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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



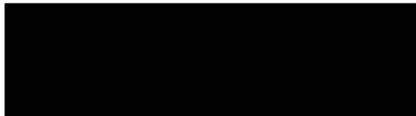
**U.S. Citizenship
and Immigration
Services**



BE

Date: **JUN 07 2011**

Office: TEXAS SERVICE CENTER

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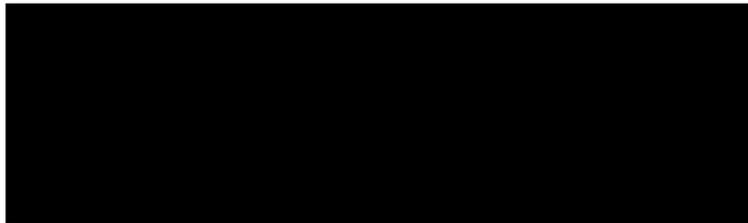
IN RE:

Petitioner: 

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a rebuilder and repairer of automobile torque converters. It seeks to employ the beneficiary permanently in the United States as a transmission mechanic. 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 priority date of the visa petition. The director denied the petition accordingly.

As set forth in the director's September 23, 2008 denial, the primary issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

The record shows that the appeal is properly filed and 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.

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of 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 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 October 22, 2003. The proffered wage as stated on the Form ETA 750 is \$33,988.00 per year. Part 14 of the Form ETA 750 reflects that the proffered job requires no education or training and two years of experience as a transmission mechanic.

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

Relevant evidence in the record includes the petitioner's owner's Forms 1040, U.S. Individual Income Tax Return, for 2003, 2004, 2005, 2006, and 2007, a Korean language certificate of employment from the beneficiary's former employer in South Korea, and an English language translation of this certificate.

Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. However, that regulation permits the director to deny petitions where the evidence submitted does not establish eligibility. *Id.* The director is not required to issue a request for further information. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation.²

On appeal, counsel argues that the denial of the petition was arbitrary because the director acknowledged that the petitioner was a sole proprietor and still failed to request evidence of personal assets. Counsel includes the petitioner's owner's Form 1040 tax return for 2007, Form W-2, Wage and Tax Statement, showing wages paid to beneficiary by the petitioner in 2007, paycheck stubs reflecting wages paid to the beneficiary by the petitioner in 2008, State of [REDACTED] Forms DE-6, Quarterly Wage and Withholding Report, for quarters ending March 31, 2004, June 30, 2004, September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, June 30, 2006, September 30, 2006, December 31, 2006, March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, March 31, 2008, and June 30, 2008, the petitioner's business checking account statements from [REDACTED] for July 31, 2008, August 29, 2008, and September 30, 2008, statements from [REDACTED] dated August 1, 2008 and October 1, 2008 for a line of credit held by the petitioner's owner, statements from [REDACTED] dated August 11, 2008, September 10, 2008, and October 13, 2008 for a line of credit held by the petitioner's owner, statements for the petitioner's owner's personal checking account from [REDACTED] dated August 25, 2008, September 25, 2008 and October 24, 2008, a statement dated September 17, 2008 for a personal Certificate of Deposit account held by the petitioner's owner at [REDACTED], statements for four personal Certificates of Deposit accounts held by the petitioner's owner's wife at [REDACTED] all dated October 8, 2008, a Form 1099-INT, Statement of Interest Income, for 2007 reflecting interest income earned on a Certificate of Deposit account held by the petitioner's owner's spouse at [REDACTED], a Form 1099-INT for 2007 reflecting interest income earned on

¹ The submission of additional evidence on appeal is allowed by the instructions to the U.S. Citizenship and Immigration Services (USCIS) Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

two checking accounts and one savings account held by the petitioner's owner's spouse at [REDACTED], a Form 1099-OID, Original Issue Discount Statement, for an investment account held by the petitioner's owner's spouse at [REDACTED] in 2007, a Form 1099-INT for 2006 reflecting interest income earned on a saving account held by the petitioner's owner's son at [REDACTED] a summary of interest earned on accounts for 2006 and 2007 held by the petitioner and the petitioner's owner from [REDACTED], a letter dated March 11, 2005 to the petitioner's owner's spouse from [REDACTED] regarding \$7.32 in interest earned on an account in 2004, a Form 1099-INT for 2004 reflecting interest income earned from six time-deposit accounts held by the petitioner's owner's spouse at [REDACTED] a Form 1099-INT for 2004 reflecting interest income earned from six accounts held by the petitioner's owner's spouse at [REDACTED], a Form 1099-INT for 2005 reflecting interest income earned from a time-deposit account held jointly by the petitioner's owner's two daughters at [REDACTED] a Form 1099-INT for 2005 reflecting interest income earned from a student savings account held by the petitioner's owner's son at [REDACTED] a Form 1099-INT for 2005 reflecting interest income earned from a checking account and five time-deposit accounts held by the petitioner's owner's spouse at [REDACTED], and a Form 1099-DIV, Statement of Dividend Income, for 2005 reflecting dividend income earned from investment accounts held by the petitioner's owner's spouse at [REDACTED]

The evidence in the record of proceeding indicates that the petitioner is structured as a sole proprietorship. On the petition, the petitioner claimed to have been established on August 9, 1974, to currently employ six employees, and to have \$12,381.00 in net annual income. According to the tax returns in the record, the petitioner's fiscal year is based on the calendar year. On the Form ETA 750, signed by the beneficiary on October 21, 2003, 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 a 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).

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 evidence in the record reflects that the petitioner did not employ the beneficiary from the priority date of October 22, 2003 through 2006. The record contains a Form W-2 statement that reflects that the petitioner paid the beneficiary \$4,585.00 (\$29,403.00 less than the proffered wage of \$33,988.00) in wages in 2007. Furthermore,

the record contains paycheck stubs reflecting the petitioner's payment of \$26,855.00 (\$7,133.00 less than the proffered wage of \$33,988.00) in wages to the beneficiary in 2008.

Clearly, the petitioner failed to establish that the petitioner paid the beneficiary the full proffered wage of \$33,988.00 in 2003, 2004, 2005, 2006, 2007, and 2008. Although the petitioner must demonstrate the ability to pay the full proffered wage in each year from 2003 to 2006, it must be noted that the petitioner is only obligated to show that he can pay the difference between the proffered wage and wages already paid in 2007 and 2008.

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 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.

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

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

A review of the Form 1040 tax returns reveals that the sole proprietor supported himself, his spouse, and three dependents in 2003, 2004, and 2005, himself, his spouse and two dependents in 2006, and himself, his spouse, and one dependent in 2007. Although the director noted that the petitioner's owner had failed to provide any evidence to determine his annual living expenses in denying the petition, neither counsel nor the petitioner submit any documentation demonstrating the petitioner's

annual household expenses on appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Regardless, the proprietor's Form 1040 tax returns reflect the following:

- Proprietor's adjusted gross income (Form 1040, line 34) for 2003 was \$7,654.00.
- Proprietor's adjusted gross income (Form 1040, line 36) for 2004 was \$13,394.00.
- Proprietor's adjusted gross income (Form 1040, line 37) for 2005 was \$14,276.00.
- Proprietor's adjusted gross income (Form 1040, line 37) for 2006 was \$51,690.00.
- Proprietor's adjusted gross income (Form 1040, line 37) for 2007 was \$113,300.00.

The evidence in the record does not establish that the petitioner had sufficient net income to pay the proffered wage in 2003, 2004, and 2005, even without consideration of the petitioner's owner's family living expenses in these years. While it appears that the petitioner had sufficient net income to pay the full proffered wage of \$33,988.00 in 2006 and 2007, the record is absent evidence demonstrating the petitioner's owner's family living expenses and, therefore, it cannot be determined whether or not the petitioner's owner could pay the proffered wage plus family living expenses in these years. Finally, no determination can be made as to whether the petitioner possessed sufficient net income in 2008 to pay the difference between the proffered wage and wages paid to the beneficiary through his adjusted gross income minus household expenses as the record is absent the petitioner's owner's tax return for this year (as well as evidence of household expenses).

Counsel is correct in asserting that as a sole proprietor, the petitioner's ownership of personal assets should be taken into account when considering his ability to pay the beneficiary the proffered wage. The record contains statements for the petitioner's owner's personal checking account from [REDACTED] dated August 25, 2008, September 25, 2008 and October 24, 2008, as well as a statement dated September 17, 2008 for a personal Certificate of Deposit account held by the petitioner's owner at [REDACTED]. However, the monthly average balance in the petitioner's owner's personal checking account is minimal, never above \$500.00, and it is considered unlikely that the petitioner's owner would liquidate the certificate of deposit valued at \$3,813.10 as such action would incur substantial penalties, interest, and taxes.

The petitioner provides statements from [REDACTED] dated August 1, 2008 and October 1, 2008 for a \$2,500.00 line of credit held by the petitioner's owner, as well as statements from [REDACTED] dated August 11, 2008, September 10, 2008, and October 13, 2008 for a \$4,000.00 line of credit held by the petitioner's owner. However, 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 petitioner's credit limits, bank lines, or lines of credit. A limit on a credit card cannot be treated as cash or as a cash asset. Further, 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. 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 a tax return or audited financial statement and will be fully considered in the evaluation of the net current assets of the petitioner. 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 petitioner’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). Here, as the evidence of these credit lines has not been submitted in the context of audited financial statements, their availability to pay the proffered wage has not been established.

The record contains numerous Forms 1099-INT, a Form 1099-OID, and a Form 1099-DIV reflecting interest income earned in 2004, 2005, 2006, and 2007 from a number of different accounts held separately by the petitioner’s owner’s spouse, son, and two daughters. However, a review of the petitioner’s owner’s Form 1040 tax returns reveals the following information:

- In 2003, the petitioner’s Form 1040 listed taxable interest income of \$5,504.00 and business income of \$2,314.00.
- In 2004, the petitioner’s Form 1040 listed taxable interest income of \$10,416.00 and business income of \$3,205.00.
- In 2005, the petitioner’s Form 1040 listed taxable interest income of \$10,681.00 and business income of \$3,493.00.
- In 2006, the petitioner’s Form 1040 listed taxable interest income of \$40,184.00 and business income of \$12,381.00.
- In 2007, the petitioner’s Form 1040 listed taxable interest income of \$110,975.00 and business income of \$2,502.00.

The fact that an overwhelming majority of the annual adjusted gross income for the petitioner’s owner and his family is derived from the interest income earned on these separately held accounts makes it unlikely that these holdings would be liquidated to pay the proffered wage to the beneficiary. In addition, the record does not contain any direct evidence from the petitioner’s spouse, son, or two daughters acknowledging their willingness and assent to liquidate any of the accounts to pay the proffered wage. Finally, although the amounts necessary to generate this interest income are likely very significant, the record is devoid of evidence establishing the existence and availability of these potentially liquid assets from the priority date, i.e., October 22, 2003, to the present. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The record also contains copies of the petitioner's business checking account statements from [REDACTED] [REDACTED] for July 31, 2008, August 29, 2008, and September 30, 2008. Nevertheless, the petitioner's business checking account represents cash needed to conduct the financial transactions involved in the petitioner's regular day-to-day operations rather than a readily available asset that could be used to continually pay the proffered wage to the beneficiary since the priority date. In addition, the balances in this account are well below the proffered wage including a negative balance in one of the three months. Finally, it cannot be determined whether the bank records are complete, and there are many intervening months which are omitted. Overall, these records do not establish that the petitioner more likely than not had the continuous and sustainable ability to pay the proffered wage since the priority date.

Thus, from the date the ETA Form 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, in 2003, 2004, 2005, 2006, and 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. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In this matter, no specific detail or documentation has been provided similar to *Sonogawa*. The instant petitioner has not submitted any evidence demonstrating that uncharacteristic losses, factors of outstanding reputation, or other circumstances that prevailed in *Sonogawa* are persuasive in this matter. The AAO cannot conclude that the petitioner has established it has had the continuing ability to pay the proffered wage. As noted above, the petitioner failed to submit evidence of his household living expenses despite being put on notice of this deficiency. The petitioner also submitted

incomplete evidence of his liquid assets from the priority date on October 22, 2003. 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.

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

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*, 229 F. Supp. 2d at 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).

Beyond the decision of the director and relevant to the Form ETA 750's requirement that the beneficiary possess two years of employment experience in the proffered position, the next issue to be examined in this proceeding is whether the beneficiary possessed the required two years of experience as a transmission mechanic as of the priority date of October 22, 2003.

In order for the petition to be approved, the petitioner must establish that the beneficiary is qualified for the offered position. Specifically, the petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, 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, Madany 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. Coorney*, 661 F.2d 1 (1st Cir. 1981).

The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve "reading and applying the plain language of the [labor certification]." *Id.* at 834.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at *7.

The regulation at 8 C.F.R. § 204.5(g)(1) states, in part:

Evidence relating to qualifying experience or training shall be in the form of

letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. *If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.*

(Emphasis added). Therefore, USCIS may accept other reliable documentation relating to the beneficiary's employment experience to establish that the beneficiary possesses the experience required by the terms of the labor certification. Such evidence may include statements from former supervisors and coworkers who are no longer employed by the petitioner. USCIS may also consider copies of Forms W-2, Wage and Tax Statement, issued by the prior employer, paychecks, offer letters, employment contracts, or other evidence to corroborate the identity of the employer and the nature and duration of the claimed employment.

As previously noted, the priority date of the Form ETA 750 is October 23, 2003. At part 15 of the Form ETA 750B, which was signed by the beneficiary on October 21, 2003, the beneficiary claimed to have been employed as a transmission part technician by [REDACTED], in [REDACTED] [REDACTED] from February 1988 to March 1999. In support of this claim of employment, the beneficiary provided a Korean language certificate of experience that contains the official seal of [REDACTED] whose position is listed as president of [REDACTED] which is accompanied by an English language translation. [REDACTED] indicated that the beneficiary's was employed by this company as a transmission part technician from February 10, 1988 to March 20, 1999. However, the non-specific certificate of experience cannot be considered as sufficient evidence to establish that the beneficiary possessed the required two years of experience in the offered job as of the priority date of October 23, 2003. The certificate of experience does not contain a specific description of the duties performed; thus, it cannot be concluded that the beneficiary is qualified to perform the duties of the proffered position. 8 C.F.R. § 204.5(g)(1). In addition, the regulation at 8 C.F.R. § 103.2(b)(3) states that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

In the instant case, the translator failed to certify either his competence to translate from the foreign language into English or the completeness and accuracy of the English language translation. Consequently, the probative value of the foreign language certificate of experience that contains the official seal of [REDACTED] with English language translation is negligible.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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.