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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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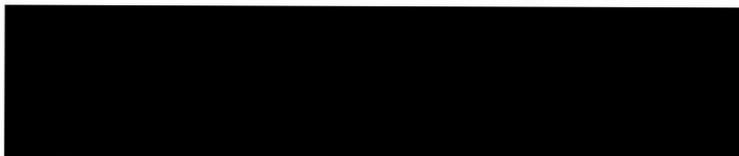
Office: NEBRASKA SERVICE CENTER

Date: JAN 12 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 a construction business. It seeks to employ the beneficiary<sup>1</sup> permanently in the United States as a carpenter. As required by statute, the petition is accompanied by an ETA Form 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. 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 denial, an 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.

An additional issue beyond the decision of the director in this case is whether or not the petitioner adequately demonstrated that the beneficiary's training and experience conforms to the requirements of the labor certification, specifically, whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the offered position of carpenter for a construction business.

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 ETA Form 750, Application for Alien Employment Certification,

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<sup>1</sup> The beneficiary is also known as [REDACTED]

was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the ETA Form 750 was accepted on April 30, 2001. The proffered wage as stated on the ETA Form 750 is \$18.79 per hour (\$39,083.20 per year). The ETA Form 750 states that the position requires two years of experience.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup>

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1988,<sup>3</sup> to have a gross annual income of \$3,809,418.00, and to currently employ ten workers. According to the tax returns in the record, the petitioner's fiscal year begins on November 1<sup>st</sup> and ends on October 31<sup>st</sup> of each year. On the ETA Form 750B, signed by the beneficiary on April 25, 2001, the beneficiary claimed to have worked for the petitioner since September 1999.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 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, United States 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

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<sup>2</sup> 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 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).

<sup>3</sup> According to the California Business Portal at <<http://kepler.ss.ca.gov>> accessed on December 2, 2009, the petitioner is [REDACTED] incorporated in California on October 23, 1987.

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.

The petitioner issued Wage and Tax Statements (W-2) to the beneficiary for years 2000,<sup>4</sup> 2001, 2002, 2003, 2004, 2005, and 2006, in the amounts of \$11,058.00, \$17,534.25, \$19,085.00, \$20,143.75, \$27,328.25, \$33,956.25, and \$37,947.75. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date as noted above. Since the proffered wage is \$39,083.20 per year, the petitioner must establish that it can pay the beneficiary the difference between wages actually paid and the proffered wage, which is in 2000-\$28,025.20, 2001-\$21,548.95; 2002-\$19,998.20; in 2003-\$18,939.45; in 2004-\$11,754.95; in 2005-\$5,126.95; and in 2006-\$1,135.45. On appeal the petitioner submitted pay statements issued to the beneficiary by the petitioner for the period December 27, 2006, to September 15, 2007, stating year-to-date wages paid of \$31,047.00 and a pay rate of \$19.00 per hour. Therefore, in the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date.

According to counsel, the petitioner paid the beneficiary the proffered wage in 2007. On the contrary, there is no evidence submitted that the petitioner paid the beneficiary the proffered wage in 2007. Assuming for the sake of argument that the petitioner paid the proffered wage in 2007, it is clear from the evidence submitted the petitioner has not paid the proffered wage in its fiscal years 2000, 2001, 2002, 2003, and 2005. The petitioner must show the ability to pay the proffered wage from the priority date.

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 (1<sup>st</sup> 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). 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 insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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.

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<sup>4</sup> The AAO will review the petitioner's 2000 tax return as the petitioner's fiscal year that ends in 2001 on October 31<sup>st</sup>, includes the priority date.

The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

Counsel asserts that the petitioner's depreciation allowance is evidence of its ability to pay the proffered wage. 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 petitioner’s tax returns demonstrate its net income as shown in the table below.

- In 2000, the form 1120 stated net income of \$11,058.00.
- In 2001, the Form 1120 stated net income of <\$52,303.00>.<sup>5</sup>
- In 2002, the Form 1120 stated net income of <\$154,683.00>.
- In 2003, the Form 1120 stated net income of <\$53,663.00>.
- In 2004, the Form 1120 stated net income of \$194,910.00.
- In 2005, the form 1120 stated net income of <\$148,755.00>.

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<sup>5</sup> The symbols <a number> indicate a negative number, or in the context of a tax return or other financial statement, a loss.

Therefore, for the years 2000, 2001, 2002, 2003, and 2005, the petitioner did not have sufficient net income to pay the proffered wage, or to pay the difference between wages actually paid and the proffered wage for years 2000, 2001, 2002, 2003, and 2005. In 2004 the petitioner had sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, USCIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>6</sup> 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 as shown in the table below.**

- In 2000, the Form 1120 stated net current assets of <\$255,715.00>.
- In 2001, the Form 1120 stated net current assets of <\$316,325.00>.
- In 2002, the Form 1120 stated net current assets of <\$479,020.00>.
- In 2003, the Form 1120 stated net current assets of <\$560,653.00>.
- In 2004, the Form 1120 stated net current assets of <\$358,808.00>.
- In 2005, the Form 1120 stated net current assets of <\$503,871.00>.

Therefore, for the years 2000, 2001, 2002, 2003, 2004, and 2005, the petitioner did not have sufficient net current assets to pay the proffered wage from net current assets, or to pay the difference between wages actually paid and the proffered wage for years 2000, 2001, 2002, 2003, 2004 and 2005.

Therefore, from the date the ETA Form 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of

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<sup>6</sup>According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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 accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets, except for year 2004.

On appeal, counsel asserts that the beneficiary's most recent pay stub in 2007 demonstrates that the petitioner is currently paying a wage greater than the prevailing wage. There is no evidence that the petitioner paid the beneficiary the proffered wage in 2007. Counsel also states that the petitioner almost paid the proffered wage in 2006. The petitioner has the burden of proving it has the ability to pay the proffered wage from the priority date. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel asserts that since the director did not request additional evidence, therefore the petitioner could not prove its ability to pay. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Furthermore, even if the director had committed procedural errors by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Counsel has asserted that the petitioner believed that its tax returns demonstrated its ability to pay the proffered wage. Counsel states that its "total income" of \$347,935.00 in 2000 and \$569,875.00 in 2005/06" are evidence of its ability to pay the proffered wage. Counsel's statement is misplaced. Counsel is omitting the fact that in tax years 2000 and 2005 the petitioner stated deductions of \$336,877.00 and \$430,833.00 respectively. It is net income that demonstrates the petitioner's ability to pay for those years. *See River Street Donuts, supra*.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the ETA Form 750 was accepted for processing by the DOL.

As already stated, counsel asserts that the increase in the petitioner's total income from 2000 to 2005, the stability of the petitioner's business, its cost of labor, and its sales and gross profits are all evidence of the petitioner's ability to pay the proffered wage. 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 *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 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.

The petitioner has been in business since 1988. In the instant case, the petitioner's "gross receipts," i.e. Form 1120, Line 1a, varied for the years for which tax returns were submitted. In 2000, the petitioner's gross receipts were \$1,382,745.00, and in 2005 the gross receipts were \$2,224,684.00 which is a decrease of 42% from 2004 in which the petitioner's gross receipts were \$3,809,418.00.

The cost of labor expense varied widely, that is from \$94,863.00 in 2001 to \$264,009.00 in 2005. There is no explanation in the record for the variance. The "cost of goods sold" deduction, i.e. Form 1120, Line 2, remained high in all years so that in conjunction with the substantial expense of "officer's compensation," the two expenses resulted in part for a stated negative net income in all years for which tax returns were submitted except 2004. Further, there was no offer in the record by the sole shareholder to pay the proffered wage from officers compensation. Since in four of the years for which tax returns were submitted, officers compensation was nearly a fixed sum, \$182,400.00, \$182,400.00, \$182,400.00, and \$186,600.00, (2000 to 2004), officers compensation does not appear to be a discretionary expense of the corporation.

There is insufficient information in the record concerning the petitioner's business reputation, and contrary to counsel's assertion, insufficient information why it would have an expectation of an increase in profits. 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 beginning on the priority date.

As already stated, an additional issue beyond the decision of the director in this case is whether or not the petitioner adequately demonstrated that the beneficiary's training and experience conforms to the requirements of the labor certification, specifically, whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the offered position of carpenter for a construction business.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 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).

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.

USCIS will look to the labor certification to ascertain the job requirements. According to the ETA Form 750, the position requires two years of experience.

The job duties of carpenter are part of the record as stated in Item 13 of the ETA Form 750, Part A, and, therefore, will not be restated here.

The ETA Form 750 indicates that the DOL assigned the SOC/O\*Net(OES) code 47-2031.01 with accompanying job title “construction carpenters” to the offered position.<sup>7</sup> DOL’s occupational codes are assigned based on normalized occupational standards. According to DOL’s public online database at <http://online.onetcenter.org/link/summary/47-2031.01>, as accessed December 2, 2009, the job title falls within “Job Zone Two: Some Preparation Needed.” DOL assigns a standard vocational preparation (SVP) range of 4.0 to < 6.0 to Job Zone 2 occupations, which means “These occupations usually require a high school diploma.” Additionally, DOL states the following concerning the related experience and job training for this occupation:

Some previous work-related skill, knowledge, or experience is usually needed. For example, a teller would benefit from experience working directly with the public. Employees in these occupations need anywhere from a few months to one year of working with experienced employees. A recognized apprenticeship program may be associated with these occupations

*See id.* Because of the requirements of the offered position and the DOL’s standard occupational requirements, the proffered position is for a skilled worker. The above regulation (i.e. 8 C.F.R. § 204.5(1)(3)) and decisional law require that USCIS determine if the beneficiary meets the requirements of the labor certification. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309

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<sup>7</sup> The code stated on the labor certification was 47-2031.00. Upon accessing O\*Net, the carpenter job classification was found to be further divided into two classifications. Construction carpenter is O\*Net code 47-2031.01.

(9<sup>th</sup> Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The beneficiary's stated on the ETA Form 750 that his most recent work experience was from September 1999 to present, i.e. April 25, 2001, as a carpenter employed by the petitioner. This is less than the two year job experience requirement. Before that employment experience, the beneficiary listed two previous positions. From May 1999, to September 1999, the beneficiary stated he was employed by [REDACTED], (no street address given), Alhambra, California, employed in maintenance. None of the stated job duties for this employer involved carpentry.

Prior to this position, the beneficiary stated that he was employed as a carpenter/framer by [REDACTED] from March 1997 to May 1999. No experience letter was provided by the petitioner to substantiate the beneficiary's employment experience in this position.

According to the regulation at 8 C.F.R. § 204.5(l)(3) independent, objective and demonstrable proof of job experience requires job experience letters to include the former and current employers of the beneficiary, the name, address and title of the writer and a listing of the beneficiary's dates of employment, job title and a specific description of the duties performed by the beneficiary. There are no job experience letters submitted by the petitioner to substantiate that the beneficiary had two years of experience as a carpenter on the priority date.

According to the record, the beneficiary prepared a USCIS Form G-325, dated January 10, 2007, that was signed by the beneficiary under penalty of perjury, in which the beneficiary listed only one job experience, that is with the petitioner commencing September 1999. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, there is no correlative evidence to support the beneficiary's employment history prior to 2000 such as cancelled pay checks, pay stubs, a history of bank deposits of the beneficiary's pay checks, or the beneficiary's personal tax returns.

Therefore, the preponderance of the evidence does not demonstrate that the beneficiary is qualified to perform the duties of the proffered position by the evidence submitted.

The petition will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.<sup>8</sup> 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.

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<sup>8</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d at 1002 n. 9.

**ORDER:** The appeal is dismissed.

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