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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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MAR 15 2010

FILE: [REDACTED]
SRC 07 202 52654

Office: TEXAS SERVICE CENTER

Date:

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:

[REDACTED]

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a convenience store. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent 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 February 1, 2008 denial, at 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 ETA Form 9089 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 ETA Form 9089 as certified by the DOL and submitted with the petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the ETA Form 9089 was accepted on August 18, 2005. The proffered wage as stated on the ETA Form 9089 is \$29,723 per year. The ETA Form 9089 also states that the position requires 24 months of experience in the proffered position.

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 of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1998 and to currently employ 3 workers. According to the tax returns in the record, the petitioner’s fiscal year is based on a calendar year. On the ETA Form 9089, signed by the beneficiary but which the beneficiary did not date, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 establishes a priority date for any immigrant petition later based on that form, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, 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 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. In this case, the petitioner has not established that it paid the beneficiary the full proffered wage or any portion of the wage at any time from the priority date onwards.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner’s federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). 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.

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).

1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is not sufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is not sufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income.

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). Thus, the AAO rejects the suggestion made by the petitioner's Certified Public Accountant (C.P.A.), [REDACTED], in his opinion letter dated January 2, 2008, that USCIS should consider the petitioner's depreciation deductions as funds available to pay the wage.

The record before the director closed on January 12, 2008 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. However, on appeal, the petitioner submitted its 2007 tax return. Therefore, the petitioner's income tax return for 2007 is the most recent return available. The petitioner's tax returns demonstrate its net income for 2005, 2006 and 2007, as shown in the table below.

- In 2005, the Form 1120S stated net income² of \$20,473.³
- In 2006, the Form 1120S stated net income of \$27,571.⁴
- In 2007, the Form 1120S stated net income of \$34,830.

Therefore, in 2005 and 2006, the petitioner did not have sufficient net income to pay the proffered wage. In 2007, the petitioner did have sufficient net income to pay the proffered wage.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. The petitioner's total assets, however, will not be considered funds available to pay the wage as these assets include depreciable assets that the petitioner uses in its business, including real property. 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. Also, the AAO rejects any suggestion made by the C.P.A., [REDACTED] that the petitioner's current assets, before they are balanced against its current liabilities, should be considered as funds available to pay the wage. The petitioner's current assets must be balanced by its current liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, USCIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁵ A corporation's year-end current assets are shown on the petitioner's tax returns on Schedule L, lines 1

² Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 17e of Schedule K (2005 tax return) and line 18 of Schedule K (2006 and 2007 tax returns). See Instructions for Form 1120S at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed March 2, 2010) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional income and other adjustments shown on its Schedule K for 2005, 2006 and 2007, the petitioner's net income is found on Schedule K of its tax returns.

³ The AAO notes that the director did not include information from the petitioner's 2005 tax return in its analysis of whether the petitioner had the ability to pay the wage. On appeal, counsel suggested that the director must have found that the petitioner had demonstrated an ability to pay the wage in 2005. Counsel did not offer any rationale for finding that the petitioner had demonstrated an ability to pay the proffered wage in 2005. This office sees no evidence in the 2005 tax return or elsewhere in the record which shows that the petitioner had the ability to pay the wage in 2005.

⁴ The director indicated that the petitioner's net income for 2006 is shown at line 21 of page one of its Form 1120S. The AAO withdraws this point in the notice of decision.

⁵ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

through 6. Its year-end current liabilities are shown on Schedule L, 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 2005 and 2006, as shown in the table below.

- In 2005, the Form 1120S stated net current assets of \$9,824.
- In 2006, the Form 1120S stated net current assets of \$9,806.⁶

Therefore, for the years 2005 and 2006, the petitioner did not have sufficient net current assets to pay the proffered wage.

Thus, from the date the ETA Form 9089 was accepted for processing by the DOL, the petitioner has not established that it had the continuing ability to pay the beneficiary the proffered wage through an examination of wages paid to the beneficiary, or its net income or net current assets.

On appeal, counsel indicated that the AAO should combine the petitioner's net income and net current assets and consider the resulting amount as funds available to pay the wage. This is not correct. Net income and net current assets are not two separate sets of funds available to pay the wage. Rather, net income and net current assets represent two different ways to view the funds available to the petitioner. Net income views the petitioner's funds for the year retrospectively, and net current assets view the petitioner's funds for the year prospectively. A net income that is greater than the amount of the proffered wage indicates that a petitioner could have paid the beneficiary the wages during the year out of its income. Net current assets that are greater than the proffered wage indicate that the petitioner anticipates receiving roughly one-twelfth of that amount each month, and that it reasonably anticipates being able to pay the proffered wage out of those funds. Counsel also submitted a letter dated February 29, 2008 written by [REDACTED] to support the assertion that net income and net current assets should be combined when analyzing the petitioner's ability to pay the wage. In this letter, the C.P.A. indicated that he wrote the letter in response to counsel's request that he provide an analysis that adds the petitioner's net income and net current assets for 2006. First, this C.P.A. opinion letter in the record is not an audited financial statement. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. Unaudited financial statements are the representations of management. The unsupported representations of management are not evidence and are not sufficient to demonstrate the ability to pay the proffered wage. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as just explained, the petitioner's net income and net current assets are not two separate funds available to pay the wage. They are two different ways of analyzing the petitioner's funds and of analyzing its ability to pay the wage. Thus, USCIS will not combine the two when examining a petitioner's ability to pay the wage.

⁶ The director indicated that, in 2006, the petitioner's year-end current liabilities were \$9,806. The AAO withdraws this point in the notice of decision. Deducting the petitioner's year-end current liabilities (Schedule L, lines 16-18, or \$46,312) from its year-end current assets (Schedule L, lines 1-6, or \$56,118), yields net current assets of \$9,806.

Counsel also suggested that because the petitioner came near being able to pay the wage in 2006 using its net income that the AAO should find that it had the ability to pay the wage during that year. This is not persuasive. The burden is on the petitioner to demonstrate that it had the ability to pay the wage from the priority date onwards. *See* 8 C.F.R. § 204.5(g)(2). The AAO would also note that the petitioner did not establish an ability to pay the wage in 2005, either. Thus, it failed to show an ability to pay in two of three years in the relevant period of analysis.

In addition, counsel asserted that the petitioner's C.P.A. opinion letter dated January 2, 2008 in the record indicates that on a "cash flow" basis the petitioner demonstrated an ability to pay the wage in 2006. The January 2, 2008 C.P.A. opinion letter in the record is not an audited financial statement. Again, the regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. Unaudited financial statements are the representations of management. The unsupported representations of management are not evidence and are not sufficient to demonstrate the ability to pay the proffered wage. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Second, the January 2, 2008 C.P.A. opinion letter indicates that the petitioner's C.P.A.: considered depreciation deductions as funds available to pay the wage, and considered the petitioner's total current assets, without balancing them against its current liabilities, as funds available to pay the wage to reach the conclusion that the petitioner had demonstrated an ability to pay the proffered wage during the relevant period. For reasons stated previously in this analysis, USCIS will not consider depreciation deductions or the petitioner's current assets, without balancing them against its current liabilities, as funds available to pay the proffered wage.

Regarding other points made by the petitioner directly or through counsel in this proceeding, the petitioner's owner submitted two letters, one dated December 26, 2007 and one dated February 22, 2008, in which he indicated that he would pay the proffered wage if the petitioner is unable to pay the wage out of its own funds. In the February 22, 2008 letter, he indicated that he had attached a copy of a financial statement that relates to his personal finances. However, his financial statement is not in the record. 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 Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, even if the petitioner's owner did document for the record that he had considerable personal wealth, the AAO would not consider documentation of the petitioner's owner's net worth as evidence of the petitioner's ability to pay the wage. USCIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioner's ability to pay the proffered wage. The AAO notes that if the tax returns indicated that compensation had been paid to the petitioner's officer and if the petitioner's owner had submitted a notarized, sworn statement which indicated that he would forego his compensation from the priority date onwards as necessary to cover the proffered wage, USCIS

would have considered officer compensation as funds available to pay the wage, as the instant petitioner has only one officer/one shareholder. However, in this matter, the three tax returns submitted state that in 2005, 2006 and 2007 the petitioner paid no compensation to its officer.

Finally, any assertion that the AAO should consider the petitioner's various bank statements submitted into the record as evidence of its ability to pay the wage is misplaced. Bank 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 not applicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. 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.

Counsel also indicated that USCIS should consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. For instance, counsel asserted that the petitioner's gross receipts of \$655,278 in 2006 increasing to \$667,865 in 2007 show potential for future growth and overcomes the petitioner's failure to show the ability to pay the wage during 2006. To support this assertion, counsel cites to *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967).

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 not able 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.

In this case, the record indicates that the petitioner was incorporated in 1998 and that it currently has three employees. The petitioner did not establish its historical growth since incorporating. Its gross

receipts or sales have not significantly increased, as suggested by counsel, but have remained somewhat close to the same amount, as follows: \$630,846 in 2005; \$655,278 in 2006; and \$667,865 in 2007. Also the tax returns reflect fairly low salaries of approximately \$40,000 to \$45,000 paid to all three employees in each year and no officer compensation paid in any year. 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, 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 from the priority date onwards. The appeal will be dismissed on this basis.

Beyond the decision of the director, the petitioner failed to provide credible documentation that, as of the priority date, the beneficiary had acquired 24 months of experience in the proffered position as required by the ETA Form 9089 as certified by the DOL. *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 997, 1002 n. 9 (2d Cir. 1989)(which notes that the AAO reviews appeals on a *de novo* basis).

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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, Mandany 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. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The ETA Form 9089, section H, items 4 through 14, set forth the minimum education, training, and experience that an applicant must have for the position of manager. Here, section H, items 4 through 14 indicate that there are no minimum educational requirements or training requirements to qualify for the proffered position, and that the applicant must have at least 24 months of experience in the proffered position. There are no additional special requirements for the position listed on the ETA Form 9089.

The duties of the proffered position as stated at section H, item 11 are to "[m]anage a convenience store. Prepare employees work schedules. Prepare payroll and sales tax. Reconcile daily cahs (sic) with sales receipts. Order inventory. Make bank deposits."

At sections J, K and L of the ETA Form 9089, the beneficiary set forth his credentials and then signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. At section K where the beneficiary is required to list "all jobs [he] has held during the past 3 years" and to "list any other experience that qualifies [him] for the job opportunity for which the employer is seeking certification," the beneficiary stated that: he worked as a manager at [REDACTED] from March 1, 2005 through an unspecified date; he worked as a manager at [REDACTED]

from October 1, 2001 through January 15, 2005; and he worked as a manager at [REDACTED] from December 1, 1997 through September 30, 2001. The beneficiary did not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(l)(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 only experience letter submitted by the petitioner on behalf of the beneficiary is on [REDACTED] letterhead stationery. In this letter which is signed by the [REDACTED] the president stated that the beneficiary was employed as manager at [REDACTED] from December 1, 1997 through September 30, 2001. The letter states that the beneficiary “was responsible to reconcile daily cash with sales receipts, prepared reports and make (sic) bank deposits and kept operating records and prepared daily record of transaction (sic). He ordered purchases of merchandise and inventory and maintained records of underground petroleum storage tanks in accordance with state and federal environmental laws. He was responsible for the on-site management of the store.”

There is no indication that the beneficiary had to prepare employees’ work schedules or prepare payroll for employees while at [REDACTED]. Yet, these are required duties of the proffered position, according to the ETA Form 9089 as certified. In addition, the letter does not indicate whether this experience was full-time or part-time such that USCIS might determine if the beneficiary had the required two years of full-time experience as of the priority date.

Moreover, in the letterhead of the [REDACTED] experience letter in the record, the city of Rosenberg, Texas is misspelled as Rosenburg, Texas, in the same manner that it is misspelled on the ETA Form 9089 at Section K, item b (Job 2) and item c (Job 3). See Texas State Library & Archives Commission Web Site at <http://www.tsl.state.tx.us/ref/abouttx/popcity12000.html>, accessed March 3, 2010, which indicates that there is no city of Rosenburg, Texas; there is only the city of

Rosenberg, Texas. A misspelled city name in a company's letterhead stationery casts serious doubt on the authenticity of this letter and its contents.⁷

Doubt cast on any aspect of the proof submitted by a petitioner may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO finds that the experience letter in the record is deficient and contains inconsistencies that the petitioner must resolve, and that it is not probative in this matter.

Thus, the preponderance of the evidence does not establish that, as of the priority date, the beneficiary had acquired 24 months of experience in the proffered position, as required by the ETA Form 9089 as certified by the DOL. Therefore, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.

⁷Also, the experience letter is signed by an individual who has the same last name as the beneficiary, which may be an indication that the two are related to each other, which casts further doubt on the reliability of the contents of the letter. In any further proceedings, the petitioner would need to submit independent, objective evidence to establish that the beneficiary did indeed have this stated prior employment. This office would add that it conducted a search using the search engine Google and found the following business in Rosenberg, Texas: