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

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 0 2 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel and motel. It seeks to employ the beneficiary permanently in the United States as a housekeeping supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. He also determined that the petitioner had not shown that the beneficiary was qualified to perform the duties of the proffered job as of 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 the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's May 1, 2008 denial, at issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. Also, at issue is whether the petitioner has shown that the beneficiary was qualified to perform the duties of the proffered job as of the priority date.

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

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.

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 DOL. *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 as certified

by the DOL and submitted with the instant petition. 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on April 27, 2001.[1] The proffered wage as stated on the Form ETA 750 is $17.21 per hour ($35,796.80 per year). The Form ETA 750 states that the position requires that the applicant for the job have a bachelor's degree in hospitality management or an unspecified related field of study; one year of experience in the proffered job; and verifiable job references.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[2]

On the petition, the petitioner claimed to have been established in 1998 and to currently employ 10 workers. The petitioner did not submit its tax returns. Thus, the evidence in the record is not clear as to how the petitioner is structured, whether as an S corporation or as another type of corporation, and the record is not clear as to whether the petitioner's fiscal year coincides with the calendar year. On the Form ETA 750B, signed by the beneficiary on April 23, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of the Form ETA 750 establishes a priority date for any immigrant petition later based on that form, 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, and the added expense of any other of its sponsored worker's wage, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

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[1] United States Citizenship and Immigration Services (USCIS) records indicate that the petitioner has also filed one other labor certification application and immigrant visa petition for an additional sponsored worker which USCIS has denied and which has been appealed to this office. This petition (A88 853 217) apparently has an April 27, 2001 priority date. Thus, throughout the relevant period (2001 onwards), the petitioner must show an ability to pay the instant wage and the proffered wage for one additional sponsored worker. The AAO notes that the petitioner filed other petitions which were denied and not appealed. This office need not consider those petitions in this analysis.

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

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. Here, the petitioner has not established that it employed and paid the beneficiary the full proffered wage or any portion of the wage during any part of the relevant period from the April 27, 2001 priority date onwards.

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, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873, 879 (E.D. Mich. 2010). 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). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is not sufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is not sufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now 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. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (which states that gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

> The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

"[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." *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on April 1, 2008 with the receipt by the director of the petitioner's request for an extension to the time allowed to respond to the director's request for evidence (RFE).[3] As of that date, the petitioner's 2007 federal income tax return was not yet due. Thus, the petitioner should have submitted tax returns for 2001 through 2006. However, the petitioner did not submit its own tax returns. Instead, it submitted tax returns for two entities which are located at the same address as the petitioner, but which are not the petitioner, as they have different titles and different Federal employer identification numbers on their tax returns than that listed for the petitioner on the Form ETA 750. The petitioner also submitted tax returns for , which is located at a different address than the petitioner but which lists on its tax returns the Federal employer identification number which the petitioner listed for itself on the Form ETA 750.

The petitioner has suggested in these proceedings that one of these entities, owns the petitioner and as such the financial information listed on the taxes from that entity should be considered the financial information of the petitioner. That is, the petitioner has suggested that any funds available to are also available to the petitioner to use to pay the proffered wage. This is not correct. First, the petitioner has not documented for the record that owns the petitioner. Going on record without adequate supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Unsupported assertions are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, in the record is a copy of a City of Los Angeles Tax Registration Certificate which lists LAX Plaza Inn Inc., Inglewood Ramada Limited, 4300 Century Blvd.,

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[3] The director stated in his denial that the RFE directly informed the petitioner that no extension of the time allotted to reply would be allowed. *See* 8 C.F.R. § 103.2(b)(8)(iv)(which states that no additional time to reply to an RFE may be granted.) We note that the purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). In this case, the director requested information such as the petitioner's tax returns and proof that the petitioner had the right to conduct business. The petitioner did not provide such evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner's failure to provide the requested evidence is a separate ground for dismissal in this matter.

as a business for transporting people. This tends to support the finding that is not a hotel and motel, as is the petitioner in this matter. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(which states that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability of all evidence offered in support of the visa petition and that the petitioner must resolve any inconsistencies in the record by independent evidence, and attempts to explain without objective evidence will not suffice.) In addition, the petitioner indicated through counsel that the business license is in the record and that it demonstrates that this entity owns the petitioner. Then later in these proceedings, the suggestion was made that the business tax certificate referred to previously) demonstrates that owns the petitioner. First, there is no business license for in the record. There is only the stated business tax certificate for . Any assertion that the petitioner has shown that owns the petitioner, cause the business tax certificate in the record lists and on the same certificate is without merit. Any assertion that the petitioner has shown that owns the petitioner because lists the petitioner's address on its tax return is also without merit. Finally, the assertion that any entity with the same address as the petitioner but a different title and Federal employer identification number is the same entity as the petitioner is without merit.[4]

Further, it is not correct to suggest that USCIS should consider the funds of a parent company as being automatically available to one of its subsidiaries, in a case where, in contrast to the present case, a petitioner does show that such a corporate parent/subsidiary relationship exists between the petitioner and the entity for which tax returns have been provided. That is, USCIS may not "pierce the corporate veil" and look to the assets of other corporations or the corporation's owners to establish 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, *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003), the court stated that "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."

Finally, this office would note incidentally that tax returns in the record do not reflect net income or net current assets equal to or greater than the proffered wage each year in the relevant period. Thus, even if the petitioner could demonstrate that the information on the

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[4] This office notes incidentally that the petitioner submitted the H3 Inc. tax returns (the second entity in the record with the petitioner's address, but a different title and different Federal employer identification number) for 2004 and years that follow; and, as the 2001-2003 tax returns were not provided, these submissions are not sufficient to show whether net income or net current assets were at or above the proffered wage for this entity each year from 2001 onwards. Thus, even if the petitioner could show that the information on these returns represents its own financial information, it still would not have shown a continuing ability to pay from 2001 onwards.

Plaza Inn Inc. tax returns did represent its financial information, as is urged by counsel on appeal, the petitioner still would not have shown the continuing ability to pay the proffered wage either through its net income or net current assets.

The petitioner also submitted the tax returns for an entity that is located at a different address than the petitioner and has a different title than the petitioner, but it uses the Federal employer identification number on its tax returns that the petitioner listed on the Form ETA 750. There is no evidence in the record that this organization: the same entity as the petitioner listed on the Form I-140, Immigrant Petition for Alien Worker, and as the employer applicant on the Form ETA 750. Also this office conducted searches online which confirm that the hotel t) located at the petitioner's address: are separate hotels operating under different names. *See* http://www.hotelmotelinlaxelsegundo.com/ and http://www.ramada.com /Ramada/control/Booking/property_info?propertyId=04527/,(accessed November 15, 2010). The AAO also notes incidentally that the tax returns for do not reflect a net income or net current assets equal to or greater than the proffered wage during any of the years in the relevant period for which this entity's returns have been submitted. Thus, even if the petitioner could show that the information on these returns represents its financial information, it still would not have shown an ability to pay the wage.

The AAO would underscore that in his RFE the director indicated that the petitioner's failure to submit its own tax returns called into question whether the petitioner was indeed an active business in California. Therefore, the director requested proof that the petitioner has the legal right to conduct business in California, including a copy of its business license, a copy of its Articles of Incorporation, etc. However, the petitioner did not submit such evidence. It did not submit this evidence on appeal. It also has provided no explanation for its failure to provide this evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). As previously noted, the petitioner's failure to submit evidence requested by the director is a separate ground for dismissal in this matter.

A search conducted at the State of California, Secretary of State, online Corporations database, http://kepler.ss.ca.gov/ (accessed November 1, 2010) shows that the petitioner is not listed as an active business in California with the California Secretary of State. This issue will be addressed further later in this discussion.

The petitioner also submitted a copy of a bank statement from May 2008 which does not list the name under which the account is established. There is nothing in the record which indicates that this statement relates to the petitioner. Further, even if the petitioner could show that this statement is a summary of its own bank account: bank statements are not among the three types of evidence, enumerated at 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional evidentiary material "in appropriate cases," here the petitioner has not shown why the documentation specified at 8 C.F.R. § 204.5(g)(2) is not applicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show

the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage.

In addition, the petitioner submitted a copy of the address page of an . December 2007 bank statement which indicates that this entity has the same address as the petitioner.[5] As noted earlier, the preponderance of the evidence shows that this entity is not the petitioner as it has a different Federal employer identification number, a different title, etc. The petitioner submitted a copy of a check drawn on an . checking account made out to on March 14, 2005. This evidence does not relate to the petitioner or its financial position, and it is not probative in this matter.

This office also notes that counsel suggested on appeal that a petitioner may demonstrate an ability to pay the wage by combining net income with a petitioner's total liquid assets (without balancing those assets against its liabilities.) This is not correct. First, any current assets of the petitioner must always be balanced against its current liabilities. Moreover, in order to demonstrate an ability to pay, a petitioner may show that its net income **or** net current assets as reflected on its tax returns, audited financial statements or annual reports show that the petitioner had funds available sufficient to cover the wage. Net income and net current assets are not two separate sets of funds available to pay the wage. Rather, net income and net current assets represent two different ways to view the funds available to the petitioner. Net income views the petitioner's funds for the year retrospectively, and net current assets view the petitioner's funds for the year prospectively. A net income that is greater than the amount of the proffered wage indicates that a petitioner could have paid the beneficiary the wages during the year out of its income. Net current assets that are greater than the proffered wage indicate that the petitioner anticipates receiving roughly one-twelfth of that amount each month, and that it reasonably anticipates being able to pay the proffered wage out of those funds.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (BIA 1967). The petitioning entity in had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the

[5] The petitioner did not submit the December 2007 bank statement to which this address page was, apparently, originally attached.

number of years 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 relevant to the petitioner's ability to pay the proffered wage.

Here, the petitioner has not provided regulatory-prescribed evidence regarding its financial position during the relevant period. It has not even established that it is licensed to conduct business or that it has conducted any business. The petitioner has also filed a petition for an additional worker. That sponsored worker's petition appears to have a priority date of April 27, 2001, also. That petition was denied and appealed to this office. Thus, from 2001 onwards, the petitioner must show an ability to pay not just the instant wage, but the added expense of this additional sponsored worker's wage. 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.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage and the wage of its other sponsored worker from the priority date onwards. The appeal must be dismissed on this basis, as well.

The director also denied the petition because the petitioner failed to submit any evidence that the beneficiary had a bachelor's degree in hospitality management or a related field as required by the Form ETA 750 as certified. On appeal, the petitioner again failed to submit evidence and to address this issue.

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

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

> 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent

> degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

To be eligible for approval, the beneficiary must have all the education, training, and experience specified on the labor certification as of the April 27, 2001 priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The job qualifications for the certified position of housekeeping supervisor are found on Form ETA 750 Part A. Item 13 of that section describes the job duties to be performed in the proffered job and because this is a public record, they need not be listed here.

The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification as follows:

Block 14:

Education (number of years)

Grade school	
High school	
College	X
College Degree Required	Bachelors
Major Field of Study	Hospitality Mgmt. or related

Experience:

Job Offered	1 year
(or)	
Related Occupation	

Block 15:

Other Special Requirements Must have verifiable job references

As set forth above, the proffered job requires a bachelor's degree in hospitality management or a related field, 1 year of experience in the job offered, and verifiable job references.

On Part B of the labor certification, signed by the beneficiary on April 23, 2001, the beneficiary listed her prior education as: the study of hospitality management from January 1993 through December 1997 at the University of Debonshire [sic] England which culminated in a bachelor's of art degree in hospitality management. The Form ETA 750B reflects the beneficiary's relevant prior work experience as: housekeeping supervisor at Best Value Inn, 4501 W. Imperial Highway, Inglewood, CA 90304,[6] from January 2000 through the date that she signed that form on April 23, 2001.

In the RFE dated February 26, 2008, the director pointed out that the petitioner had failed to submit documentary evidence that the beneficiary had earned a bachelor's degree in hospitality management or a related field as of the April 27, 2001 priority date. He specified that the petitioner should submit evidence that the beneficiary had earned a bachelor's degree in hospitality management or a related field and that the "evidence must be in the form of an official record showing the dates of attendance, area of concentration of study, and date of degree award, if any." The director also explained that if the "degree is from an educational institution outside the United States, then a current advisory evaluation of the alien's credentials must be obtained. This evaluation is necessary to determine the level and major field of educational attainment described in the supporting documents in terms of equivalent education in the United States." The director went on to specify that an acceptable evaluation should: 1) consider only formal education, and not practical experience or practical training; 2) specify whether the collegiate training was post-secondary education; 3) include a detailed explanation of the material which is being evaluated (its complexity and length), and not merely a conclusive statement; and 4) summarize the experience and qualifications of the evaluator who submits the evaluation, and attach evidence of the evaluator's authority to evaluate college-level credit in the specialty.

In the director's denial, he stated that the petitioner had failed to submit any evidence that the beneficiary had the bachelor's degree required by the labor certification, as requested in the RFE. Thus, the petitioner had not shown that the beneficiary was eligible for the proffered job as of the priority date.

On appeal, the petitioner again did not submit any documentary evidence that the beneficiary had earned a bachelor's degree, or any other evidence related to this requirement. Thus, the AAO finds that the petitioner has failed to establish that the petitioner was qualified to perform the duties of the proffered position as of the priority date. The appeal must be dismissed on this basis as well.

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[6] This is the same address as listed on the Hotel Plus, Inc., America's Best Value Inn, tax returns in the record. These returns list the Federal employer identification number which the petitioner listed for itself on the Form ETA 750. However, as noted earlier, because the title and address for this entity are different from that of the petitioner, the AAO finds that this entity is not the petitioner.

Going beyond the decision of the director,[7] the AAO finds that the preponderance of the evidence indicates that the petitioner is not currently licensed to conduct business in California; thus, the AAO finds that the job offer defined on the petition is not a *bona fide* job offer.

As stated earlier, the director, in his RFE, indicated that the petitioner's failure to submit its own tax returns called into question whether the petitioner is indeed an active business in California. Therefore, the director requested proof that the petitioner has the legal right to conduct business in California, including a copy of its business license, a copy of its Articles of Incorporation, etc. The director allowed the petitioner 30 days in which to provide evidence that it is in operation as a viable business and was in operation during the pendency of the petition. However, the petitioner did not submit such evidence. It also provided no explanation for its failure to provide this evidence. It has not provided this evidence on appeal. A search conducted at the [redacted] shows that the petitioner is not listed, with the California Secretary of State, as a business (active or inactive) in California.

In the RFE, the director also notified the petitioner that if the petitioner was sold after the priority date, the petitioner should submit documentary evidence of that sale. The petitioner did not provide any evidence related to such a sale in reply to the RFE or on appeal. The petitioner has given no indication that it has ever been sold to a potential successor-in-interest in this matter. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Rather, the petitioner has requested that this office consider the tax returns of [redacted] in the record as reflecting the financial information of the petitioner based on the petitioner's undocumented assertions that [redacted] Inc. owns the petitioner.

Thus, the record indicates that the petitioner does not have the legal right to conduct business in California. As such the AAO finds that the job offer defined on the petition is not a *bona fide* job offer. The appeal must be dismissed on this basis as well.

The AAO would underscore as well that any concealment of the true legal status of the organization by the petitioner seriously compromises the credibility of all the evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(which states that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.) It is incumbent upon 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. *See id.*

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[7] 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*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.