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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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File: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 27 2010
SRC 07 163 51442

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:



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

The petitioner is a construction firm. The petitioner seeks to classify the beneficiary¹ pursuant to section 203(b)(1)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1) as a sheet metal fabricator. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition. The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date.

On appeal, counsel submits additional evidence of the petitioner's net worth and asserts that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *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.²

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.

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

¹It is noted that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was permitted by DOL at the time of filing this petition. DOL amended the administrative regulations at 20 C.F.R. part 656 through a final rulemaking published on May 17, 2007, which took effect on July 16, 2007 (71 FR 27904). The regulation at 20 C.F.R. § 656.11 prohibits the alteration of any formation contained in the labor certification after the labor certification is filed with DOL, to include the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. For individual labor certifications filed with [DOL] prior to March 28, 2005, a new Form ETA 750 (sic), Part B signed by the substituted alien must be included with the preference petition. For individual labor certifications filed with the DOL on or after March 28, 2005, a new ETA Form 9089 signed by the substituted alien must be included with the petition. USCIS continued to accept Form I-140 petitions that requested labor certification substitution, which were filed prior to July 16, 2007. The substitution was accepted in this case because the Form I-140 petition was filed prior to July 16, 2007.

² 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).

skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, was accepted for processing by any office within the employment system of 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 April 24, 2001, which establishes the priority date. The proffered wage as stated on the Form ETA 750 is \$21.50 per hour, which amounts to \$44,720 per year. On Part 5 of the Immigrant Petition for Alien Worker (I-140), the petitioner states that it was established on September 20, 1995, claims a gross annual income of \$243,873, a net annual income of \$57,083 and states that it currently employs four workers. Part B of the ETA 750, signed by the beneficiary on April 30, 2007, does not indicate that the petitioner has employed the beneficiary as of the date of signing.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an Form ETA 750 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).³ 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 overall circumstances

³If the preference 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.

affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 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, or that its net income or net current assets⁴ could cover the difference between the actual wages paid and 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 record does not indicate that the petitioner employed the beneficiary or paid the beneficiary any wages.

The director denied the petition, concluding that the petitioner's federal income tax returns did not demonstrate ability to pay the proffered wage after considering living expenses that would be required to support a family of four.

In this case, it is noted that the petitioner submitted copies of the individual income tax returns for 2001, 2002, 2003, 2004, 2005, 2006, and 2007 filed by the petitioner's owner, jointly with his spouse. In each of the years, two dependents were declared. The income tax returns indicate that the petitioning business was operated as a sole proprietorship in 2001 and 2002.⁵

Where an individual or sole proprietorship is involved, unlike a corporation, assets and liabilities are indivisible from their owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the individual's or sole proprietor's adjusted gross income, assets and personal liabilities are 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. Any 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, individuals and sole proprietors provide evidence of pertinent household expenses that are considered as part of the calculation of their continuing financial ability to pay the proffered wage.

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a

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. The difference between these two figures may be characterized as net current assets.

⁵ Adjusted gross income is shown on line 33 of the Form 1040 in 2001 and on line 35 in 2002.

gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

As to the petitioner's status in the remaining years of 2003 through 2007, it is noted that in support of the petitioner's ability to pay the proffered wage of \$44,720 per year, the petitioner submitted a letter, dated April 23, 2008, signed by the petitioner's accountant, [REDACTED]. He asserts the petitioner's ability to pay the proffered wage and indicates that the petitioner is a single-member limited liability company (LLC). According to the pertinent state on-line database, the petitioner registered as a limited liability company on January 27, 2003.⁶ As such, the AAO will treat the petitioner as a single member limited liability company for 2003 and the remaining relevant years.

A limited liability company is an entity formed under state law by filing articles of organization. Members of a limited liability company enjoy protection from individual liability similar to that afforded to corporate shareholders. While the owners of a corporation are referenced as shareholders or stockholders, the owners of a limited liability company are often referenced as "members." It is possible for an LLC to be formed by a single individual, in which case it may be referenced as a "single member LLC." A LLC, like a corporation is a legal entity separate and distinct from its owners. The debts and obligations of the company generally are not the debts and obligations of the owners or anyone else.⁷ An investor's liability is limited to his or her initial investment. As the owner is only liable to his or her initial investment, the total income and assets of the owner and his ability to pay the company's debts and obligations, cannot be utilized to demonstrate the petitioner's ability to pay the proffered wage. The petitioner must show the ability to pay the proffered wage out of its own funds.⁸

⁶See <http://www.concord-sots.ct.gov/CONCORD/InquiryServlet?eid=14&businessID=0737863> (accessed September 24, 2010).

⁷Although this general rule might be amenable to alteration pursuant to contract or otherwise, no evidence appears in the record to indicate that the general rule is inapplicable in the instant case.

⁸As in this case, if the LLC has only one owner, it will automatically be treated as a sole proprietorship for *tax purposes* unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. (Emphasis added). If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. See 26 C.F.R. § 301.7701-3. The election referred to is made using IRS Form 8832, Entity Classification Election. A single member LLC is treated as a sole proprietorship only as a mechanism for tax filing purposes and does not change the fact that the business is legally a limited liability company. If the only member of the LLC is an individual, the LLC income and expenses are reported on Form 1040, Schedule C, E, or F. See IRS Publication 3402 (Rev. 7-2000) Catalog Number 249400 "Tax Issues for Limited Liability Companies." Members are like shareholders of a corporation and own an interest in the LLC but they are not the LLC. Property interests may be acquired by the LLC and the title acquired vests in the LLC. See *HB Management, LLC v. Brooks*, 2005 WL 225993 (D.C. Super. Ct.); see also *McKinney's Limited Liability Company Law* § 609(a) (members and managers of limited liability companies are

For the years 2003, 2004, 2005, 2006 and 2007, the petitioner's pertinent financial information is reflected as its net profit or loss on line 31 of Schedule C of the owner's individual federal income tax returns (Form 1040) submitted to the record. The tax returns for the years 2001-2007, indicate the following:

Year	Adjusted Gross Income p.1, line 33 (2001); line 35	Schedule C, line 31 Net Income	Comparison to Proffered Wage of \$44,720
2001	\$44,014.31		\$705.69 less
2002	\$45,168.45		\$448.45 more
2003		\$27,058	\$17,662 less
2004		\$21,596	\$23,124 less
2005		\$30,468	\$14,252 less
2006		\$37,575	\$ 7,145 less
2007		\$38,527	\$ 6,193 less

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).

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 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

generally expressly exempt from personal responsibility for a company's obligations). Further, USCIS need not consider the financial resources of individuals or entities that have no legal obligation to pay the wage. See *Sitar Restaurant v. Ashcroft* 2003 WL 22203713 (D.Mass. Sept. 18, 2003).

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).

In 2001, even without considering payment of household expenses, which were not provided, the sole proprietor’s adjusted gross income of \$44,014.31 was already \$705.69 less than the proffered wage of \$44,720. The petitioner did not demonstrate its ability to pay the proffered salary in this year.

In 2002, although the sole proprietor’s adjusted gross income of \$45,168.45 exceeded the proffered wage by \$448.45, even without considering payment of household expenses, the proffered salary represented 99% of the sole proprietor’s adjusted gross income. It is highly unlikely that the sole proprietor could cover payment of the certified salary and additionally support himself, a spouse and two dependents. *See Ubeda*, 539 F. Supp. at 650. The petitioner failed to demonstrate the ability to pay the proffered wage in 2002.

In 2003, as an LLC, the petitioner’s stated net income of \$27,058 was \$17,662 less than the proffered wage and insufficient to demonstrate its ability to pay.

For the remaining relevant years of 2004, 2005, 2006, and 2007, as shown in the table above, the petitioner’s stated net income in 2004 was \$23,124 less than the proffered wage of \$44,720; the 2005 net income was \$14,252 less than the proffered wage; the 2006 net income was \$7,145 less; and the 2007 net income was \$6,193 less than the proffered wage. The evidence is insufficient to demonstrate the petitioner’s ability to pay the certified salary in any of the relevant years.

If the net income the petitioner demonstrates it had available during that period does not equal the amount of the proffered wage or more, USCIS will review the petitioner’s net current assets. Net current assets are the difference between the petitioner’s current assets and current liabilities. Since the petitioner did not submit audited financial statements or annual reports according to the regulation at 8 C.F.R. § 204.5(g)(2), and current assets and current liabilities are not stated on the Schedules C (Form 1040) submitted by the petitioner, net current assets cannot be ascertained for any year. Therefore, the petitioner did not establish that it had sufficient net current assets to pay the

full proffered wage in any of the years discussed. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Thus, the petitioner has not established that it had the continuing ability to pay the beneficiary the proffered wage through an examination of wages paid to the beneficiary, or its net income or net current assets from the priority date.

On appeal, counsel submits copies of a 2006 property tax assessment of the owner's personal residence and a copy of the pertinent mortgage information, asserting that owner could apply his equity of over \$400,000 to payment of the proffered wage. Counsel also provides a copy of a bank letter, dated June 6, 2008, relevant to a checking and savings account. Although the letter is addressed to the petitioning LLC, it is unclear in what name the accounts are held as to whether they represent LLC funds or the individual owner's assets. The current balances are listed as \$26,444.35 for the checking account and \$901.13 for the savings account. The average balances are listed as \$32,616.38 in the checking account opened on March 3, 2003, and \$903.92 in the savings account opened on March 5, 2007. The letter indicates that the average balance information is based on the previous twelve months. Based on the dates of opening those accounts were not available from the priority date onward. Additionally, it is not clear that the average balance amount was available from 2003 onward.⁹

Counsel also asserts that the *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), (Yates Memorandum)* supports the approval of the petition.

Counsel's assertions are not persuasive. With regard 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.¹⁰ It does not supersede the plain language of the regulation at 8 C.F.R. § 204.5(g)(2), which requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The memo 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." 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.

⁹ Average balance based on the previous twelve months, if measured from the date of the letter, would have commenced on June 7, 2007.

¹⁰ See also, *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968).

Although the sole proprietor's current readily available cash or cash equivalent assets are considered in the determination of the ability to pay the proffered wage, [here for 2001 and 2002 prior to LLC formation] the AAO does not consider real estate to be such a current readily available asset, but rather that it is a long-term asset. Moreover, the ability to encumber or sell a personal residence will not be considered as a means to demonstrate the ability to pay a proffered wage because it would not be converted to cash during the ordinary course of events and will not, therefore, be considered as funds available to pay the proffered wage.

With respect to the bank accounts, it is noted that no value is given for the checking account when it was opened on March 3, 2003, only the current balance and the average balance for the previous twelve months, which would have been June 2007. It is additionally observed that bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. As noted above, while this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) consisting of federal tax returns, audited financial statements or annual reports is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Bank statements generally reflect only a portion of a petitioner's financial profile and are not indicative of other encumbrances affecting its position and are not an acceptable substitute for the required evidence over a prolonged period. The petitioner has not demonstrated that the cash balances as shown on the business checking or saving accounts as stated by the bank's letter somehow reflects additional funds of the business that are not already reflected in the financial information contained on the respective tax returns on Schedule C, Profit or Loss From Business. This schedule includes not only a statement of the business gross profits and cash flow, but is also balanced by the business expenses incurred during the applicable year. Even if considered, based on the bank document submitted, it appears that the this amount would only be applicable to 2007 and would not demonstrate the petitioner's continuing financial ability to pay beginning as of the priority date in 2001.

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 Sonegawa*, 12 I&N Dec. The petitioning entity in *Sonegawa* 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, or other evidence deemed relevant.

In this case, there is no information in the record concerning the petitioner's reputation within the industry, or the occurrence of any uncharacteristic business expenditures or losses. The AAO notes that based on the petitioner's tax returns, the petitioner's gross receipts generally increased from \$149,933 in 2001 to 2005 where they reached \$298,505 (except for 2003 where they dipped to \$146,886), but have declined each year from 2005 to 2007. The petitioner's gross receipts were \$294,858 in 2006 and \$147,815 in 2007. Further as noted above, the petitioner's net income has been consistently less than the proffered wage since 2003. From the financial evidence presented, the petitioner's finances are in a sustained downturn. Thus, assessing the overall circumstances in this individual case, it is concluded that the petitioner has not proven that it has had the *continuing* financial ability to pay the proffered wage as of the priority date pursuant to 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, and as noted above, we do not find that the petitioner has demonstrated that the beneficiary possessed the requisite work experience as set forth on the ETA 750.¹¹ The beneficiary claimed one prior job on Part B of the 750. He signed the ETA 750 on April 20, 2007. The instructions to Part B of the ETA 750, appearing at item 15, instruct the beneficiary to list all jobs held for the past three years and any job related to the position for which the alien is seeking certification. The alien listed only one job held in Poland for the Olexbud Construction Company from March 1999 to February 2001. On the G-325A Biographic Information form, submitted with his I-485, Application to Register Permanent Residence or Adjust Status, however,

¹¹ Item 14 of the ETA 750 requires that the beneficiary has two years of work experience in the job offered of sheet metal fabricator. 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.

signed by the beneficiary on May 24, 2007, and submitted in support of his adjustment of status application, the beneficiary states that he worked at [REDACTED] Bristol, Connecticut as a stucco mason from April 2006 until November 2006. This job was omitted on Part B of the ETA 750.¹² Further, the beneficiary claims that his employment as a sheet metal fabricator at Olexbud Construction in Poland was from July 1999 to June 2002.

As these dates and jobs do not correspond, it raises a question as to the authenticity of the copy of the employment verification letter provided by the petitioner from Olexbud Construction in which the dates of the beneficiary's employment are stated to have been from March 1, 1999 to February 28, 2001. Without clarification and additional independent evidence, this documentation is insufficient to find that the petitioner has established the beneficiary's required two years of experience as a sheet metal fabricator as set forth on the ETA 750. 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. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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 Soltane v. DOJ*, 381 F.3d 143 at 145 (AAO's *de novo* authority well recognized by federal courts.)

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.

¹² However, we note that as the priority date is April 24, 2001, the beneficiary would be required to meet the experience requirement by that date.