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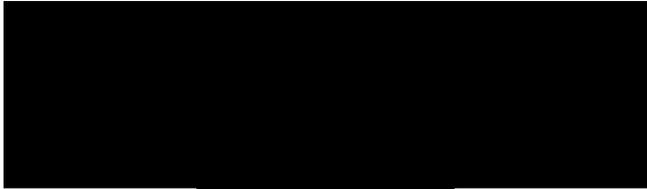
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [Redacted]
LIN 07 252 52941

Office: NEBRASKA SERVICE CENTER

Date: FEB 25 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as a bread and pasta cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. 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. 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.

According to the director's November 16, 2007 denial, the single issue in this case is 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.

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.

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. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$13.87 per hour (\$28,849.60 per year). The Form ETA 750 states that the position requires two years experience in the job offered.

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 on appeal.¹

The evidence in the record shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1993 and to currently employ eight workers. The petitioner left blank on the petition the box in which it was to state its gross annual income. According to the tax returns in the record, the petitioner’s fiscal year runs from July 1st to June 30th. On the Form ETA 750B, signed by the beneficiary on April 16, 2001, the beneficiary claimed to have worked for the petitioner as a bread and pasta maker from February 1995 through an unspecified date. The petitioner submitted copies of its Forms W-2, Wage and Tax Statement, issued to the beneficiary for the years 1999, 2000 and 2001.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form 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, U.S. Citizenship and Immigration Services (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 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 from the priority date of April 30, 2001 onwards. The record does indicate that the petitioner paid the beneficiary \$11,548 during 2001, or \$17,301 less than the proffered wage.

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*

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

Street Donuts, LLC v. Napolitano, 558 F.3d 111 (1st Cir. 2009). 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). Contrary to counsel's assertions made on appeal, reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is not sufficient. Similarly, showing that the petitioner paid wages or had labor costs in excess of the proffered wage is not sufficient, also contrary to counsel's assertions.

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 assertion that the Service should have considered income before expenses were paid rather than net income. Accordingly, this office rejects the similar assertion made by counsel in this matter.

Any suggestion by counsel that the petitioner's depreciation allocation should be considered funds available to pay the wage is also misplaced. 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.

River Street Donuts at 116. "[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).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on October 31, 2007 with

the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2006 is the most recent return available. The petitioner's tax returns demonstrate its net income for 2001-2006, as shown in the table below.²

- In 2001, the Form 1120 stated net income of \$0.
- In 2002, the Form 1120 stated net income of \$1,769.
- In 2003, the Form 1120 stated net income of \$1,992.
- In 2004, the Form 1120 stated net income of \$233.
- In 2005, the Form 1120 stated net income (loss) of -\$364.
- In 2006, the Form 1120 stated net income (loss) of -2,821.

Therefore, the petitioner did not establish that in 2001 it could have paid the beneficiary the difference between the wages that it actually paid him and the proffered wage (\$17,301) out of its net income. Also, for the years 2002-2006, the petitioner did not have sufficient net income to pay the full 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. However, total assets will not be considered in the determination of the ability to pay the proffered wage. 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.³ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2001-2006, as shown in the table below.

² The priority date in this case is April 30, 2001. The petitioner's 2001 income tax return covers the period from July 1, 2001 through June 30, 2002. Thus, the petitioner should have submitted its income tax return for 2000 as well.

³ 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.

- In 2001, the Form 1120 stated net current assets of \$21,617.
- In 2002, the Form 1120 stated net current assets of \$9,002.
- In 2003, the Form 1120 stated net current assets (liabilities) of -\$5,381.
- In 2004, the Form 1120 stated net current assets (liabilities) of -\$2,700.⁴
- In 2005, the Form 1120 stated net current assets of \$5,107.
- In 2006, the Form 1120 stated net current assets of \$7,981.

While the net current assets for the petitioner's 2001 fiscal year (July 1, 2001 through June 30, 2002) added to the amount that the petitioner paid the beneficiary during calendar year 2001 (\$11,548) amounts to more than the proffered wage, the petitioner has not yet established that it could have paid the proffered wage through net current assets from the April 30, 2001 priority date through the end of 2001. That is, the petitioner would need to submit its 2000 tax return which includes the period from the priority date, April 30, 2001 through June 30, 2001, before it may be said that it has shown the ability to pay the wage in 2001.⁵ For the years 2002-2006, the petitioner did not have sufficient net current assets to pay the full proffered wage.

Therefore, the petitioner has not established that it had the continuing ability to pay the beneficiary the proffered wage from the priority date forward through an examination of wages paid to the beneficiary, or its net income or net current assets.

On appeal, counsel asserted, citing *Matter of Sonogawa*, 12 I&N Dec. 612, that the petitioner's tax returns demonstrate an ability to pay the wage in that they provide a solid basis for expectations of the petitioner's continued stability and of its growth in business and profits. In specific, counsel indicated that the tax returns show a steady increase in gross profits from \$207,129 in 2001 to \$235,354 in 2006. The AAO finds that such small growth in gross profits would not demonstrate sufficient growth to outweigh the evidence in the tax returns that the petitioner did not have funds available to pay the wage from the priority date onwards. Moreover, the petitioner did not show a steady increase in gross profits during 2001-2006, as indicated by counsel. Gross profits did increase to \$239,942 in 2004. However, gross profits declined to \$228,574 in 2005, and they remained below 2004 levels in 2006 with gross profits of \$235,354.

Counsel also suggested that USCIS should consider the amounts the petitioner paid to compensate officers and which it paid as "cost of labor" in addition to looking to gross receipts and gross profits and determine that the petitioner has shown a continuing ability to pay the wage. In particular, counsel

⁴ The director incorrectly indicated that the petitioner's net current assets (liabilities) for 2004 were \$2,700, rather than -\$2,700. The AAO withdraws this point in the notice of decision.

⁵ The director indicated that the petitioner had established through the combination of its fiscal year 2001 net current assets and the wages it actually paid the beneficiary in 2001 that it could pay the proffered wage in 2001. The AAO withdraws this point in the notice of decision. The AAO notes further that even if the petitioner could establish the ability to pay the wage in 2001 through its 2000 tax return, the appeal would still be dismissed because the petitioner has not shown the continuing ability to pay the wage from 2002 onwards. Therefore, the petitioner has not been harmed by the director's error.

asserted that, from 2001-2006, the petitioner has shown gross receipts of over half a million dollars per year, gross profits of over \$200,000 per year and cost of labor currently at \$180,515, and thus it has shown the ability to pay the wage of \$28,849.60 since 2001 through the strength of its business. The AAO notes first that there is no evidence in the record that any of the funds paid out in cost of labor or to compensate officers would have been available to pay the wage from 2001-2006. Going on record without supporting documentary evidence is not sufficient to meet 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)). Unsupported assertions are not evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The strength of the petitioner's small business of eight employees as reflected in its tax returns is not sufficient to overcome the evidence in the tax returns that the petitioner did not have the funds available to pay the wage during the relevant period.

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 Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* 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 *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, 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 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 incorporated in 1993 and has 8 employees. It has not established its historical growth since incorporating. Its gross sales or receipts have not steadily increased, but have fluctuated as follows: \$207,129 in 2001; \$216,404 in 2002; \$225,354 in 2003; \$239,942 in 2004; \$228,574 in 2005; and \$235,354 in 2006. Further, the petitioner has not established: the occurrence of any uncharacteristic business expenditures or losses; the petitioner's reputation within its industry; or whether the beneficiary will be replacing a former employee or an outsourced service. Thus, assessing the totality of the circumstances in this individual case, the AAO finds that the petitioner has not established that it had the continuing ability to pay the proffered wage.

Counsel also suggested that the AAO should consider the petitioner's various bank statements submitted into the record as evidence of its ability to pay the wage. This assertion is misplaced. First, bank

checking account 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," the petitioner here has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable 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. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow denote additional available funds that were not reflected on its tax returns, such as the petitioner's net income or the cash specified on Schedule L which was duly considered when reviewing the petitioner's net current assets.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage from the priority date onwards. The appeal must be dismissed on this basis.

Beyond the decision of the director, the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.⁶ In the instant case, the Application for Alien Employment Certification, Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of restaurant cook. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|-----|
| 14. Education | |
| Grade School | n/a |
| High School | n/a |
| College | n/a |
| College Degree Required | -- |
| Major Field of Study | -- |

The applicant must also have two years of experience in the job offered. The duties of the proffered job are delineated at Item 13 of the Form ETA 750A and since this is a public record, the duties will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA 750B. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked for the petitioner 40 hours per week as a bread and pasta maker from February 1995 through an unspecified date. He also represented that he worked 40 hours per week as a "██████████" for ██████████ Glendora, California from February 1990 through January 1995, and 40 hours per week as a cook for ██████████ San Dimas, California from April 1990 through October 1991. He does not provide any additional information concerning his employment background on that form.

⁶ 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 *Dor v. INS*, 891 F.2d at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

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

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

The director stated in the September 20, 2007 Request for Evidence that the petitioner should submit evidence that the beneficiary had received two years of experience in the proffered position. The director stated that the evidence should be in the form of “letter(s) from current or former employer(s) giving the name, address, and title of the employer and a description of the experience of the alien, including the specific dates of the employment and the specific duties. Please note that affidavits from current or former co-workers are not acceptable.”

In response, counsel submitted a letter dated October 30, 2007 in which he indicated that the petitioner is not able to obtain the required experience letter from the beneficiary’s former employer because that employer is no longer in business. Instead, the petitioner submitted the letter of [REDACTED] dated October 11, 2007. In this letter, [REDACTED] stated that he worked at [REDACTED], Glendora, California from May 1990 through September 1994 as a cook helper. He stated that the beneficiary also worked at this company from April 18, 1992 through August 26, 1994. He indicated that the beneficiary prepared “breads, pastas, sauces and all the dishes on the menu.”⁷ The beneficiary indicated on the Form 750B that he worked at this restaurant for 40 hours a week from February 1990 through January 1995. The AAO finds that the letter submitted to establish the petitioner’s claim that the beneficiary had at least two years of experience in the proffered position is not reliable for the following reasons. [REDACTED] indicated that the beneficiary did not begin work at [REDACTED] until April 18, 1992 (almost two years after [REDACTED] began there) and that he left this restaurant on August 26, 1994 (a short time prior to when [REDACTED] stopped working at this restaurant.) Yet, the beneficiary’s statements indicate: that he worked at this restaurant for almost five years beginning in February 1990; that he began working there prior to [REDACTED] arrival at the restaurant; and that he remained there after [REDACTED] left. Further, the regulations require that the petitioner provide the letter of a current or former employer which describes the

⁷ Also in the record is the January 24, 2002 letter signed by [REDACTED] in which [REDACTED] did not list: the duties of the beneficiary at the restaurant; the beneficiary’s dates of employment at the restaurant; etc. That letter is not probative in this matter.

beneficiary's employment experience at that place of employment as proof of the beneficiary's qualifying experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The AAO finds that [REDACTED] October 2007 letter regarding the beneficiary's employment is not probative.⁸

The petitioner has failed to establish that the beneficiary had the required two years of experience in the proffered position and that he was qualified to perform the duties of the position as of the priority date.

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.

⁸ In connection with a separate proceeding in the beneficiary's A-file, the beneficiary submitted an employer letter from [REDACTED], dated July 23, 1993. This letter indicates that [REDACTED] employed the beneficiary at this restaurant from approximately February 2, 1990 through the date that letter was signed, but it fails to state what type of experience the beneficiary gained at this restaurant, what position he held at the restaurant, etc. This letter is also not probative in this matter.