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



**U.S. Citizenship
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FILE:



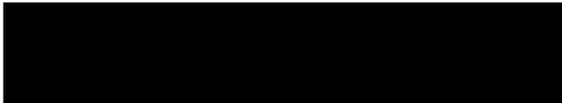
Office: NEBRASKA SERVICE CENTER

Date: JAN 03 2011

IN RE:

Petitioner:

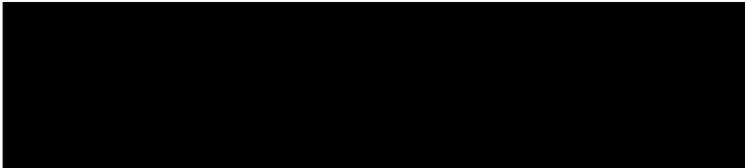
Beneficiary:



Petition:

Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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 \$630. 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 Director, Nebraska Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a supermarket. It seeks to employ the beneficiary permanently in the United States as a butcher. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The Form ETA 750 submitted with the Form I-140 requires one year and five months on-the-job training, three years of experience in the proffered position, and an understanding of "the anatomy of various animals, [a] working knowledge of government standards for meat grade classification, [and the ability] to identify infections and illnesses which animals may have." Part 2, g, was checked on the Form I-140 stating that the petition was filed for an unskilled worker requiring less than two years of training or experience. Thus, the director determined that the Form I-140 petition was not supported by a valid labor certification and denied the petition. The director further noted in denying the petition that the petitioner had not established the ability to pay the proffered wage from the priority date onward, and that the petitioner had not established that the beneficiary met the training and experience requirements for the position set forth on the Form I-140.

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

Here, the Form I-140 filed on July 30, 2007. As set forth above, on Part 2.g. of the Form I-140, the petitioner indicated that it was filing the petition for an unskilled worker.

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 On appeal, counsel states that the record establishes the petitioner's ability to pay the proffered wage and that the beneficiary meets the training and

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 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).

experience requirements of the Form ETA 750. Counsel did not address the director's denial of the petition on the grounds that the Form I-140 was not supported by a valid labor certification for an unskilled 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, and as previously stated, the labor certification states that the proffered position requires one year and five months of on-the-job training, three years of experience in the proffered position and other special requirements. The labor certification as certified does not support a petition for an unskilled worker as sought by the petitioner on the Form I-140. 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 petition was, therefore, appropriately denied by the director on this ground. In this matter, the appropriate remedy would be to file another petition with the proper fee, select the appropriate category, and submit the required documentation.

The director further denied the petition stating that the petitioner had not established the ability to pay the proffered wage from the priority date forward.

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 ETA Form 9089 Application for Permanent Employment Certification was accepted for processing by the DOL national processing center. *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).

The labor certification was accepted for processing on September 9, 2004.² The proffered wage as stated on the Form ETA 750 is \$16.24 per hour (\$33,779.20 per year). The labor certification requires one year and five months on-the-job training, three years of experience in the proffered position, and an understanding of “the anatomy of various animals, [a] working knowledge of government standards for meat grade classification, [and the ability] to identify infections and illnesses which animals may have.”

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.³

The record indicates the petitioner is structured as a domestic general partnership and files its tax returns on IRS Form 1065. On the petition, the petitioner claimed to have been established in 1998 and to currently employ seven workers. According to the tax returns in the record, the petitioner’s fiscal year is based on a calendar year. On the Form ETA 750 signed by the beneficiary on August 26, 2004, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of the 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). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary’s proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

² Counsel states that the labor certification was inappropriately closed by the Department of Labor and asserts that upon request by counsel, the labor certification was reopened. A notice dated January 25, 2005 from the Employment Development Department of California stated that the labor certification application with an original priority date of April 20, 2001 was being reinstated and the case forwarded for additional processing. On June 29, 2007, the U.S. Department of Labor issued a final determination and assigned a priority date of September 9, 2004. Additionally, the letter counsel submitted does not contain any ETA reference number to show that it is the same labor certification referenced in the letter. The September 9, 2004 date, as noted by the director, must, therefore, be accepted as the final priority date, not April 20, 2001 as asserted by counsel.

³ 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 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).

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. As previously stated, the labor certification was accepted for processing on September 9, 2004. As of that date, the most recent tax return available would have been for 2003. The petitioner submitted the following W-2 Forms showing that the beneficiary was paid wages by the petitioner:

- 2004 - \$18,720.00
- 2005 - \$18,720.00
- 2006 - Not Submitted
- 2007 - \$5,460.00⁴

The petitioner submitted payroll information showing wages earned by the beneficiary in 2008 from [REDACTED] of \$19,320 as of November 16, 2008. A 2007 W-2 Form from [REDACTED] Markets #3 shows a federal employer identification number of 26-0234872. A 2007 W-2 Form from [REDACTED] Meat Market shows a federal employer identification number of 95-4707844, which is the same employer identification number listed by the petitioner on the Form I-140. As the 2008 wages are from a separate company, they cannot be accepted to show the petitioner's ability to pay. Therefore, the petitioner must establish that it can pay the full proffered wage in this year.

The petitioner has failed to establish that it paid the beneficiary the full proffered wage from the priority date onward. Since partial wages were paid in 2004, 2005 and 2007, the petitioner need only establish the ability to pay the difference between the proffered wage and the wages paid for those years. Those sums are as follows:

- 2004 - \$15,059.20

⁴ One 2007 W-2 Form (wages of \$5,507.26) was issued by [REDACTED] and bears a federal employer identification number of [REDACTED]. The second 2007 W-2 Form listed above was issued by [REDACTED] and bears a federal employer identification number of [REDACTED] the same number listed by the petitioner on the Form I-140. The wages paid by [REDACTED] bearing a different employer identification number from the petitioner, appear to be wages paid by a separate entity and will not be considered. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

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 (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 sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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 the Service should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010) (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 petitioner’s 2006 Form 1065 shows a net income of \$25,180.⁵ That net income is insufficient to pay the proffered wage. The petitioner did not submit any other tax returns from the priority date onward, either in response to the RFE, or on appeal although requested to do so by the director in his Request For Evidence dated October 15, 2008.⁶ The petitioner has, therefore, failed to establish the

⁵ For a partnership, where a partnership’s income is exclusively from a trade or business, USCIS considers net income to be the figure shown on Line 22 of the Form 1065, U.S. Partnership Income Tax Return. However, where a partnership 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 or additional credits, deductions or other adjustments, net income is found on page 4 of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K. In the instant case, the petitioner’s Schedule K has relevant entries for additional income and, therefore, its net income is found on line 1 of the Analysis of Net Income (Loss) of Schedule K.

⁶ On appeal, counsel states that “the sponsoring entity business was sold during the pendency of the underlying application.” The record contains no evidence that one business was the successor to another. From the record, it is unclear who counsel asserts is the successor. The Form ETA 750 was filed by [REDACTED]

Matter of Dial Auto is an AAO decision designated as precedent by the Commissioner. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

By way of background, *Matter of Dial Auto* involved a petition filed by [REDACTED] (Dial Auto) on behalf of an alien beneficiary for the position of automotive technician. The beneficiary’s former employer, [REDACTED] filed the underlying labor certification. On the petition, Dial Auto claimed to be a successor-in-interest to [REDACTED]. The part of the Commissioner’s decision relating to successor-in-interest issue is set forth below:

Additionally, the *representations made by the petitioner* concerning the relationship between [REDACTED] and itself are issues which have not been resolved. On order to determine whether the petitioner was a true successor to [REDACTED] counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of [REDACTED] and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the *petitioner’s claim* of having assumed all of [REDACTED] rights, duties, obligations, etc., is found to be untrue, then grounds would exist for *invalidation of the labor certification under 20*

ability to pay in any year since the 2004 priority date based upon an analysis of the petitioner's net income.

C.F.R. § 656.30 (1987). Conversely, if the claim is found to be true, *and it is determined that an actual successorship exists*, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

(All emphasis added). The legacy INS and USCIS has, at times, strictly interpreted *Matter of Dial Auto* to limit a successor-in-interest finding to cases where the petitioner could show that it assumed all of the original entity's rights, duties, obligations and assets. However, a close reading of the Commissioner's decision reveals that it does not explicitly require a successor-in-interest to establish that it is assuming all of the original employer's rights, duties, and obligations. Instead, in *Matter of [REDACTED]*, the petitioner had *represented* that it had assumed all of the original employer's rights, duties, and obligations, but had failed to submit requested evidence to establish that this was, in fact, true. And, if the petitioner's claim was untrue, the Commissioner stated that the underlying *labor certification* could be *invalidated for fraud or willful misrepresentation* pursuant to 20 C.F.R. § 656.30 (1987).⁶ This is why the Commissioner said "[i]f the petitioner's claim is found to be true, *and it is determined that an actual successorship exists*, the petition could be approved." (Emphasis added.) The Commissioner was explicitly stating that the petitioner's claim that it assumed all of the original employer's rights, duties, and obligations is a separate inquiry from whether or not the petitioner is a successor-in-interest. The Commissioner was most interested in receiving a full explanation as to the "manner by which the petitioner took over the business of [the alleged predecessor] and seeing a copy of "the contract or agreement between the two entities."

In view of the above, *Matter of Dial Auto* did not state that a valid successor relationship could only be established through the assumption of all of a predecessor entity's rights, duties, and obligations. Instead, based on this precedent and the regulations pertaining to this visa classification, a valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor.

Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of business transfer until the beneficiary adjusts status to lawful permanent resident.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ A partnership's year-end current assets are shown on Schedule L, lines 1(d) through 6(d) and include cash-on-hand, inventories, and receivables expected to be converted to cash within one year. Its year-end current liabilities are shown on lines 15(d) through 17(d). If the total of a partnership'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. In 2006, the petitioner's IRS Form 1065, Schedule L, stated end-of-year net current assets of [REDACTED]. Therefore, for the year 2006, the petitioner's tax return shows sufficient net current assets to pay the beneficiary the proffered wage. However, as noted above, the petitioner failed to submit tax returns for any other year.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner has failed to establish the ability to pay the proffered wage, or difference between the proffered wage and wages actually paid to the beneficiary, based on an analysis of the petitioner's net income and net current assets during 2004, 2005 or 2007.

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 [REDACTED], 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 [REDACTED] 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

⁷ According 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.

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 failed to submit tax returns for any year since the 2004 priority date except for the 2006 tax year. Thus, its net income and net current assets for those years cannot be determined. The only other financial evidence submitted by the petitioner was an unsworn statement from its tax preparer, unsupported by any financial documentation, stating that the petitioner had gross receipts in 2004 and 2005 of \$740,141 and \$779,544 respectively. This information fails to support the petitioner's claim to have the ability to pay the proffered wage. The record does not establish that the petitioner's reputation in the industry is such that it is more likely than not that it has continuously maintained the ability to pay the proffered wage, or difference between wages paid and the proffered wage, from the priority date onward. Additionally, on appeal counsel states that "the sponsoring business was sold during the pendency of the underlying application." The record contains no evidence regarding any sale or alleged successorship. 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.

Additionally, the petitioner must establish that the beneficiary has the education, training and experience for the position. The petitioner submitted a statement indicating that the beneficiary received 18 months of on-the-job training as a butcher while employed by the beneficiary's former employer, [REDACTED] beginning May 1995. The Form ETA 750 also requires, however, that the beneficiary have three years of experience in the proffered position and other special skills as of the priority date. The petitioner has provided no documentation to establish that the beneficiary has the requisite experience or special skills required by the labor certification. 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.

The evidence submitted fails to establish that the petitioner has the continuing ability to pay the proffered wage beginning on the priority date, nor does it establish that the beneficiary meets the experience and other special requirements set forth on the Form ETA 750.

Accordingly, 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.