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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

PUBLIC COPY

[REDACTED]

B6

FILE: [REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

OCT 29 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a chef-Korean foods. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (the DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's denial, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Beyond the decision of the director, additional issues are (1) whether or not the petitioner demonstrated that the beneficiary is qualified to perform the duties of the proffered position; and (2) whether the petitioner has sufficient income to pay all the wages for all sponsored beneficiaries from the priority date. The petitioner has filed three other immigrant petitions (Forms I-140) according to the electronic records of U.S. Citizenship and Immigration Services (USCIS). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).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.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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 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).

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 instant 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 9, 2006. The proffered wage as stated on the ETA Form 9089 is \$25,418.00 per year.

Accompanying the petition and the labor certification, counsel submitted, *inter alia*, the petitioner's federal income tax (Form 1120S) return for 2005; and the petitioner's owners' joint personal federal income tax (Form 1040) return for 2005.

On September 13, 2007, the director issued a request for evidence (RFE) to the petitioner and instructed the petitioner to submit, *inter alia*, its 2006 federal income tax return; a copy of its checking and savings account statements; the beneficiary's Wage and Tax Statement (W-2) for 2006; and copies of the beneficiary's pay vouchers for 2007.

In response, counsel submitted the petitioner's 2006 Form 1120S federal income tax return; the petitioner's owners' joint personal federal income tax (Form 1040) return for 2006; the monthly household expenses of the petitioner's owners dated October 22, 2007; and eight copies of the petitioner's owners' bank checking statements for the period August 23, 2006, to January 22, 2007.

On appeal, counsel submitted a legal brief; a letter from the petitioner's accountant regarding the petitioner's finances; and copies of the petitioner's tax return for 2006, and the petitioner's owners' joint personal federal income tax return for 2006, both returns already submitted in this matter.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145.

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 2000 and to currently employ ten 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 on May 24, 2006, 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 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, 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 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 the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2006 or subsequently.

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); *Taco Especial v. Napolitano*, --- F. Supp. 2d. ---, 2010 WL 956001, at *6 (E.D. Mich. 2010). 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. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, --- F. Supp. 2d. at *6 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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 118. “[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).

The record before the director closed on October 24, 2007, with the receipt by the director of the petitioner’s submissions in response to the director’s RFE. As of that date, the petitioner’s 2007 federal income tax return was not yet due. Therefore, the petitioner’s income tax return for 2006 was the most recent return available. The petitioner’s tax return² demonstrates its net income as shown in the table below.

- In 2006, the Form 1120S stated net income³ of \$9,732.00.

Therefore, for 2006, the petitioner did not 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. Net current assets are the difference between the

² Tax returns submitted for years prior to the priority date have little probative value in the determination of the ability to pay from the priority date. However, we will consider the petitioner’s 2005 federal income tax return generally.

³ 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. In this instance, the S corporation does not have income, credits, deductions or other adjustments from sources other than a trade or business, as reported on Schedule K that differ from the net income stated on Line 21.

petitioner's current assets and current liabilities.⁴ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax return demonstrates its end-of-year net current assets as shown in the table below.

- In 2006, the Form 1120S stated net current assets of \$11,935.00.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of its net income or net current assets for 2006.

On appeal, counsel asserts:

The petitioner is an S Corporation. The accounting practices of an S corporation are designed to minimize the net profit reported on the corporate tax return and instead to pass on the taxable net profits to the shareholder. The purpose of this manner of accounting is to avoid the double taxation that the shareholders of a regular corporation are subject to. *Matter of X*, EAC-01-018-50413 (AAO, January 31, 2003),⁵ holds that the [USCIS] must take into consideration the normal accounting practices of a company when determining [the] ability to pay. Since the IRS Form 1120S is designed to minimize the taxable profits reported, the [USCIS] should look at the shareholder(s) financial records to determine where the actual profits of the S Corporation are reflected.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. See *Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000.00. 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

⁴According 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.

⁵ Counsel refers to a decision issued by the AAO concerning S Corporations and the ability to pay the proffered wage, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. See 8 C.F.R. § 103.9(a).

prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

It is not an uncommon practice for a petitioner's sole owner/stockholder (or, in certain cases, joint stockholders) to take the corporation's income and compensate themselves with it, thus sheltering it from corporate additional taxation. In the present case, counsel is asserting, and has submitted evidence (i.e. the petitioner's owners' tax returns for 2005 and 2006), that USCIS should examine the personal assets of the petitioner's owners as evidence of the petitioner's ability to pay the proffered wage.⁶ Counsel is also asserting that the shareholders could have used some portion of that income/profit to pay the beneficiary had they needed to do so. Counsel's assertions are misplaced. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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. 1998).

⁶ The AAO notes that the petitioner is not a personal service corporation as it has not made that election to the IRS on its tax returns. Although other forms of corporate organizations practice tax minimization procedures, in this instance, because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." In the present instance, the three distributions to the shareholders have been expensed on the petitioner's tax returns.

Counsel has submitted a letter from the petitioner's accountant dated February 19, 2008. According to the accountant, two expense items, shareholder loans, and officers compensation, as well as an earnings distribution, should not be considered as expenses or liabilities for the reason that the shareholder/owners "did not have to do that" and the shareholders "simply moved [business expenses]" from one place to another on the balance sheet.

According to the accountant, the petitioner would have had higher net profits but for these three tax saving devices. The accountant asserts, by implication that loans to shareholders, distribution of retained earnings, and officers' compensation should be used as current assets for the year 2006 (and not expenses) to demonstrate the petitioner's ability to pay the proffered wage. It is clear that shareholder proceeds, or expenses/liabilities for that matter, cannot be evidence of the ability to pay by their very nature. The fact that the shareholders reduced debt owed to them by the petitioner is not relevant to the matter at hand, which is the ability of the petitioner to pay the proffered wage from its net income and net current assets. No letter or statement was submitted from the petitioner's officers or shareholders to substantiate that money in their bank accounts, once received from the petitioner, are then available to pay the proffered wage. Counsel cites no legal precedent for the assertions mentioned above, and, according to regulation,⁷ copies of annual reports, federal tax returns, or audited financial statements are the means by which petitioner's ability to pay is determined.

Although in this case, the sole owners/stockholders officers receive officers' compensation, counsel has not contended that the compensation of the petitioner's officers is discretionary. In the instant case, the officers have not stated that they have or will pass on their compensation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

The petitioner's gross receipts were \$549,391.00 and \$637,330.00 in 2005 and 2006, and the petitioner employs ten workers. Although the petitioner enjoyed an increase in gross receipts, the petitioner's net income in 2005 of \$16,270,⁸ and the net income \$9,732.00 in 2006, are insufficient to pay the proffered wage. In the instant case, there is a paucity of information concerning the petitioner's finances and reputation in its business sector. There is insufficient evidence in the record to conclude that it is more likely than not that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. The petitioner has not stated there was an occurrence of uncharacteristic business expenditures or losses. 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.

⁷ 8 C.F.R. § 204.5(g)(2).

⁸ Assuming for the sake of argument that the 2005 tax return for the petitioner could be analyzed and reviewed under *Sonegawa*.

Beyond the decision of the director, an additional issue is whether the petitioner has sufficient income to pay all the wages for all sponsored beneficiaries on the priority date. The petitioner has filed two other immigrant petitions (Forms I-140) according to the electronic records of USCIS, (i.e. LIN 07 003 52332 and SRC 03 110 52132). The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). Further, the petitioner would be obligated to pay each beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each petition. This is an additional reason for ineligibility.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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 ETA Form 9089 states that the position requires two years of experience.

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

(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.

On the ETA Form 9089, the beneficiary stated her employment experience under penalty of perjury. From March 5, 1998, to June 11, 2001, the beneficiary stated she was employed fulltime as a chef-Korean food by the [REDACTED]. She described the job's duties as follows:

Direct and participate in preparation, seasoning, and cooking of Korean dishes.

The ETA Form 9089's job description states the duties of chef-Korean foods as follows:

Direct and participate in preparation, seasoning, and cooking of Korean dishes.

No other employment experience was stated on the labor certification other than these brief and identical job descriptions.

The regulation at 8 C.F.R. § 204.5(g)(1)(2) 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. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The petitioner has submitted a certificate to substantiate the beneficiary's prior job experience. According to the certificate of experience dated September 15, 2005, the beneficiary residing in Seoul, South Korea, occupied the position of Korean Food Chef with a Korean Food Cook License, (license no. [REDACTED]) from March 5, 1998, to July 11, 2001, with the [REDACTED] Restaurant. The license was not submitted nor any explanation why the beneficiary was issued such a license.

According to the labor certification, the beneficiary graduated from [REDACTED] University located in [REDACTED] South Korea, in 1988. No diploma or university transcript was provided, nor was proof submitted that the beneficiary was employed by the [REDACTED] Restaurant such as tax records, pay vouchers, cash receipts, affidavits or letters from the beneficiary's former employer or trainer with a specific description of the duties performed by the beneficiary or of the training received.

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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Counsel did not submit sufficient evidence relating to the labor certification's requirement that the beneficiary have two years of qualifying experience prior to the priority date. 8 C.F.R. § 204.5(g)(1)(2).

No other letters or statements according to the regulation at 8 C.F.R. § 204.5(1)(3) were submitted by the petitioner. Other than the beneficiary's statement in the Form ETA 750, Part B, of her work experiences, and the tax document for one year, there is no other verification of the beneficiary's job experience. The preponderance of the evidence does not demonstrate that the beneficiary acquired the minimum qualifications for the offered position from the evidence submitted in this record of proceeding. Thus, 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. 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.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

ORDER: The appeal is dismissed.