in this case is whether or not the petitioner has established that it has the continuing ability to pay the proffered wage from the priority date of April 30, 2001.

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

¹ We note that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was permitted by the DOL at the time of filing this petition. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. *See* 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 CFR §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to U.S. Citizenship and Immigration Services ("USCIS") based on a Memorandum of Understanding, which was recently rescinded. *See* 72 Fed. Reg. 27904 (May 17, 2007) (codified at 20 C.F.R. § 656). DOL's final rule became effective July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. The filing of the instant case predates the rule changing substitution. However, evidence in the record of proceeding indicates that the petitioner may not be able to substitute the beneficiary for the original beneficiary that is listed on Form ETA 750. Discussion of this evidence will be provided further in this decision.

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.

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 [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 April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$12.19 per hour or \$25,355.20 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.² Relevant evidence submitted on appeal includes counsel's statement, a copy of the petitioner's 2005 Schedule L from its Form 1120, U.S. Corporation Income Tax Return, and a copy of the petitioner's 2006 Form 1120. Other relevant evidence includes copies of the petitioner's 2001 through 2005 Forms 1120,³ and a copy of the 2002 Form 1040, U.S. Individual Income Tax Return, for the petitioner's owner. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's 2001 through 2006 Forms 1120 reflect taxable incomes before net operating loss deduction and special deductions or net incomes of \$0, -\$932, \$40,948, \$39,562, \$7,106, and

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

³ The 2002 Form 1120 was taken from a prior petition filed for the original beneficiary.

-\$9,422, respectively. The petitioner's 2001 through 2006 Forms 1120 also reflect net current assets of \$76,766, \$52,976, \$66,685, \$92,988, \$75,225, and \$38,129, respectively.

The 2002 Form 1040 for the petitioner's owner reflects an adjusted gross income of \$113,448.⁴

On appeal, counsel asserts:

We respectfully request that you reconsider your denial or reopen the case based on the documentation attached, which shows the corporation's year-end net current assets demonstrating a continuing ability by the petitioner to pay the proffered wage. [REDACTED] Annual Federal Income Tax Return, Schedule L).

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, 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

⁴ It is noted that the petitioner's tax returns list it as a limited liability corporation with an Employer Identification Number (EIN) of [REDACTED] and that its date of incorporation was January 30, 1998. The 2002 Form 1040, Schedule C, Profit or Loss from Business, for the petitioner's owner does not provide an address for the janitorial business but does show its EIN as [REDACTED]. As the company listed on Form 1040 Schedule C has a different EIN number, it is a different entity. USCIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). 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. In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." Therefore, the owner's 2002 Form 1040 cannot be used to show the petitioner's ability to pay the proffered wage.

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 May 15, 2007, the beneficiary does not claim the petitioner as a past or present employer. In addition, counsel has not submitted any Forms W-2, Wage and Tax Statements, or Forms 1099-MISC, Miscellaneous Income, issued by the petitioner on behalf of the beneficiary that establish that the petitioner employed the beneficiary in 2001 through 2006. Thus, the petitioner is obligated to show that it had sufficient funds to pay the entire proffered wage of \$25,355.20 from the priority date of April 30, 2001 and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). In addition, USCIS records indicate that the petitioner has filed additional immigrant petitions (Forms I-140) with priority dates in the same year or subsequent years. Some of those immigrant petitions have been approved. Therefore, the petitioner is obligated to show that it had sufficient funds to pay the beneficiary and all of the additional beneficiaries with priority dates in the same and subsequent years.

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. *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 2001 through 2006, the petitioner was structured as a limited liability company (LLC). A LLC is an entity formed under state law by filing articles of organization. A LLC may be classified for federal income tax purposes as if it were a sole proprietorship, a partnership or a corporation. If the

LLC has only one owner, it will automatically be treated as a sole proprietorship unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. *See* 26 C.F.R. § 301.7701-3. The election referred to is made using IRS Form 8832, Entity Classification Election. In the instant case based on the tax returns submitted to the record, the petitioner is considered to be a corporation for federal tax purposes. 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 2001 through 2006 were \$0, -\$932, \$40,948, \$39,562, \$7,106, and -\$9,422 respectively. The petitioner could not have paid the proffered wage of \$25,355.20 in 2001, 2002, 2005, and 2006 from its net incomes in 2001, 2002, 2005, and 2006. In addition, although it appears that the petitioner has sufficient funds to pay the proffered wage of \$25,355.20 in 2003 and 2004 from its net incomes in those years, the petitioner is also obligated to show that it had sufficient funds to pay the wages of the additional beneficiaries (approximately 5) petitioned for as well as the current beneficiary. In the instant case, the petitioner has not done so.

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.⁵ A corporation’s year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If 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 2001 through 2006 were \$76,766, \$52,976, \$92,988, \$75,225, and \$38,129, respectively. While it appears that the petitioner had sufficient funds to pay the proffered wage of \$25,355.20 in 2001 through 2006 from its net current assets, the petitioner is also obligated to show that it had sufficient funds to pay the

⁵ 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.

wages of the additional beneficiaries (approximately 5) petitioned for as well as the current beneficiary. In the instant case, the petitioner has not done so.

On appeal, counsel asserts that the petitioner has established its ability to pay the proffered wage of \$25,355.20 based on its net current assets and on the wages paid to departing employees.

Counsel is mistaken. Although the petitioner appears to have sufficient funds to pay the proffered wage of \$25,355.20 from its net current assets in 2001 through 2006, the petitioner is also obligated to show that it had sufficient funds to pay the wages of the additional beneficiaries (approximately 5) petitioned for as well as the current beneficiary. 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. 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 9089). *See also* 8 C.F.R. § 204.5(g)(2).

Counsel advised that the wages paid to departing workers could be paid to the beneficiary. The record does not, however, name these workers, state their wages, verify their full-time employment, or provide evidence that the petitioner has replaced or will replace them with the beneficiary. In general, wages already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. Moreover, there is no evidence that the position of the departing workers involves the same duties as those set forth in the Form ETA 750. The petitioner has not documented the positions, duties, and terminations of the workers who performed the duties of the proffered position. If those employees performed other kinds of work, then the beneficiary could not have replaced them.

Finally, 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 it was incorporated in 1998. The petitioner has provided Forms 1120 for the years 2001 through 2006. However, none of the tax returns establish the petitioner's ability to pay the proffered wage of \$25,355.20 and the additional wages of the multiple beneficiaries petitioned for from their respective priority dates and continuing to the present. In addition, the petitioner's 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. There is also 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.

For the reasons discussed above, the assertions of counsel on appeal do not overcome the decision of the director.⁶

⁶ If the petitioner wishes to pursue this case further, it must establish that the labor certification has not previously been used, and that the beneficiary has the experience required to meet the terms of the certified 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).

At the time of filing of the instant petition, USCIS policy permitted the substitution of beneficiaries. However, significantly, USCIS may not approve a visa petition when the approved labor certification has already been used by another alien. *See Matter of Harry Bailen Builders, Inc.*, 19 I&N Dec. 412, 414 (Comm. 1986). Moreover, USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). Thus, while USCIS policy permits substitutions of beneficiaries

in this case, once the labor certification has been used for the original beneficiary, even in error, that labor certification is no longer available.

In the instant matter, the initial beneficiary of the Form ETA 750 adjusted status based on 8 C.F.R. § 245.10 (“245i”) under the initial labor certification with the April 30, 2001 priority date. The beneficiary’s adjustment of status was approved prior to counsel’s request to use the labor certification for the instant Form I-140 filed on the beneficiary’s behalf.

Once the labor certification has been used for the original beneficiary, that labor certification is no longer available. (It should be noted that the original Form I-140 filed in the instant matter could not have been approved without a valid labor certification from DOL. Thus, the adjustment of status of a beneficiary based on a Form I-140 must still contain a valid labor certification.). Since the labor certification, in this case, has been used with the adjustment of status of another beneficiary, that labor certification would no longer be available to the current beneficiary. *See Matter of Harry Bailen Builders, Inc.*, 19 I&N Dec. 412, 414 (Comm. 1986). Section 212(a)(5)(A) of the Act. Counsel provides no legal authority, and we know of none, that would allow USCIS to rely on the labor certification of an adjusted alien to correct an error or to allow a second beneficiary to adjust to lawful permanent resident. *See also* 8 C.F.R. § 245.10(j) which limits “grandfathering” for adjustment of status under 245(i) to “only the alien who was the beneficiary of the application for the labor certification on or before April 30, 2001.” Further, 8 C.F.R. § 245.10(j) states that, “an alien who was substituted for the previous beneficiary of the application for the labor certification after April 30, 2001, will not be considered to be a grandfathered alien.”

In any further proceedings, the petitioner would bear the burden of establishing that the Form I-140 filed for the instant beneficiary was properly filed with a valid labor certification that had not previously been used.

The petitioner must also establish that the beneficiary has the experience required by the certified labor certification.

The letter that the petitioner submitted to document the beneficiary’s experience is insufficient. A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which provides that:

(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

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.

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.

In the instant case, the experience letter that the petitioner submitted on the beneficiary's behalf does not meet those requirements. The letter fails to separate the beneficiary's experience between assistant and supervisor, does not give the exact dates the beneficiary worked as a supervisor in order to determine whether the experience met the required full two years, and whether the employment was full or part-time. Further, the letter fails to provide the name and address of the company, and does not provide a description of the beneficiary's supervisory experience. Also, as the letter is signed by the beneficiary's father, any additional evidence should be from an independent and objective source to confirm such employment. Accordingly, the letter submitted is insufficient to document that the beneficiary has the required two years of experience. Additionally, while the letter states that the beneficiary was employed for two years as a supervisor, Form ETA 750B, signed by the beneficiary on May 15, 2007, asserts that he worked as a supervisor for nine years. 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).