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U. S. Citizenship and Immigration Services
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FILE:



Office: TEXAS SERVICE CENTER

Date: **MAR 17 2010**

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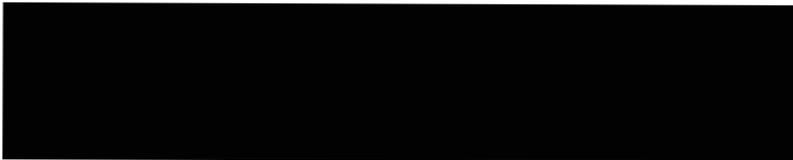
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



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 concerning your case 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition¹ was initially approved by the Director, Texas Service Center. Based on the result of a permanent residence interview, the director consequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR). The director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) on October 12, 2007. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain revoked.

The petitioner is a church. It seeks to employ the beneficiary permanently in the United States as a pastoral assistant. As required by statute, a Form ETA 750, Application for Alien Employment Certification (ETA 750), approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not submitted sufficient evidence in rebuttal to the NOIR to overcome the grounds for revocation.

The record shows that the appeal is properly and timely filed, 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.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

As set forth in the director’s October 12, 2007 NOR, the primary issue in this case is whether the petitioner has overcome the grounds of revocation in the director’s NOIR dated August 21, 2007 and whether the director has good and sufficient cause to revoke the approval of the instant petition.

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

¹ This is the second petition the instant petitioner filed on behalf of the beneficiary. The record shows that the petitioner filed Form I-360, Petition for Special Immigrant Religious Worker, on behalf of the beneficiary in the position of choir director and Sunday school teacher on February 21, 1997. The petition was denied by the director of Texas Service Center on July 23, 1997 because the petitioner did not establish that the beneficiary had had the requisite continuous work experience in a religious occupation during the two-year periods immediately preceding the filing date of the petition. The subsequent appeal was dismissed by the Office of Administrative Appeals on October 7, 1998 affirming the director’s denial ground as well as finding additional grounds of ineligibility such as failure to establish that the proposed position constituted a qualifying religious occupation, that the petitioner extended a valid, qualifying job offer, that it had the ability to pay the proffered wage and that the beneficiary was qualified to perform a religious occupation.

Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

Section 203(b)(3)(A)(i) of 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 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).

The Form ETA 750 was accepted on April 19, 2000. The proffered wage as stated on the Form ETA 750 is \$10.69 per hour (\$22,235.20 per year based on working 40 hours per week as set forth on the ETA 750A). On the petition, the petitioner claims that it is a church, established in 1979, to have a net annual income of \$200,000, and to currently employ one worker.

On appeal, counsel did not submit additional evidence to establish the petitioner's ability to pay the proffered wage, but argues that the petitioner submitted a volume of evidence of its net assets, which demonstrates that the petitioner has more than sufficient ability to pay the proffered salary.

In determining the petitioner's ability to pay the proffered wage during a given period, U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence

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

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 the instant case, the petitioner did not submit any documentary evidence that the petitioner hired and paid the beneficiary the proffered wage. Therefore, the petitioner failed to establish its ability to pay the proffered wage through the examination of wages actually paid to the beneficiary.

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. 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 total income and wage expense is misplaced. Showing that the petitioner's total income exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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.³

Counsel claims that the petitioner is a non-profit organization, and therefore, is not required to file the Form 990, Return for Organization Exempt From Income Tax. The record contains a letter dated October 20, 1972 from Acting Chief of Exempt Organization Branch, Rulings Section, Internal Revenue Services (IRS) regarding exemption under section 501(c)(3) of the Internal Revenue Code (the Code). However, it is noted that the IRS letter is dated October 20, 1972, seven years before the petitioner was established, and that it was addressed to [REDACTED]. The record does not contain any establishment documents for the petitioner, nor does the record contain any legal documents establishing the relationship between Church of God in Cleveland, TN and the petitioner. Therefore, the petitioner failed to establish its

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 accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

non-profit organization status under 501(c)(3) of the Code. It is incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Even if the petitioner is not required to file Form 990 Return of Organization Exempt from Income Tax, the petitioner must demonstrate that it had sufficient net income or net current assets as of the priority date in 2000 through the present. On January 15, 2002, the director issued a request for evidence (RFE) requesting that the petitioner submit evidence to establish that it has the financial ability to pay the proffered wage as of April 19, 2000 in the form of annual reports, U.S. tax returns or audited financial statements. In response to the RFE, counsel asserted that the petitioner is not required to file a Form 990, but did not submit the petitioner's annual reports or audited financial statements for these relevant years. The regulation 8 C.F.R. § 204.5(g)(2) specifies evidence of the petitioner's ability to pay the proffered wage shall be in the form of copies of annual reports, federal tax returns, or audited financial statements. The petitioner did not submit any type of evidence enumerated in 8 C.F.R. § 204.5(g)(2). Accordingly, the petitioner failed to demonstrate that it had sufficient net income or net current assets to pay the proffered wage from the priority date.

The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide copies of its audited financial statements. If the petitioner is not required to file its tax returns, its audited financial statements for the relevant years are the only type of regulatory-prescribed evidence available to demonstrate net income or net current assets. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Counsel submitted the petitioner's Monthly Income Receipts Report and Monthly Disbursement Report covering a period from March 1999 to February 2001, and Income and Expenses for a period from March 1, 2001 to February 28, 2002. Counsel's reliance on unaudited financial records is misplaced. 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. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The record also contains bank statements for the petitioner's bank checking and saving accounts covering January 1, 2000 through July 31, 2007 as evidence to establish the petitioner's ability to pay the proffered wage. However, counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 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 material "in appropriate cases," the petitioner in this case has not

demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2), such as annual reports or audited financial statements, 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 reflect additional available funds that were not reflected on its tax return, annual report or audited financial statement, such as the petitioner's net income or net current assets that would be considered in determining the petitioner's ability to pay the proffered wage.

On appeal counsel also asserts that the director erred in failing to take into account the value of the petitioner's real estate. USCIS will review the petitioner's assets when the net income is not sufficient to pay the proffered wage. We reject, however, the idea the petitioner's total assets should have been considered in the determination of the ability to pay the proffered wage. Even if a petition is a sole proprietorship and the sole proprietor's income, liquefiable assets, and personal liabilities are also considered as part of the petitioner's ability to pay, the AAO does not generally accept a claim that the sole proprietor relies on the value of his real property to show his ability to pay because it is not likely that the petitioner will liquidate such assets in order to pay a wage. In the instant case, the petitioner is a church, not a sole proprietor church. Counsel's reliance on the petitioner's real property to demonstrate ability to pay the proffered wage is misplaced.

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 (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 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.

In the instant case, the record does not contain any regulatory-prescribed evidence of the petitioner's financial conditions. Given the record as a whole, the petitioner's history of filing petitions behalf of the beneficiary, the AAO cannot conclude that the petitioner has not established that it had the continuing ability to pay the proffered wages upon assessing the totality of the circumstances in this individual case.

Counsel's assertions on appeal that the petitioner has demonstrated that it could pay the proffered wage from the day the ETA 750 was accepted for processing by DOL do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. Therefore, the director has good and sufficient cause to revoke the approval of the instant petition.

As discussed above, the petitioner failed to establish its ability to pay the proffered wage even though the totality of the circumstances affecting the petitioning business has been considered. Therefore, the petitioner also failed to establish that its job offer to the beneficiary was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence.

In addition, the director required the petitioner to establish the validity of a permanent full-time job offer in his NOIR. In response, the petitioner provided a correspondence from [REDACTED] dated September 19, 2007. The correspondence states that the petitioner intends to employ the beneficiary. The record does not contain any objective evidence to support the petitioner's statement. Moreover, this correspondence does not establish that the beneficiary has worked, is working or will work for the petitioner 40 hours per week, 8:00 am to 5:00 pm daily in a permanent full-time position of pastoral assistant as set forth on the Form ETA 750A. On appeal, counsel does not submit any evidence to establish the validity of the petitioner's job offer and instead merely asserts that the director's revocation is arbitrary and capricious. Counsel maintains that the director disregarded the petitioner's letter which reaffirms that the petitioner is ready, willing and able to employ the beneficiary under the terms and conditions set forth in the approved labor certification application. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence submitted does not establish that the job offer the petitioner provided to the beneficiary was and continues to be a realistic and bona fide job opportunity.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date in the instant case is April 19, 2000.

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).

Here, the Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of pastoral assistant. Item 14 describes the requirement of the proffered position is two years of experience in the job offered. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth her credentials on Form ETA-750B and signed her name on April 12, 2000 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information on the beneficiary's work experience, she represents that she has been unemployed since July 1996. Prior to that, she worked 40 hours per week as a pastoral assistant for [REDACTED] from June 1986 to June 1994, and worked 20 hours per week as a secretary for Broadleaf Interior Decorating from June 1994 to June 1996. She does not provide any additional information concerning her employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The petitioner submits a letter dated April 18, 2001 from [REDACTED] of New [REDACTED] at [REDACTED] certifying the beneficiary's work experience as a pastoral assistant with the church from June 1986 to June 1994. This letter is on the church letterhead, includes the name, address, and title of the writer, and a specific description of the duties performed by the alien and appears to meet the requirements of the regulation quoted above.

However, as the director pointed out in his NOIR, this letter provides inconsistent information regarding the beneficiary's work experience with the church on [REDACTED] from [REDACTED] [REDACTED]'s letter dated November 29, 1996 and other correspondence submitted in the record. The director properly informed the petitioner of these inconsistencies and provided an opportunity to rebut them. In response to the director's NOIR, the petitioner provided additional correspondence dated September 15, 2007 from [REDACTED]. The correspondence creates additional inconsistencies with evidence submitted to the record. On appeal, counsel did not submit any additional documentary evidence to establish the beneficiary's qualifying experience for the proffered position. Thus, the record remains unclear with respect to the beneficiary's experience. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec.

503, 506 (BIA 1980). It is incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Because of these defects, the experience letters from Pastor Graham cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications. The record of proceeding does not contain any other documentary evidence to support the beneficiary's qualifications. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered for the proffered position as required by the ETA 750. The AAO does not find that the record contains sufficient evidence to overcome the director's ground that the petitioner failed to establish the beneficiary's qualifications.

Counsel asserts on appeal that the director did not provide an opportunity to rebut unknown derogatory information before revoking the approval of the petition, did not offer an opportunity to review the record by providing requested copies through FOIA. The AAO finds this assertion to be without merit. In response to the director's NOIR, the petitioner failed to submit sufficient evidence to rebut the director's ground of revocation, namely that the petitioner failed to establish ability to pay the proffered wage and that its job offer to the beneficiary was realistic as of the priority date and that remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. Assertions that the petitioner had sufficient financial ability to pay the proffered wage from the petitioner and counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Generally, when something is to be established by a preponderance of evidence, it is sufficient that the proof establish that it is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The evidence in each case is judged by its probative value and credibility. Each piece of relevant evidence is examined and determinations are made as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. Truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The AAO concurs with the director's decision and determines that the director had good and sufficient cause to revoke the petition's approval based on the insufficient evidence to support factual assertions presented by the petitioner concerning its ability to pay the proffered wage and the validity of its job offer to the beneficiary and presented by the beneficiary concerning her qualifications for the proffered position.

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. The director's decision on October 12, 2007 is affirmed and the approval of the petition remains revoked.