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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



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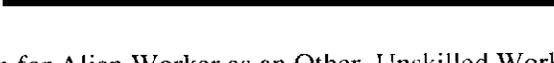


B6

FILE:  Office: NEBRASKA SERVICE CENTER

Date:

JAN 28 2011

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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 Rhey
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 residential sheet metal company. It seeks to employ the beneficiary permanently in the United States as a sheet metal field installer. 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 determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the 2001 priority date of the visa petition. The director denied the petition accordingly.

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

As set forth in the director's January 5, 2009 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the 2001 priority date and continuing until the beneficiary obtains lawful permanent residence.

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 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.

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 \$16.24 per hour (\$33,779.20 per year). The Form ETA 750 states that the position requires two years of hands-on training.

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 submitted an I-290B noting that the petitioner has 29 employees, with gross receipts of over one million dollars a year and that the petitioner has employed the beneficiary since 2001, paying wages close to the prevailing wage. Counsel also states that the United States Citizenship and Immigration Services (USCIS) should take into consideration the petitioner's depreciable assets, cash on hand, fixed assets, the petitioner's line of credit for its operations, as well as the petitioner's normal accounting practices.

The record indicates that further evidence is submitted to the director on March 5, 2009.² This new evidence includes the petitioner's Forms EDD DE-6 Form, Quarterly Wage and Withholding Report from the first quarter of 2001 until the first quarter of 2007. These reports reflect the wages paid by the petitioner to the beneficiary during this relevant period of time.³ Counsel also submits the petitioner's Forms 1120S for tax years 2002, 2003, 2004, 2006, and 2007.⁴ The record also contains the petitioner's 2005 state of California income tax return that reflects information provided on its federal tax return for the same year.

The record also contains the petitioner's unaudited Financial Reports for December 2001 and 2003 prepared by [REDACTED] and the petitioner's unaudited financial statements for 2004,

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).

² Counsel submits no further brief that is found in the record with this evidence. The AAO notes that the evidence appears to have been submitted with a copy of the receipt of the petitioner's I-290B that is date-stamped March 5, 2009.

³ The petitioner's EDD DE-6 Quarterly Report forms for tax year 2006 submitted on appeal corroborate the beneficiary's wages for tax year 2001 to 2005 and indicate the petitioner paid the beneficiary \$30,361.93 in tax year 2006, and \$26,644.73 for the first three quarters of 2007.

⁴ The AAO notes that [REDACTED] the petitioner's Human Resources Administrator, submitted the petitioner's compiled financial statements in response to the director's RFE dated October 15, 2008. [REDACTED] described the financial statements as audited, and noted that she could not find the financial statement for tax year 2002, and thus, was submitting the petitioner's Form 1120S for that year. Based on [REDACTED] letter describing her efforts to provide what she thought were the right documents, in response to the RFE, the AAO accepts the Forms 1120S on appeal. Under the circumstances, the AAO will accept and consider the sufficiency of the evidence submitted on appeal.

2005, and 2006 prepared by [REDACTED] C.P.A.s Finally the record contains the petitioner's W-2 Forms for the beneficiary for tax years 2001 to 2005. These documents indicate the petitioner paid the beneficiary \$20,394 in 2001; \$20,907 in 2002; \$27,405 in 2003; \$20,510 in 2004; and \$34,897.37 in 2005.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established on December 1, 1994 and to currently employ 29 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 26, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 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 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, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner established that it employed and paid the beneficiary \$20,394 in 2001; \$20,907 in 2002; \$27,405 in 2003; \$20,510 in 2004; \$34,897.37 in 2005, \$30,361.93 in tax year 2006, and \$26,644.73 for the first three quarters of 2007. The petitioner paid the beneficiary more than the proffered wage in 2005; however, the petitioner has to establish its ability to pay the difference between the beneficiary's actual wages and the proffered wage in tax years 2001, 2002, 2003, 2004, and 2006 based on either the petitioner's net income or net current assets.⁵

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, contrary to counsel's assertion, 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

⁵ The difference between the beneficiary's actual wages and the proffered wage of \$33,779.20 is \$13,385.20 in 2001; \$12,872.20 in 2002; \$6,374.20 in 2003; \$13,269.20 in 2004; \$3,417.27 in 2006 and \$7,134.47 in 2007.

income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d 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 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." [REDACTED] at 537 (emphasis added).

The record before the director closed on November 17, 2008 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return was due. On appeal, the petitioner submits its 2002,

2003, 2004, 2006 and 2007 tax returns. The petitioner also submits its state of California tax return for 2005. Therefore, the petitioner's income tax return for 2007 is the most recent return available. The petitioner's tax returns demonstrate its net income for the relevant period of time, as shown in the table below.

- In 2001, the petitioner did not submit its Form 1120S for 2001. Therefore the AAO cannot examine the petitioner's net income⁶ for the priority year.
- In 2002, the petitioner's Form 1120S states net income of -\$177,278.
- In 2003, the petitioner's Form 1120S states net income of \$95,703.
- In 2004, the petitioner's Form 1120S states net income of -\$54,842.
- In 2006, the petitioner's Form 1120S states net income of \$4,083.
- In 2007, the petitioner's Form 1120S states net income of \$178,828.

Therefore, for the years 2003, 2006, and 2007, the petitioner had sufficient net income to pay the difference between the beneficiary's actual wages and the proffered wage of \$33,799.20.⁷ However, in tax years 2001, 2002, and 2004, the petitioner did not have sufficient net income to pay the proffered wage.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁸ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the

⁶ Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23* (1997-2003) line 17e (2004-2005) line 18 (2006) of Schedule K. See Instructions for Form 1120S, 2006, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional income, credits, deduction, or other adjustments shown on its Schedule K for tax years 2001, 2002, 2003, 2004, 2006 and 2007, the petitioner's net income is found on Schedule K of its tax returns for these years at either line 17e, 18, or 23.

⁷ As stated previously, the difference between the beneficiary's actual wages and the proffered in these three years was \$6,374.20 in 2003; \$3,417.27 in 2006; and \$7,134.47 in 2007.

⁸ 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.

proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for tax years 2001, 2002, and 2004, as shown in the table below.

- In 2001, the petitioner did not submit its Form 1120S. Therefore the AAO cannot determine the petitioner's net current assets.
- In 2002, the petitioner had net current assets of -\$51,794.
- In 2004, the petitioner had net current assets of -\$81,998.

Therefore, for the years 2001, 2002 and 2004, the petitioner either did not establish its net current assets, or did not have sufficient net current assets to pay the difference between the actual wages and the proffered wage.

The AAO notes that the petitioner filed eight I-140 petitions from 2001 to 2009. Of these petitions, two have been submitted for the same four individuals. The earlier petitions were all denied in 2001, with a later one for the same beneficiary showing as "abandoned" in USCIS computer records. In the beneficiary's case, the petitioner filed an earlier I-140 that the record indicates was submitted without a certified labor certification in 2001. Of the eight petitions, only one I-140 petition for a beneficiary whose wages are reflected in the petitioner's DE-6 Forms was filed and approved in October 2008. The instant petition is the only petition for which the petitioner filed an appeal. The AAO does not view the question of multiple beneficiaries to be dispositive in these proceedings.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets, except for 2003, 2005, 2006, and 2007.

On appeal, counsel asserts that the AAO should consider the petitioner's depreciation, fixed assets, cash on hand, and its line of credit. As previously discussed, depreciation is not considered when examining the petitioner's net income and cash on hand is included in the AAO consideration of the petitioner's net current assets. Counsel provides no further explanation for why the AAO should consider the petitioner's fixed assets, and thus, the AAO will not address this issue further. With regard to lines of credit, the record contains no evidence of any lines of credit available to the petitioner. Further, in calculating the ability to pay the proffered salary, USCIS will not augment the petitioner's net income or net current assets by adding in the corporation's credit limits, bank lines, or lines of credit. A "bank line" or "line of credit" is a bank's unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. *See Barron's Dictionary of Finance and Investment Terms*, 45 (1998).

Since the line of credit is a "commitment to loan" and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner's existent loans

will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the corporation's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

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

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (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 *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 has been in business since December 1, 1994. As stated previously, the petitioner did not submit its 2001 tax return to the record. Thus, the AAO cannot comment on the petitioner's gross receipts, officer compensation or total wages for the priority year. With regard to

tax years 2002 to 2007, the petitioner's gross receipts are as follows: \$970,644 in 2002; \$1,347,221 in 2003; \$1,200,937 in 2004; \$2,892,864 in 2005;⁹ \$2,091,304 in 2006; and \$3,272,691 in 2007.

The record contains no evidence with regard to the petitioner's reputation and business operations. The petitioner's tax return in 2002 indicate that [REDACTED] is the petitioner's only officer and 100 percent shareholder, while the petitioner's 2006 and 2007 tax returns indicates that it has two officers, with [REDACTED] the 100 percent shareholder and officer. With regard of officer compensation, the record indicates that the petitioner paid officer compensation of \$132,000 in 2002; \$106,000 in 2003; \$26,000 in 2004; \$94,221 in 2005; \$123,690 in 2006; and \$97,940 in 2007. With regard to total wages and cost of labor, the petitioner's tax returns indicate the following: \$370,453 in 2002; \$467,523 in 2003; \$408,312 in 2004; \$652,629 in 2005; \$610,432 in 2006; and \$935,261 in 2007. The record thus indicates a decline in officer compensation, wages and cost of labor, and slight decline in gross receipts in 2004. While the record indicates some significant business growth during the relevant period of time, the lack of any evidence with regard to the petitioner's 2001 business operations, undermines the weight to be given to the record. The AAO further notes that the petitioner's address changed between the submission of the initial ETA Form 750 and the certification of the labor certification; however, the record contains no information as to any impact any change in address had on the petitioner's business.¹⁰ Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

Beyond the decision of the director, the AAO will briefly comment on the beneficiary's qualifications. 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).

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. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).¹¹ The Immigrant Petition for Alien Worker (Form I-140) was filed on September 1, 2007.

⁹ As indicated on the petitioner's state tax return for 2005, at Schedule F.

¹⁰ The DOL approved the address change from [REDACTED], California on July 11, 2007.

¹¹ If the 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 is clear.

The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification and reflects the following requirements: "two years of hands-on training." In Section Fourteen, the petitioner indicates "Must speak some Spanish and English." On Part B of the labor certification, signed by the beneficiary on April 26, 2001, the beneficiary did not list any training and indicated that as of April 26, four days before the labor certification application was filed, he had not worked for the petitioner. The beneficiary did not indicate that he had worked at any other sheet metal installation company, or received any hands-on training, or list any other work experience. Thus, the record is not clear that the beneficiary has the required two years of hands-on training. Thus the petitioner has not established that the beneficiary possesses the required training for the proffered position. The AAO further notes that the classification of unskilled worker does not require any training or education; however, the petitioner required two years of training which is more indicative of the skilled worker classification.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.