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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
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Services**



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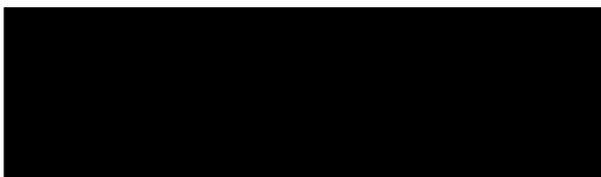
IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 law office. It seeks to employ the beneficiary permanently in the United States as a legal assistant. 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 (DOL). The director denied the petition, stating that the record did not establish the petitioner's continuing ability to pay the beneficiary the proffered wage beginning on the priority date and that the petition was not filed under the correct category. 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 July 29, 2009 denial, the issues in this case are 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 and whether the petition was filed under the correct category as the labor certification requires two years and three months year of training, however, the petition was filed as one for an "other worker" instead of for a "skilled worker." On appeal, we have identified an additional ground of ineligibility in that the petitioner did not submit sufficient evidence to establish that the beneficiary possessed the specific requirements of the labor certification as of the date of certification.

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 nature, for which qualified workers are not available in the United States. 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.

Regarding the classification sought, on Part 2.g. of the Form I-140, the petitioner indicated that it was filing the petition for an other worker.

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

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

In this case, the labor certification indicates that two years and three months of training as an office assistant is required for the position. However, the petitioner requested the other worker classification on the Form I-140, which requires less than two years of training and/or experience. On appeal, the petitioner submitted a second Form I-140 and requested the skilled worker classification and stated that the incorrect classification was "a typing error." There is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to readjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). The labor certification submitted does not support the visa category requested and the petition remains denied on this basis.

With regards to the petitioner's ability to pay the proffered wage, 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, Application for Alien Employment Certification, 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, Application for Alien Employment Certification, 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 30, 2001. The proffered wage as stated on the Form ETA 750 is \$28.32 per hour (\$58,905 per year). The Form ETA 750 states that the position requires two years and three months training as an office assistant and the following other special requirements: "Spanish speaker; data processing especially word perfect; outlook; legal office procedures and duties such as calendaring."

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.¹

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in

The evidence in the record of proceeding shows that the petitioner is structured as a sole proprietorship. On the petition, the petitioner claimed to have been established in 1993 and to currently employ five workers. On the Form ETA 750B, the beneficiary stated that she began working for the petitioner in April 2000.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the 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. The petitioner submitted the following evidence:

- In 2001, the Form 1099 demonstrated that the petitioner paid the beneficiary \$9,720.00.
- In 2002, the Form 1099 demonstrated that the petitioner paid the beneficiary \$13,100.00.
- In 2003, the Form 1099 demonstrated that the petitioner paid the beneficiary \$14,400.00.
- In 2004, the Form 1099 demonstrated that the petitioner paid the beneficiary \$14,900.00.
- In 2005, the Form 1099 demonstrated that the petitioner paid the beneficiary \$13,129.22.
- In 2006, the Form 1099 demonstrated that the petitioner paid the beneficiary \$14,995.43.
- In 2007, the Form 1099 demonstrated that the petitioner paid the beneficiary \$22,440.00.
- In 2008, the Form 1099 demonstrated that the petitioner paid the beneficiary \$8,127.84.
- In 2009, paystubs in the record demonstrated that the petitioner paid the beneficiary \$20,073.17 through August 2009.²

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).

² In response to the director's RFE, which the petitioner responded to on May 4, 2009, the petitioner submitted a 2009 Form 1099 showing that it paid the beneficiary \$8,060. In the director's decision, he noted that a Form 1099 is usually prepared at the end of the year so the submission of the 2009 Form 1099 mid-year raised suspicions regarding whether the beneficiary continued to work for the petitioner and the validity of both that form and the other Form 1099s in the record. On appeal, counsel explained that the 2009 Form 1099 was prepared in order to provide evidence in response to

As none of the amounts paid were in excess of the proffered wage, the petitioner must establish its ability to pay the difference between the actual wage paid and the proffered wage, which in 2001 is \$49,185; in 2002 is \$45,805; in 2003 is \$44,505; in 2004 is \$44,005; in 2005 is \$45,776; in 2006 is \$43,909.57; in 2007 is \$36,465; in 2008 is \$50,778; and in 2009 is \$38,832.³

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*, 696 F. Supp. 2d 873, 881 (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*, 696 F. Supp. at 881 (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

the director's RFE. The petitioner also submitted paystubs and checks issued to the beneficiary in 2009 including some issued after the RFE response was submitted. We have used these paystubs and checks in determining the wages paid to the beneficiary in 2009.

³ On Form I-140, the petitioner left blank the beneficiary's Social Security Number. Forms 1099 list a Social Security Number. This conflict calls into question the evidence submitted and whether the amounts claimed were actually paid to the beneficiary. "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Until this conflict is resolved, we cannot conclusively accept that these amounts were paid to the beneficiary. We additionally note that the petitioner submitted Forms 941 for 2007; nothing shows that the beneficiary was paid wages as an employee in that year.

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, 558 F.3d 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*, 719 F.Supp. at 537 (emphasis added).

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

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 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.

In the instant case, the petitioner submitted tax information for the following years, which reflect that he has a spouse and supports four dependents:⁴

⁴ The petitioner also submitted a 2000 Form 1040, but as that tax return covers a period prior to the priority date, it will be considered only generally.

Tax Return for Year:	Sole Proprietor's AGI (1040)	Petitioner's Gross Receipts (Schedule C)	Petitioner's Wages Paid (Schedule C)	Petitioner's Net Profit from business (Schedule C)
2001	\$20,602	\$20,772 ⁵	\$30,915	\$22,110
2002	\$53,226	\$205,762	\$0	\$57,273
2003	\$48,470	\$194,850	\$20,274	\$40,773
2004	\$44,714	\$65,278 ⁶	\$42,616	\$26,106
2005	\$47,556	\$286,650	\$18,929	\$24,178
2006	\$37,440	\$16,132 ⁷	\$42,585	\$17,372
2007	\$44,519	\$190,000	\$16,041	\$27,371

We will consider a sole proprietor's total income or AGI, reflected on the Form 1040 as a whole. See *Ubeda*, 539 F.Supp. 647. In response to the director's Request for Evidence ("RFE"), the petitioner submitted a letter through counsel stating that the sole proprietor's average monthly household expenses are \$1,099.00 (\$13,188 per year). As the director noted in his decision, the sole proprietor's list of monthly recurring household expenses states that no mortgage or rent is paid per month, however, the petitioner's tax returns includes a deduction for home mortgage interest and points paid for every year except for 2003 (no Schedule A was submitted in that year).⁸ "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). "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. at 591. Despite being notified of this deficiency and inconsistency in the self-estimated expenses, the petitioner submitted no evidence or argument on appeal to address this point of the director's decision. Therefore, we cannot accept the sole proprietor's self-estimate of expenses as accurate as the amount claimed is substantially deficient based on other evidence in the record.

USCIS electronic records show that the petitioner filed one other Form I-140 petition which was pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions,

⁵ The petitioner's Gross Income on Line 7 was \$135,850, which includes "Other Income" that the petitioner identifies as "Litigations."

⁶ The petitioner's Gross Income on Line 7 was \$210,536.

⁷ The petitioner's Gross Income on Line 7 was \$188,152.

⁸ The mortgage interest paid, per the Schedule A, in 2001 was \$25,021; in 2002 was \$15,275; in 2004 was \$30,645; in 2005 was \$18,947; in 2006 was \$21,538; and in 2007 was \$18,180.

as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2). The other petition was submitted by the petitioner in 2007 (unknown priority date) and withdrawn in December 2009. The record in the instant case contains no information about the proffered wage for the beneficiary of that petition. As the petitioner's AGI in 2001 and 2006 was less than the difference between the actual wage paid and the proffered wage, it is not necessary to consider whether the petitioner had the ability to pay the wage of the other sponsored worker in those years (if relevant based on the priority date) or the sole proprietor's expenses. In 2002, 2003, 2004, 2005, and 2007, the petitioner's AGI remaining after subtracting out the difference between the proffered wage and actual wage paid as noted by the director is insufficient to cover the sole proprietor's claimed monthly expenses. As a result, the petitioner did not demonstrate its ability to pay the proffered wage to this beneficiary or the other sponsored worker in any of the relevant years.

On appeal, counsel states that a letter from the petitioner's accountant was submitted as "Exhibit A." Although a marker is in the record for "Exhibit A," no document follows that marker and no accountant letter appears in the record. The petitioner also submitted a 2005 Profit and Loss Statement, however, the regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance whether the financial statements of the business are free of material misstatements. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they represent audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the

petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner submitted no evidence as to its reputation or any evidence showing that one year was off or otherwise not representative of the petitioner's overall financial picture. Instead, the sole proprietor failed to address the director's question related to the sole proprietor's expenses and the discrepancy between the significant mortgage interest claimed, and the statement that the sole proprietor paid no monthly mortgage or rent. The sole proprietor's AGI would not support payment of the beneficiary's wage and household expenses (undetermined based on an inaccurate estimate as the petitioner failed to resolve the conflict in the evidence). While the petitioner paid the beneficiary partial wages from the time of the priority date onward, the total wages paid in each year were less than the beneficiary's proffered wage even though the petitioner claimed to have five workers on the Form I-140. 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.

Regarding the beneficiary's qualifications for the position, beyond the decision of the director, the petitioner failed to establish that the beneficiary had the training and special requirements of the labor certification. 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).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies that:

(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.

....

(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.

USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986); To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's*

Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The Form ETA 750 requires two years and three months of training as an office assistant before the April 30, 2001 priority date. The labor certification also required certain special requirements in block 15: "data processing especially word perfect; outlook; legal office procedures and duties such as calendaring." The petitioner submitted a transcript from the Los Angeles School District and course completion reports from East Los Angeles Occupational Center for classes such as computer operation, typing, data entry, office procedures, and business math and English. It is unclear from these transcripts that the beneficiary has either the full two years and three months of training required by the terms of the labor certification or that she possesses the specific skills required. We note that the beneficiary began working for the petitioner in April 2000, but did not finish the classes listed on the transcript until January 2001 so that we are unable to conclude that she was a full-time student during that time. As a result, we are unable to conclude that the beneficiary had the two years and three months of training as well as the special requirements at the time the labor certification was certified by the DOL.

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.