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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

[redacted]

B6

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 08 2010

IN RE: Petitioner: Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[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, with a fee of $630. 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 Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a provider of integrated business technology solutions. It seeks to permanently employ the beneficiary in the United States as a systems analyst. The petitioner requests classification of the beneficiary as an a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).[1]

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

As set forth in the director's March 26, 2008 denial, the primary issue in this case is whether is a successor-in-interest to (hereinafter the company that filed the labor certification and the instant petition. The AAO will also consider whether the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.[2]

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.

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

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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 grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] 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).

[3] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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

The instant petition was filed with U.S. Citizenship and Immigration Services (USCIS) on October 31, 2003. In a letter dated August 24, 2007, the owner of the petitioner, informed USCIS that:

> I am now also the owner of the company that is now assuming the petition for bought assets and liabilities, and continues to employ in the same position offered by

On November 28, 2007, the director issued a request for evidence (RFE). The RFE instructed the petitioner to submit "legal documents" establishing that is a successor-in-interest to . The RFE also instructed the petitioner to provide evidence of its ability to pay the proffered wage from the priority date.

The petitioner submitted its RFE response on February 25, 2008. The RFE response contained a letter by former counsel stating that merged into in 2002, that assumed all of the rights, duties, obligations and assets of , and that operates the same business as . The RFE response also included the following:

- Form 1099-MISC issued to the beneficiary by in 2001.
- Forms 1099-MISC issued to the beneficiary by in 2002, 2003, 2004 and 2005.
- Form W-2 issued to the beneficiary by in 2006.
- Form 1120, U.S. Corporation Income Tax Return, for for 2002.
- Form 1120S, U.S. Income Tax Return for an S Corporation, for for 2003, 2004, 2005 and 2006.
- Letter from The letter states that the author is the accountant for and that the company "assumed all of the rights, duties, obligations and assets of , and continues to operate the same type of business as , which is a Technology Consulting type of company."

The director denied the petition on October 11, 2007. The director's decision concludes that failed to submit legal documents sufficient to establish that it is a successor-in-interest to .

appealed the decision on April 25, 2008. In support of its appeal, submits the following:

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newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

- Minutes of the Special Meeting of the Shareholders of , dated April 24, 2008. The minutes state that , the sole shareholder of , met to discuss "a proposed merger between " The minutes state that "the customers of are now being serviced by and that the two companies both operate as professional services companies offering computer networking, maintenance and technical support services through its employee." The minutes state that the shareholder voted affirmatively on the proposed merger.
- Resolution by Board of Directors of , dated April 24, 2008. The resolution states that "the servicing of clients has been performed exclusively by one employee, who is now employed by that the two companies have been "informally merged now for several years and now wish to effect a formal merger," that "this is a zero dollar transaction," and the "merger between be effective nunc pro tunc to January 1, 2002, the original date of intended merger of the two companies without the need for further contractual or other documentation being required to formalize the merger beyond this resolution."
- Minutes of the Special Meeting of the Shareholders of dated April 24, 2008. The minutes state that , the sole shareholder of met to discuss the proposed merger between and The minutes state that the sole shareholder voted affirmatively on the proposed merger.
- Resolution by Board of Directors of , dated April 24, 2008. The resolution states that the sole shareholder of has voted to accept the merger between . and B to "be effective nunc pro tunc to January 1, 2002."
- Form 1099-MISC issued to the beneficiary by " in 2001.
- Form 941, Employer's Quarterly Federal Tax Return for the first quarter of 2006, filed by indicating that the company had no employees.
- Forms 941 for 2007, filed by , indicating that the company had one employee, the beneficiary.
- Printouts from the Georgia Secretary of State website, dated April 1, 2008, indicating that and are in active status with the state of Georgia.

The brief in support of the appeal, submitted by current counsel, states that the submitted documentary evidence establishes that is a successor-in-interest to

To summarize the evidence in the record: in a letter dated August 24, 2007 the owner of and , represented to the director that bought s assets and liabilities. When the director issued an RFE requesting legal documents of the claimed transaction, former counsel for represented to USCIS that was merged into in 2002, and that assumed all of the rights, duties, obligations and assets of . The RFE response also contained a letter from purported accountant, claiming that assumed all of the rights, duties, obligations and assets of . However, no legal documents establishing

this claimed transaction in 2002 were submitted. Now, on appeal, counsel for submits shareholder meeting minutes and resolutions dated April 24, 2008 relating to a merger between and . Therefore, contrary to the prior claims by , the company had not previously merged with and it had not assumed all of the rights, duties, obligations and assets of .

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

In general, a successor is a business organization that, through amalgamation, consolidation, or other assumption of interests, is vested with the rights and duties of a predecessor business organization. *See* Black's Law Dictionary 1473 (8th ed. 2004). There are no regulations that govern immigrant visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481, 482 (Comm. 1981)(hereinafter "*Matter of Dial Auto*"), a binding precedent decision. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

The facts of the precedent decision are instructive in this matter. *Matter of Dial Auto* involved a petition filed by Dial Auto Repair Shop, Inc. on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, Elvira Auto Body, filed the underlying labor certification. On the petition, Dial Auto claimed to be a successor-in-interest to Elvira Auto Body. The part of the Commissioner's decision relating to the successor-in-interest issue follows:

> Additionally, the representations made by the petitioner concerning the relationship between Elvira Auto Body and itself are issues which have not been resolved. In order to determine whether the petitioner was a true successor to Elvira Auto Body, counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of Elvira Auto Body and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the *petitioner's claim of having assumed all of Elvira Auto Body's rights, duties, obligations*, etc., is found to be untrue, then grounds would exist for invalidation of the labor certification under 20 C.F.R. § 656.30 (1987). Conversely, if the claim is found to be true, and it is determined that an actual successorship exists, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

19 I&N Dec. at 482-3 (emphasis added).

In the present matter, the director strictly interpreted *Matter of Dial Auto* to limit a successor-in-interest finding to cases where the petitioner could show that it assumed "all" of the original employer's rights, duties, obligations, and assets. The Commissioner's decision, however, does not require a successor-in-interest to establish that it assumed all rights, duties, and obligations. Instead, in *Matter of Dial Auto*, the petitioner represented that it had assumed all of the original employer's rights, duties, and obligations, but failed to submit requested evidence to establish that this claim was, in fact, true. And, if the petitioner's claim was untrue, the Commissioner stated that the government could invalidate the underlying labor certification for fraud or willful misrepresentation. For this reason the Commissioner said: "if the claim is found to be true, *and* it is determined that an actual successorship exists, the petition could be approved." *Id.* (emphasis added).

Accordingly, the Commissioner clearly considered the petitioner's claim that it had assumed all of the original employer's rights, duties, and obligations to be a separate inquiry from whether or not the petitioner is a successor-in-interest. The Commissioner was most interested in receiving a full explanation as to the "manner by which the petitioner took over the business of [the alleged predecessor]" and seeing a copy of "the contract or agreement between the two entities" in order to verify the petitioner's claims.

In view of the above, *Matter of Dial Auto* does not stand for the proposition that a valid successor relationship may only be established through the assumption of "all" or a totality of a predecessor entity's rights, duties, and obligations. Instead, the generally accepted definition of a successor-in-interest is broader: "One who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." Black's Law Dictionary at 1473 (defining "successor in interest").

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.[4] *Id.* (defining "successor"). When considering other business organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the

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[4] Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes "consolidations" that occur when two or more corporations are united to create one new corporation. The second group comprehends "mergers," consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes "reorganizations" that occur when the new corporation is, either in law or in point of fact, the reincarnation or reorganization of one previously existing. To the fourth group belong those transactions in which a corporation, although continuing to exist as a legal entity, is in fact merged in another which, by acquiring its assets and business, has left the first with only its corporate shell. 19 Am. Jur. 2d Corporations § 2165 (2010).

petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application.[5]

A mere transfer of assets, even one that takes up a predecessor's business activities, does not necessarily create a successor-in-interest. *Id.*; *see also Holland v. Williams Mountain Coal Co.*, 496 F.3d 670, 672 (D.C. Cir. 2007). An asset transaction occurs when one business organization sells property – such as real estate, machinery, or intellectual property - to another business organization. While the merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law, the purchase of assets from a predecessor will only result in a successor-in-interest relationship if the parties agree to the transfer and assumption of the essential rights and obligations of the predecessor necessary to carry on the business in the same manner with regard to the assets sold.[6] *See generally* 19 Am. Jur. 2d Corporations § 2170 (2010).

Considering *Matter of Dial Auto* and the generally accepted definition of successor-in-interest, a petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the job opportunity offered by the petitioner must be the same as originally offered on the labor certification. Second, both the predecessor and the purported successor must establish eligibility in all respects by a preponderance of the evidence. The petitioner is required to submit evidence of the predecessor entity's ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2) beginning on the priority date until the date the transfer of ownership to the successor is completed. The purported successor must demonstrate its continuing ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2) from the transaction date forward. Third, the petitioner must fully describe and document the transfer and assumption of the ownership of all, or the relevant part of, the predecessor by the claimed successor.

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same

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[5] For example, unlike a corporation with its own distinct legal identity, if a general partnership adds a partner after the filing of a labor certification application, a Form I-140 filed by what is essentially a new partnership must contain evidence that this partnership is a successor-in-interest to the filer of the labor certification application. *See Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). Similarly, if the employer identified in a labor certification application is a sole proprietorship, and the petitioner identified in the Form I-140 is a business organization, such as a corporation which happens to be solely owned by the individual who filed the labor certification application, the petitioner must nevertheless establish that it is a bona fide successor-in-interest.

[6] The mere assumption of immigration obligations, or the transfer of immigration benefits, derived from approved or pending immigration petitions or applications will not give rise to a successor-in-interest relationship unless the transfer results from the bona fide acquisition of the essential rights and obligations of the predecessor necessary to carry on the business in the same manner.

type of business as the predecessor and the essential business functions must remain substantially the same as before the ownership transfer.

The documents submitted as evidence of the merger are described above. Applying the analysis set forth above to the instant petition, the evidence submitted by counsel is not sufficient to establish that the is a successor-in-interest to . Prior to the instant appeal, the only evidence of the successor-in-interest relationship between and is a letter from , a claim by prior counsel, and a letter from the company's accountant. The director correctly concluded that the submitted evidence was not sufficient to establish a successor-in-interest relationship.

Further, it is concluded that the evidence submitted on appeal of a purported merger between and is also not sufficient to establish a successor-in-interest relationship. There is no Merger Agreement in the record. There is no evidence that any articles of merger were filed with the State of Georgia as required by Ga. Code Ann., § 14-2-1105 (requiring the surviving corporation to file articles of merger with the Secretary of State). Further, there is no provision in Georgia law that permits a retroactive merger. *See* Ga. Code Ann., § 14-2-1105 ("Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles or certificate of merger or share exchange is filed."). It further does not appear that any merger took place, as was in active status with the State of Georgia until September 11, 2010, at which time it was administratively dissolved.

There is also no evidence that that acquired any assets from . Further, it does not appear from the evidence in the record that possessed any assets to acquire.

The evidence in the record indicates that had only one employee, the beneficiary. In addition, has only one employee, the beneficiary. and the claimed merger appear to be solely driven by an attempt to maintain the beneficiary's lawful permanent resident processing.

For the aforementioned reasons, counsel's claim that is a successor-in-interest to the petitioner is rejected.

Beyond the decision of the director, the evidence in the record does not establish the petitioner's ability to pay the proffered wage. The petitioner must establish that its job offer to the beneficiary is a realistic one. 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). The regulation 8 C.F.R. § 204.5(g)(2) states:

> *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.

Therefore, the petitioner must establish that it has possessed the continuing ability to pay the proffered wage beginning on the April 30, 2001 priority date.

The instant petition was filed on October 31, 2003. The record contains the 2002 federal tax return for The record does not contain an annual report, federal tax return, or audited financial statement for for 2001.[7] The regulation 8 C.F.R. § 204.5(g)(2) states that the petitioner must demonstrate its ability to pay the proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence," and that the evidence of ability to pay "*shall* be in the form of copies of annual reports, federal tax returns, or audited financial statements." (Emphasis added.). The petitioner's failure to provide this evidence is, by itself, sufficient cause to dismiss this appeal. While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Also beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). 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* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coorney,* 661 F.2d 1 (1st Cir. 1981).

The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on

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[7] The record contains tax returns for for 2002, 2003, 2004, 2005, and 2006, but, as is discussed above, the petitioner has not established that is a successor-in-interest to

the labor certification, must involve "reading and applying the plain language of the [labor certification]." *Id.* at 834.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at *7.

The minimum education, training, experience and skills required to perform the duties of the offered position is set forth at Part A of the labor certification. In the instant case, the labor certification states that the position of has the following minimum requirements:

EDUCATION
High School: 4 years
EXPERIENCE: Two (2) years in the job offered or in the related occupation of computer science, computer information systems or engineering.
OTHER SPECIAL REQUIREMENTS: Concurrent experience must include 2 years managing NT & UNIX environments, UDB, Net Objects Fusion 4.0 and 5.0, Lotus Notes, SQL, Oracle, OS2 & OS400"

There is no evidence in the record that establishes that the beneficiary's obtained a U.S. high school diploma or foreign equivalent degree by the priority date. Therefore, the petitioner has not established that the beneficiary possesses the claimed education for the offered position.

The petitioner has also failed to establish that the beneficiary possesses the required experience and special requirements for the offered position. Any experience requirements for skilled workers must be supported by letters from employers giving the name, address, and title of the trainer or employer, and a description of the experience of the alien. 8 C.F.R. § 204.5(l)(3)(ii)(B). Evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien. 8 C.F.R. § 204.5(g)(1).

The labor certification, signed by the beneficiary under penalty of perjury, states that he has the following employment experience:

- IT Director, [redacted] from October 2000 until "present" (the labor certification was filed with the DOL on April 30, 2001). The duties performed are described as implementing the radio station's automation system using Cool Edit Pro and Wavestation 3.0, implementing a computer network and providing technical support. There is no letter in the record attesting to this experience.

- Software Account Manager, [redacted] from February 1997 until January 2000. The duties

performed are described as pre-sale consultation and technical support of IBM software solutions, developing and implementing different interfaces, performing product analysis of Oracle and SQL, and supporting software trials, proofs of concepts and supporting development and design of software solutions.

The record contains the following documents testifying to the beneficiary's prior employment experience in this position:

- Letter from Human Resources Professional of dated April 19, 2001. The letter states that the beneficiary was employed as a SAM Software Account Manager from July 17, 1995 until January 31, 2000, a period of four and a half years. The dates of employment differ from the dates listed on the labor certification. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. The letter does not describe the duties performed by the beneficiary, and therefore does not meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(B) and 8 C.F.R. § 204.5(g).

- The record also contains a letter from of ., dated February 19, 2001. The letter states that the beneficiary "demonstrated experience and knowledge of different software products like UDB of IBM, Lotus Notes, Lotus SmartSuite Millenium and different Operation Systems like OS2, OS 400, and Unix." The letter does not state the beneficiary's start and end dates of employment, but instead states that the beneficiary was employed for two years by the company. This contradicts both the labor certification and the letter of *See Matter of Ho*, 19 I&N Dec. at 591-92. In addition, the letter does not describe the duties performed by the beneficiary's during his employment and therefore does not meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(B) and 8 C.F.R. § 204.5(g).

- The record contains a letter from dated April 5, 2001. The letter states that:

> We certify that [the beneficiary] was a member of our organization for a period of two years, from 1997 to 1999, where he participated as a Consultant in different projects on Technological administration and actualization for the principal companies of Colombia. He demonstrated experience and knowledge in Software environments like: Net Objects Fusion 4.0, 5.0, SQL Environments, Oracle, Lotus Notes, Tivoli and Operations Systems including Windows NT, Unix, OS2 and OS500.

> As the associate dealing with IBM solutions and technology, I can give testimony to the professional and interpersonal quality and extensive knowledge that showed in his work while working with our organization.

It appears from the context of the letter that the beneficiary was assigned to company from . Accordingly, the letter has not been prepared by the beneficiary's employer. The letter does not describe the duties performed by the beneficiary during his employment. Further, since the exact dates of employment are not provided, the letter could encompass a period of just over one year. Therefore this letter also does not meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(B) and 8 C.F.R. § 204.5(g).

The petitioner has not submitted any employment experience letters that comply with 8 C.F.R. § 204.5(l)(3)(ii)(B) and 8 C.F.R. § 204.5(g). Therefore, the petitioner has not established that the beneficiary possesses the required education and experience for the offered position as set forth on the labor certification. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In summary, the instant appeal is dismissed for the following reasons: the failed to establish that it is a successor-in-interest to and have failed to establish an ability to pay the proffered wage from the priority date; and the petitioner has failed to establish that the beneficiary possesses the education, experience and special requirements to perform the offered position.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d at 1043.

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.

CC: [redacted]