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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



B6

FILE:  Office: NEBRASKA SERVICE CENTER Date: **JUN 07 2011**

IN RE: Petitioner:   
Beneficiary: 

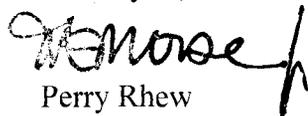
PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:  
  
SELF-REPRESENTED

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 The director's decision will be affirmed in part and withdrawn in part.

The petitioner is a farm. It seeks to employ the beneficiary permanently in the United States as a supervisor farm worker.<sup>1</sup> As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had failed to provide required initial evidence to establish eligibility for the classification sought. 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 August 25, 2010 denial, the issues in this case are whether or not the petitioner has established eligibility for classification as an other worker, the ability to pay the proffered wage from the priority date to the present, and the beneficiary's qualifications for the proffered position. Beyond the decision of the director, the AAO notes that an additional ground for dismissal exists because, as discussed below, the instant petition is filed under the wrong preference classification and Form ETA 9089 is not signed by the beneficiary or the petitioner.

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.

Here, the Form I-140 was filed on May 3, 2010. On Part 2.g. of the Form I-140, the petitioner indicated that it was filing the petition for an other worker, requiring less than two years of training or experience. The certified labor certification application filed in support of the instant I-140 petition indicates that two years of experience in the job offered or two years of experience as a farm worker are required to perform in the position.

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<sup>1</sup> The AAO notes that the immigrant petition submitted in the instant cases lists the job title as farm worker while the labor certification application lists the job title as supervisor, farm worker. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: 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. 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). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Thus, USCIS is bound by the terms of the certified labor certification application in this matter and will analyze the position of supervisor, farm 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.<sup>2</sup> On appeal, counsel submits IRS Forms W-2 for tax years 2009 and 2008, copies of the first page of its tax returns for 2007, 2008 and 2009, copies of checks issued to the beneficiary in 2010, a letter from [REDACTED] Utah, and a letter from the petitioner regarding the beneficiary's position duties and prior training.

Beyond the director's decision, no evidence is submitted on appeal to show either that the position requires less than two years of experience such that it can properly be classified as an other worker. 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 (9<sup>th</sup> 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). Thus, the AAO finds that the instant petition must be dismissed because it was filed under the wrong preference classification.

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 of experience in the job offered are required for the proffered position. However, the petitioner requested the any other worker classification 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 evidence submitted does not establish that the petition requires less than two years of training or experience such that the beneficiary may be found qualified for classification as an other worker and is an additional reason why the petition may not be approved.

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<sup>2</sup> 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).

With respect to establishing the 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 9089 was accepted on April 17, 2009. The proffered wage as stated on the Form ETA 9089 is \$9.42 per hour (\$19,593.60 per year)<sup>3</sup>. The Form ETA 9089 states that the position requires two years of experience in the job offered, supervisor farm worker, or two years of experience in the alternate occupation of farm worker.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1987 and to currently employ 2 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 9089, the beneficiary claims to have worked for the petitioner since March 1, 1997. It is also noted that the both the petitioner and beneficiary have not signed the certified ETA Form 9089 submitted with the petition. USCIS will not approve a petition unless it is supported by an original certified ETA Form 9089 that has been signed by the employer, beneficiary, attorney and/or agent.<sup>4</sup> *See* 20 C.F.R. § 656.17(a)(1).

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<sup>3</sup> The AAO notes that the immigrant petition reflects a wage of \$10.06 per hour (\$20,924.80 per year). *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

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.

<sup>4</sup> The AAO notes that this petition was not approvable at the time of filing because it was not accompanied by a valid labor certification. The regulation at 20 C.F.R. § 656.17 describing the basic labor certification process provides in part:

- (a) Filing applications.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA 9089, 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).

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 has provided IRS W-2, Wage and Tax Statements, as evidence that it employed and paid the beneficiary \$15,600 in 2008 and \$16,800 in 2009. The petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date in April 2009 through the present.<sup>5</sup> Since the proffered wage is \$19,593.60, the petitioner must establish that it can pay the beneficiary the difference between wages actually paid and the proffered wage, which is \$2,793.60 in 2009.

Counsel has submitted checks made out to the beneficiary by the petitioner on a bi-weekly basis in the amount of \$800 for work performed from April 15, 2010 through September 14, 2010. These checks constitute sufficient evidence of wages paid to the beneficiary that are equal to or above the proffered wage for this time period during 2010 because they are endorsed by the beneficiary and appear to have been processed by a bank. If the petitioner paid the beneficiary at the rate of \$800 on a bi-weekly basis throughout 2010, the beneficiary's annual salary would amount to \$20,800.

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(1). . . Applications filed and certified electronically must, upon receipt of the labor certification, be signed immediately by the employer in order to be valid. Applications submitted by mail must contain the original signature of the employer, alien, attorney, and/or agent when they are received by the application processing center. DHS will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien, attorney and/or agent.

Although a Form ETA 9089 approved by DOL accompanied the petition, it was not signed by the alien, counsel or the petitioner. As such, the preference petition could not be approved until the Form ETA 9089 is appropriately signed.

<sup>5</sup> The AAO may consider tax returns for tax years prior to 2009, the priority date year, in its analysis of totality of the circumstances.

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 (1<sup>st</sup> 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 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.” *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on May 3, 2010, the date on which the Form I-140 immigrant petition was received by the director. On appeal, the petitioner provides corporate tax returns from tax years 2007, 2008 and 2009. Therefore, the petitioner’s income tax return for 2009 is the most recent return available.<sup>6</sup> The petitioner’s tax returns demonstrate net income as shown in the table below.

- In 2009, the Form 1120S stated net income of \$82,017.

As an alternate means of determining the petitioner’s ability to pay the prevailing 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.<sup>7</sup> A corporation’s year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation’s end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner submitted an incomplete copy of its tax returns for 2009. As a result, the AAO will not accept the documentation provided as proof of ability to pay the proffered wage because the record does not contain Schedules K or L for tax year 2009. Schedule K may reflect a different, and accurate, net income amount<sup>8</sup> and Schedule L reflects net current assets. The AAO affirms this portion of the director’s decision.

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<sup>6</sup> As the petitioner only has to demonstrate ability to pay from the priority date of April 17, 2009 forward, the tax returns from 2007 and 2008 may be considered as part of the totality of the circumstances.

<sup>7</sup> According to *Barron’s Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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 as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>8</sup> 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 - 2010) of Schedule K. See Instructions for Form 1120S, 2006, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed January 20, 2011) (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, deductions, and other adjustments shown on its Schedule K for 2009, the petitioner’s net income is found on Schedule K of its tax returns.

Therefore, from the date the Form ETA 9089 was accepted for processing by the DOL, the petitioner has not established the ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary and its net income.

The director also denied the petition because no evidence has been provided with respect to the beneficiary's eligibility for the certified position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which as noted above, is April 17, 2009. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). 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). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In order to meet the regulatory requirements set forth in 8 C.F.R. § 204.5(l)(3)(ii)(A), 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.

In the instant case, the certified Form ETA 9089 requires two years of experience in the job offered, or two years of experience in the alternative occupation of farm worker. The record of proceeding contains a letter from the beneficiary's direct supervisor, Scott Hintze. This letter contains a detailed description of the duties currently performed by the beneficiary and states that the beneficiary has been working for the petitioner since 2006.<sup>9</sup> The petitioner must demonstrate that on the priority date of April 17, 2009, the beneficiary had the qualifications stated on its certified Form ETA 750. *Matter of Wing's Tea House*, 16 I&N Dec. at 158. Any portion of the beneficiary's experience working for the petitioner that was obtained after the priority date cannot be considered in assessing whether the beneficiary possesses the requisite experience for the proffered position. The AAO finds that this letter satisfies the regulatory requirements and is sufficient evidence that the beneficiary possesses at least two years of experience in the alternate occupation of farm worker prior to the filing of the labor certification application. No other experience is listed on the ETA 9089 or evidenced in the record of proceeding. The AAO withdraws this portion of the director's decision.

There are other problems with this case and the petition cannot be approved. Beyond the decision of the direction, the AAO notes inconsistencies within the record of proceeding that must be resolved should the petitioner wish to pursue this matter further. *See Spencer Enterprise*, 229 F. Supp. 2d at 1043. The certified Form ETA 9089 reflects that the position certified is that of supervisor, farm worker. The job duties are listed as: directly supervise and coordinate activities of agricultural crop workers (grains and alfalfa). The Form I-140 filed based on this approved labor certification reflects

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<sup>9</sup> The AAO notes that the unsigned ETA Form 9089 states that the beneficiary has worked for the petitioner since March 1997 in the position of farm worker. It is incumbent on the petition to resolve inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

that the proffered position is that of a farm worker with duties that include planting, irrigating, and harvesting alfalfa crop, use and maintain farm equipment. Thus, it appears that the certified position and the I-140 position are different positions. The record of proceeding contains no explanation regarding these inconsistencies.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA 9089, 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. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). The I-140 petition reflects that the petitioner employs two employees; however, the certified ETA Form 9089 states that the beneficiary will be employed as a supervisor, farm worker. Based on the evidence in the record of proceeding, the beneficiary appears to be directly supervised by Scott Hintze.<sup>10</sup> Thus, the AAO questions whether a supervisor, farm worker position exists because it is unclear how the beneficiary will supervise and coordinate the activities of agricultural crop workers if the only other employee of the petitioner is the beneficiary's direct supervisor. The federal tax returns submitted to the record do not reflect salaries or wages paid to employees and do not contain schedules that would reflect payments made to subcontractors. If the petitioner pursues this matter further, this issue must be clarified. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The AAO notes that the inconsistencies in the record of proceeding could potentially result in a finding of misrepresentation against the petitioner and beneficiary. *See* Section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182, regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

*See also* 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

(d) finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of*

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<sup>10</sup> It is noted that [REDACTED] signed the immigrant petition and I-290B, Notice of Appeal, in this case. [REDACTED] also signed the beneficiary's paychecks contained in the record.

*Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

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. Based on the evidence in the record of proceeding, the petitioner has not met this burden.

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.