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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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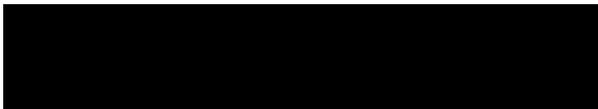
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



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, with a fee of \$585. 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 restaurant manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien 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, an additional issue is whether or not the petitioner demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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 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 unavailable.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the 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).

Here, the Form ETA 750 was accepted on March 29, 2001. The proffered wage as stated on the Form ETA 750 is \$16.74 per hour (\$34,819.20 per year), plus 10 hours of over-time at the rate of \$25.11 per hour (\$13,057.20) for a total proffered wage of \$47,876.40.¹ The Form ETA 750 states that the position requires one year of experience.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

Accompanying the petition and labor certification, counsel submitted, *inter alia*, the petitioner's federal income tax returns (Forms 1120S) for 2001, 2002, 2003, 2004, and 2005 all submitted without a Schedule L; an unaudited financial statement for the period January through June 2006; Wage and Tax Statements (Forms W-2) issued by the petitioner to the beneficiary for 2004-\$32,125.60; 2005-\$32,917.25; and 2006-\$34,330.00.

The director issued a request for evidence (RFE) dated July 1, 2008, to the petitioner and requested additional financial evidence from the priority date. The director requested the petitioner's complete federal income tax returns for 2001 (noting that no Schedule L was submitted for 2001), 2002, and 2003, as well as the beneficiary's W-2 or 1099-MISC Wage Statements issued by the petitioner for 2001, 2002, and 2003.

In response on August 14, 2008, counsel submitted the petitioner's federal income tax returns (Forms 1120S) for 2001 (without a Schedule L), 2002, and 2003; Wage and Tax Statements (Forms W-2) issued by the petitioner to the beneficiary for 2001-\$28,245.02; 2002-\$31,382.17; and 2003-\$30,990.29 as well as the beneficiary's "last" check stubs for the period June 11, 2008, to July 22, 2008, stating year-to-date earnings of \$13,050.00 paid at a hourly rate of \$11.25.

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 1994 and to currently employ "80-110" workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on December 21, 2001, the beneficiary claimed to have worked for the petitioner from October 1995 to "present" (i.e. December 21, 2001).

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

¹ According to counsel's brief dated November 6, 2008, submitted on appeal, the prevailing wage is \$25.11 per hour (which is the stated over-time hourly rate on the labor certification). According to a letter from the petitioner dated May 11, 2007, the offered wage is \$25.11 per hour. However, the labor certification states that the prevailing wage rate is \$16.74 per hour. Assuming for the sake of argument that the prevailing wage rate is 67% higher, than in that case, the yearly wage is \$52,228.80. Based upon the evidence submitted, the petitioner would not have demonstrated its ability to pay the proffered wage of \$52,228.80, in 2001, 2002, or 2003.

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, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

In support of the petition, the petitioner submitted, *inter alia*, W-2 statements purportedly representing wages paid to the beneficiary in 2001 through 2006. The petitioner also submitted alleged copies of the beneficiary's tax returns on which he supposedly claimed these wages as income. However, the record contains inconsistencies pertaining to the identity of the beneficiary. The W-2 statements state that the wages were paid to a person having social security number [REDACTED]. The petitioner did not respond to the query in the Form I-140 asking for the beneficiary's social security number, even though this information was clearly available to it if, in fact, [REDACTED] is the beneficiary's social security number. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Absent clarification of these inconsistencies in the record, the AAO will not accept the W-2 statements as persuasive evidence of wages paid to the beneficiary in 2001 through 2006. Although this is not the basis for the AAO's decision in the instant case, it is noted that certain unlawful uses of social security numbers are criminal offenses involving moral turpitude and can lead in certain circumstances to removal from the United States. *See Lateef v. Dept. of Homeland Security*, 592 F.3d 926 (8th Cir. 2010).

Regardless, assuming the W-2 statements were persuasive evidence of wages paid to the beneficiary during those years in question, the petitioner allegedly paid the beneficiary wages as stated below:

Petitioner's Tax Year:	Proffered Wage	Wages Paid	Difference between the Proffered Wage and the Wage Paid in Each Year:
2001	\$47,876.40	\$28,245.02	\$19,631.38
2002	\$47,876.40	\$31,382.17	\$16,494.23
2003	\$47,876.40	\$30,990.29	\$16,886.11
2004	\$47,876.40	\$32,125.60	\$15,750.80
2005	\$47,876.40	\$32,917.25	\$14,959.15
2006	\$47,876.40	\$34,330.00	\$13,546.40

In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date in 2001 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 August 14, 2008 with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. The petitioner’s tax returns demonstrate its net income as shown in the table below.

- In 2001, the Form 1120S stated net income² of <\$20,498>.³
- In 2002, the Form 1120S stated net income of <\$106,819.00>.
- In 2003, the Form 1120S stated net income of \$8,170.00.
- In 2004, the Form 1120S stated net income of \$73,542.00.
- In 2005, the Form 1120S stated net income of \$132,502.00.
- In 2006, the Form 1120S stated net income of \$94,215.00.
- In 2007, the Form 1120S stated net income of \$97,667.00.

² Where an S corporation’s income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner’s IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003), line 17e (2004-2005) or line 18 (2006-2007) of Schedule K. See Instructions for Form 1120S at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed September 7, 2010) (indicating that Schedule K is a summary schedule of all shareholder’s shares of the corporation’s income, deductions, credits, etc.).

³ The symbols <a number> indicate a negative number, or in the context of a tax return or other financial statement, a loss.

Therefore, for the years 2001, 2002, and 2003, the petitioner, through an examination of its net income and wages paid to the beneficiary, could not 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 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 returns demonstrate its end-of-year net current assets as shown in the table below.

- In 2001, the Form 1120S, Schedule L was withheld from evidence by the petitioner.⁵
- In 2002, the Form 1120S stated net current assets of <\$25,181.00>.
- In 2003, the Form 1120S stated net current assets of <\$40,698.00>.

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 wages paid to the beneficiary, or its net income or net current assets for years 2001, 2002, and 2003.

On appeal, counsel submits a legal brief dated November 6, 2008, and the petitioner's complete federal income tax returns for 2001 through 2007 including Schedules L. The petitioner was put on notice of required evidence, that is the Schedule L from its 2001 tax return,⁶ and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

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 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 complete tax returns for 2001, 2004, and 2005. See 8 C.F.R. § 204.5(g)(2).

⁶ The petitioner stated net current assets of \$8,869.00 in 2001.

Additionally, counsel submitted the beneficiary's W-2 Statement issued by the petitioner for 2007- (\$37,593.87), and a pay statement dated October 28, 2008, showing year-to-date earnings of \$27,171.03, including over-time hours.

On appeal, counsel asserts that officers' compensation stated in 2001 was available to pay the proffered wage. Officers' compensation is a deduction used to determine net income, and once paid, is not an asset available to pay the proffered wage. It is not an uncommon practice for a petitioner's sole owner/stockholder (or, in this case, joint stockholders) to direct a corporation's net income and essentially compensate themselves with it, thus sheltering it from additional taxation. In this matter, the amount of officer compensation does vary over the course of the pertinent years demonstrating that the amount does not represent some contractually obligated and fixed amount of compensation. The officers receiving the compensation are the stockholders lending credence to the argument that the officers had the discretion to set their own compensation.

However, the petitioner's owners are not offering to give up some of their compensation to pay the proffered wage. Counsel's assertion is unsupported. 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). 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).

Furthermore, it is not credible that these officers truly would or could have sacrificed a portion of their modest income to pay the beneficiary the proffered wage. Therefore, it does not appear reasonable to conclude without evidence to the contrary, that the petitioner had the ability to pay the proffered wage through an examination of officers' compensation. It seems unlikely that the petitioner could have used any sacrificed officers' compensation to pay the beneficiary the proffered wage since there is no statement in the record from the officers offering to contribute their compensation to pay the proffered wage.

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

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a

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

The petitioner was established in 1994 and reputedly employs "80-110" workers, but this figure was not substantiated by the petitioner. In the instant case, counsel states that the totality of evidence shows that the petitioner is a "largely successful and viable business that pays substantial wages and compensation to officers," and the growth of the business has been significant in the "past four years." Counsel's assertion must be qualified. The petitioner must demonstrate the ability to pay the proffered wage from the priority date, not from 2004. Further, in 2001, the petitioner stated \$2,396,086.00 in gross receipts with a high of \$3,748,122.00 in 2005, and a low of \$1,545,055.00 in 2007. Based on the gross receipts as of 2007, the business is in decline. Although the petitioner claimed it closed on the cream shop, and this was the reason that 2002 and part of 2003 were "unusually difficult," the petitioner has not submitted evidence to substantiate this reputed difficulty. Other than this assertion, there is insufficient evidence submitted of the petitioner's financial solvency and viability from the priority date and no allegation of any temporary and uncharacteristic disruption in the petitioner's business activities to account for its poor financial returns. 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.

Finally, as noted above, the record contains unresolved inconsistencies pertaining to the identity of the beneficiary and the petitioner's claim to have paid wages to him. 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.

Beyond the decision of the director, an additional issue is whether or not the petitioner demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

The Form ETA 750, Part A, Line 13, describes the job duties as follows:

Coordinates food service activities of restaurant. Estimates food and beverage costs and requisitions or purchases supplies. Confers with food preparation and other personnel to plan menus and related activities. Directs hiring and assignment of

personnel. Investigates and resolves food quality and service complaints. Reviews financial transactions and monitor budget to ensure efficient operation, and to ensure expenditures stay within budget limitations.

The beneficiary stated in the Form ETA 750B that he was employed fulltime by the petitioner as a restaurant manger from October 1995 to present (i.e. December 21, 2001). The job duties stated were as recited above on the ETA Form 750A.

Prior to the above, the beneficiary stated he was employed fulltime by [REDACTED] as a manager/cook. The job duties stated were generally as included above on the ETA Form 750A with the addition of "Plans and prepares meals. Served to waiters on orders."

Prior to the above, the beneficiary stated he was employed by [REDACTED] as a cook.

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

(ii) Other documentation—

(D) Other workers. If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

Counsel submitted three prior employment reference letters dated September 30, 1996, from [REDACTED] dated December 18, 2001, and [REDACTED] Dated November 6, 1993.

According to the [REDACTED] job reference, the beneficiary's job title was not mentioned but the beneficiary "posses[es] kitchen skills along with the versatility to work every station," and was employed there from May 1987 to November 1993.

According to the [REDACTED] job reference, the beneficiary's position there was a "member of our management team." The letter stated he was employed there from 1994 to present day (i.e. December 18, 2001). The beneficiary's statement in the labor certification is inconsistent with the [REDACTED] letter since he stated he was employed there from 1993 to 2003. No explanation for the inconsistency was provided by the petitioner.

In the [REDACTED] employment reference letter, that employer stated the beneficiary was employed at this business, described as a sandwich shop, from November 1, 1995, through September 27, 1996, performing duties such as "meat slicing, salad preparation, sandwich making, dishwashing and floor mopping."

The only job reference in which job experience may be the same as the offered job is the reputed [REDACTED] position. However, the dates that the beneficiary stated in the labor certification for this employment conflict with the dates given in the [REDACTED] letter. The [REDACTED] reference is insufficient evidence of the beneficiary's qualifications to perform the offered position as there is no description of his job duties. Furthermore, the beneficiary claims to have been employed fulltime by both the petitioner and [REDACTED] for over the eight year period.

Therefore, the sole statement submitted in the record concerning the beneficiary's qualifications is insufficient evidence under the regulation at 8 C.F.R. § 204.5(1)(3) to demonstrate that the beneficiary is qualified to perform the duties of the proffered position. No other letters or statements according to the regulation at 8 C.F.R. § 204.5(1)(3) were submitted by the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The preponderance of the evidence does not demonstrate that the beneficiary acquired the minimum qualifications for the offered position from the evidence submitted into 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.

ORDER: The appeal is dismissed.