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



U.S. Citizenship
and Immigration
Services

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Office: NEBRASKA SERVICE CENTER

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Petitioner:

Beneficiary:

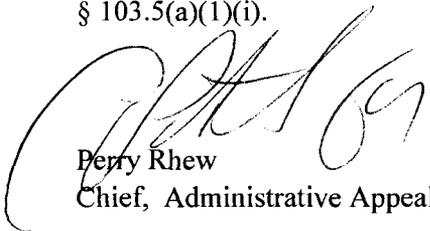
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 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 employment based visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an automobile repair firm. It seeks to employ the beneficiary permanently in the United States as an automobile mechanic. As required by statute, a Form ETA 750 (ETA 750), Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the requirements set forth on the approved labor certification were consistent with the visa classification sought. The director also determined that the petitioner had failed to establish that it had the ability to pay the proffered wage or that the beneficiary had obtained the required work experience. The director denied the petition on December 1, 2008.

On appeal, the petitioner, through counsel, submits additional evidence relating to the petitioner's ability to pay the proffered wage and the beneficiary's work experience. Counsel asserts that the director should have exercised discretion to correct the visa classification and should have notified the petitioner of the deficiency.

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).¹

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.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

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

¹ The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.

(4) *Differentiating between skilled and other workers.* The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

Part 5 of the Immigrant Petition for Alien Worker, (I-140), filed on July 2, 2007, indicates that the petitioner was established on January 1, 1985, currently employs one worker, and reported a gross annual income of \$84,284 and a net annual income of \$25,224. The petitioner sought visa classification (Part 2, paragraph e of I-140) of the beneficiary as a skilled worker (requiring at least two years of training or experience) under section 203(b)(3)(A)(i) of the Act. Item 14 of the ETA 750, as corrected by DOL, required the applicant to have nine years of grade school education and six months of experience in the job offered of mechanic. The job duties of the certified position described in Item 13 of the ETA 750 stated:

The applicant for this position will be required to mount and balance tires front end alignment, brake jobs, carburetors overhaul, transmissions, and engines, timing belts, timing changes, cylinders heads, a/c systems, abs services, trace and fix electrical shorts front end suspensions.[sic]

Citing 8 C.F.R. § 204.5(1)(2), and as mentioned above, the director observed that the minimum requirements of the certified position described on the ETA 750 required no education² and six months of experience. As the visa classification sought on the Form I-140 petition designated the skilled worker (or professional) category (paragraph e), the Form I-140 petition was not approvable because it was not supported by the appropriate ETA 750. In order to be classified as a skilled worker, the ETA Form 750 must require a minimum of two years of training or experience as set forth in Section 203(b)(3)(A)(i) of the Act. The director denied the petition on this basis because the petitioner did not demonstrate that the position required at least two years of training or experience, therefore the labor certification does not support the visa classification sought. The director further determined that the petitioner submitted the Form I-140 petition without evidence of the petitioner's ability to pay the proffered wage.

On appeal, counsel maintains that the petitioner made a typographical error on the Form I-140 petition. Counsel asserts that the director should have exercised discretion to select the appropriate visa category and should have notified the petitioner with an opportunity to cure the deficiencies in the record. The AAO does not concur. It is noted that the petitioner did not indicate anywhere else in the underlying record which classification it sought for the instant petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) clearly allows the denial of an application or petition, notwithstanding any lack of required initial evidence, if evidence of ineligibility is present. It is noted that neither the law nor the regulations require the director to consider other classifications if the petition is not approvable under the classification requested or require the

² This was incorrect. The minimum education as stated on Item 14 is nine months of grade school.

director to issue a request for evidence where evidence of ineligibility is present. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). In this matter, the appropriate remedy would be to file another petition with the proper fee, select the proper category, and submit the required documentation. We cannot conclude that the director committed reversible error by adjudicating the petition under the classification requested by the petitioner.

Additionally, it is noted that a petitioner must demonstrate that it has the continuing financial ability to pay the proffered wage as of the priority date.³ It must also demonstrate that the beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the ETA 750 is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA 750 was accepted for processing on April 30, 2001. The proffered wage as set forth on the ETA 750 is \$13.00 per hour, which amounts to \$27,040 per year.

With respect to the petitioner's ability to pay the proffered wage, it is noted that the regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's

³ The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any immigrant petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); see also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the overall 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).

ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [United States Citizenship and Immigration Services (USCIS)].

In this case, the petitioner provided no evidence of its ability to pay the proffered wage with the initial filing of the I-140 petition. It is noted that the beneficiary also filed an I-485, Application to Register Permanent Residence or Adjust Status (I-1485), concurrently with the Form I-140. In support of this application, the beneficiary's W-2 for 2006 was submitted. It shows that the petitioner paid wages of \$20,800 to the beneficiary that year, which is \$6,240 less than the proffered wage.

On appeal, counsel submits a copy of the beneficiary's 2007 and 2008 W-2s, as well as a copy of an individual tax return (Form 1040) for 2007 filed by '██████████' and a copy of the beneficiary's individual tax return for 2007. The 2007 and 2008 W-2s reflect that the petitioner paid the beneficiary exactly the proffered wage of \$27,040 for those two years. The 2007 individual tax return of ██████████ reflects that the petitioning business is operated as a sole proprietorship. In 2007, ██████████ filed as a single person and declared no dependents. This tax return contained the following information:

	2007
Wages	none listed
Business Income	\$16,922
Adjusted Gross Income ⁴	\$15,726

A sole proprietorship, as is the case here, is a entity in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). For that reason, sole proprietors provide evidence of pertinent personal household expenses that are considered as part of the calculation of their continuing financial ability to pay the proffered wage.

⁴ Adjusted gross income is shown on line 37 of page one of the tax return.

We do not find that the petitioner established its *continuing* financial ability to pay the proffered wage of \$27,040 beginning as of the priority date.⁵ It is noted that if a petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage during a given period, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. To the extent that the petitioner may have paid the beneficiary less than the proffered wage during a given period, those amounts will be considered. If the difference between the amount of wages paid and the proffered wage can be covered by the petitioner's net income or net current assets for a given year, then the petitioner's ability to pay the full proffered wage for that period will also be demonstrated. In this case, as noted above, the payment of the proffered wage establishes the petitioner's ability to pay in 2007 and 2008. In 2006, the petitioner paid the beneficiary \$6,240 less than the proffered wage. The petitioner failed to submit any financial documentation such as federal tax returns, audited financial statements or annual reports for 2001, 2002, 2003, 2004, 2005, and 2006. Thus, although the petitioner demonstrated its ability to pay the proffered wage in 2007 and 2008 through the submission of the beneficiary's W-2s and the other documentation relevant to those two years, it has not established its ability to pay the full proffered wage in any of the other six years pertinent to this determination.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during the relevant 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. 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 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.

⁵ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

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).

On appeal, counsel asserts that the petitioner has had the ability to pay the proffered wage and asserts that USCIS policy supports this argument. Counsel relies upon a *Memorandum by William R. Yates, Associate Director of Operations*, “Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2),” HQOPRD 90/16.45 (May 4, 2004) in support of the petitioner’s ability to pay. That memorandum advised adjudicators of three methods by which the ability to pay should be evaluated. It provides guidance to adjudicators to review a record of proceeding and make a positive determination of a petitioning entity’s ability to pay if, in the context of the beneficiary’s employment, “[t]he record contains credible verifiable evidence that the petitioner is not only is employing the beneficiary but also has paid or currently is paying the proffered wage.”

With respect to the Yates Memorandum, it is noted that by its own terms, this document is not intended to create any right or benefit or constitute a legally binding precedent within the regulation(s) at 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), but merely offered as guidance.⁶

⁶See also, *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968).

Similarly, the BIA cases cited by counsel are not legally binding precedent. The AAO is bound by the Act, regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from the circuit where the action arose. *See N.L.R.B v. Ashkenazy Property Management Corp.*, 817 F.2d 74,75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). The AAO consistently adjudicates appeals in accordance with the Yates memorandum. However, counsel's interpretation of the language in that memorandum is overly broad and does not comport with the plain language of the regulation at 8 C.F.R. § 204.5(g)(2) set forth in the memorandum as authority for the policy guidance therein. The regulation requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. If USCIS and the AAO were to interpret and apply the Yates memorandum as counsel urges, then in this particular factual context, the clear language in the regulation would be usurped by an interoffice guidance memorandum without binding legal effect. The petitioner must demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date, which in this case is was April 30, 2001, as established by the labor certification. Demonstrating that the petitioner is paying the proffered wage in a specific year or time period may suffice to show the petitioner's ability to pay for that year or period of time, but the petitioner must still demonstrate its ability to pay for the remainder of the pertinent period of time. Here, as noted above, the petitioner failed to submit evidence of its ability to pay for 2001, 2002, 2003, 2004, 2005, and 2006.

Relying on *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967), counsel asserts on appeal that the petitioner's status as a business for over 25 years, its routine earnings of over \$100,000 and its sound business reputation should merit the petition's approval based on its ability to pay the proffered wage.

In some cases, 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). That case, however, relates to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years. 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. In the instant case, the it may not be concluded that the single tax return or payment of the proffered wage to the beneficiary in 2007 and 2008 establishes a framework of profitability as in *Sonegawa* or sufficiently documents counsel's assertions as to the petitioner's longevity or reputation.). It is noted that although the petitioner paid the proffered wage to the beneficiary in 2007, the sole proprietor's adjusted gross income itself was reported as only \$15,726 or \$11,314 less than the proffered wage in that year. Further, the petitioner reported only one employee on the I-140 and Schedule C of the sole proprietor's tax return shows that only one salary (the beneficiary's) was reported. 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 undocumented assertions of 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). Unlike the *Sonegawa* petitioner, the instant petitioner has not submitted sufficient evidence demonstrating that uncharacteristic losses, factors of outstanding reputation or other overall circumstances similar to *Sonegawa* justify the petition's approval. While the petitioner established its ability to pay the proffered wage in 2007 and 2008, the AAO does not conclude that the petitioner has established that it has had the *continuing* ability to pay the proffered wage beginning as of the priority date in 2001 or has demonstrated its ability to pay in 2002, 2003, 2004, 2005 or 2006.

Relevant to evidence of training or experience, 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.

With reference to the beneficiary's work experience, the ETA 750 directs that all jobs should be listed that the beneficiary has performed in the last three years and additionally to include any jobs that qualify the beneficiary for the certified position. The beneficiary originally signed Part

B of the ETA 750 on April 21, 2001. He claimed one job as qualifying experience. He stated that he worked as a general mechanic for '██████████' at ██████████ Gardena California. No dates of employment are listed and no details of the job performed are stated. In an amendment to Part B, submitted on December 8, 2006, signed by the beneficiary, the beneficiary claims to have worked for the petitioner as an automobile mechanic since February 1994 to the present (date of signing). No employment verification letters pursuant to 8 C.F.R. 204(l)(3)(ii) have been submitted from any employer either to the underlying record or on appeal. Counsel asserts on appeal that a G-325A, a biographic information form and the ETA 750 establishes the qualifying experience or that the director should have requested additional evidence from the petitioner.

First, as stated above, if there is evidence of ineligibility, the director is not obliged to request additional evidence on other issues, but may deny the petition based on the evidence submitted with the I-140. *See* 8 C.F.R. § 103.2(b)(8)(ii). Second, the G-325A, biographic information form, signed by the beneficiary on July 23, 2007, indicates his employment with the petitioner but appears on appeal for the first time. Moreover, although the beneficiary's employment with the petitioner is suggested by the beneficiary's signature on the amendment to Part B of the ETA 750 and on the G-325A, as well as by the 2006 W-2 issued to the beneficiary by the petitioner, the beneficiary's actual employment as an auto mechanic and description of duties has not been verified by any employer as required by 8 C.F.R. § 204.5(l)(3). The petitioner has not established that the beneficiary acquired the requisite six months of experience before the priority date as set forth in the terms of the labor certification.

Finally, it is noted that the ETA 750 also requires that the applicant must have nine years of grade school education. The regulation at 204.5(l)(3)(D) provides that the evidence must establish that the alien meets any educational requirements set forth in the labor certification. In this case, no supporting documentation in the form of a transcript or diploma was submitted by the petitioner in support of the beneficiary's claim to have attended the Escuela Secundaria in Puebla, Mexico from February 1978 to December 1980 or to corroborate that he has had nine years of grade school education. 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)).

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 997, 1002 at n. 9.(noting that the AAO reviews appeals on a *de novo* basis).

Based on a review of the underlying record and the argument submitted on appeal, it may not be concluded that the labor certification provided supports the approval of the petition for a skilled worker visa classification sought by the petitioner. Additionally, the petitioner has failed to

establish its ability to pay; there was insufficient evidence that the beneficiary had obtained six months of experience as an automobile mechanic or had completed nine years of grade school as required by the labor certification. Therefore, the appeal will be dismissed on these bases.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.