

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



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



B6

FILE:



Office: TEXAS SERVICE CENTER

Date: MAR 02 2011

IN RE:

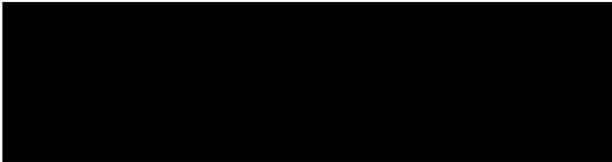
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a 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:

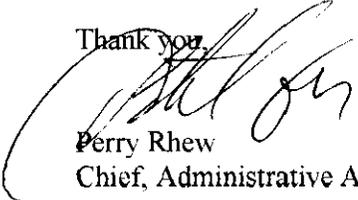


INSTRUCTIONS:

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 your 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 pizzeria and restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. 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 on June 10, 2009.

On appeal, counsel asserts that the petitioner established its ability to pay the proffered wage and that the director erred in denying the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

For the reasons explained below, the AAO concludes that the petitioner has failed to demonstrate its continuing ability to pay the proffered wage and has additionally failed to establish that the Immigrant Petition for Alien Worker (Form I-140) for an other (unskilled worker) was supported by an approved labor certification; that the beneficiary possessed the requisite work experience and required training as required by the terms of the labor certification; and that the employer filing the petition was existent at the time the priority date was established so as to make a *bona fide* job offer. 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*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381F. 3d, 143 at 145 (AAO's *de novo* authority well recognized by federal courts).

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.

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 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 *bona fides* of the job offer as of the visa priority date, including the petitioner's ability to pay the proffered wage and the beneficiary's qualifications for the position are essential elements 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). Relevant to the ability to pay the proffered salary and 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 overall 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).

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, 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, which establishes the priority date. The proffered wage as stated on the Form ETA 750 is \$500 per week, which amounts to \$26,000 per year.

At the outset, we note that on Part 5 of the Form I-140, which was completed in response to the director's request, the petitioner claims that it was established on October 3, 2005 and currently employs two (3) workers. No clarification of the discrepancy between the date that the petitioner commenced operation and the priority date of April 30, 2001 has been offered. Other than a copy of a 2004 Internal Revenue Service (IRS) Schedule C, Profit or Loss From Business from an unidentified Form 1040 indicating that [REDACTED] was the proprietor of an establishment identified as [REDACTED] located at the same address as the instant petitioner

with a different employer identification number [REDACTED]<sup>1</sup> as the petitioner's, the I-140 petitioner has failed to submit evidence establishing that it is a successor-in-interest.<sup>2</sup> Thus, the

<sup>1</sup> The regulation at 20 C.F.R. § 656.3(1) provides that an employer who proposes to employ a full-time employee within the United States must possess a valid Federal Employer Identification Number.

<sup>2</sup> It is noted that a valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor. If a successor-in-interest cannot be established, then the labor certification may not be used by the entity claiming to be the successor.

Evidence of transfer of ownership must show that the successor not only obtained the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of business transfer until the beneficiary adjusts status to lawful permanent resident. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). *Matter of Dial Auto* involved a petition filed by Dial Auto Repair Shop, Inc. (Dial Auto) on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, Elvira Auto Body, filed the underlying labor certification. On the petition, Dial Auto claimed to be a successor-in-interest to Elvira Auto Body. The part of the Commissioner's decision relating to successor-in-interest issue is set forth below:

Additionally, the *representations made by the petitioner* concerning the relationship between Elvira Auto Body and itself are issues which have not been resolved. On order to determine whether the petitioner was a true successor to Elvira Auto Body, counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of Elvira Auto Body and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the *petitioner's claim* of having assumed all of Elvira Auto Body's rights, duties, obligations, etc., is found to be untrue, then grounds would exist for *invalidation of the labor certification under 20 C.F.R. § 656.30 (1987)*. Conversely, if the claim is found to be true, *and it is determined that an actual successorship exists*, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

petitioner has not demonstrated that it should be regarded as the employer identified on the Form ETA 750 or was capable of making a *bona fide* job offer to the beneficiary as of the April 30, 2001 priority date. The regulation at 8 C.F.R. § 103.2(b)(1) requires that eligibility for the requested benefit must be established at the time of filing the application or petition. Similarly, various copies of Wage and Tax Statements (W-2s) and other financial documents issued to the beneficiary by the entity with the EIN of [REDACTED] or any EIN other than the one specified as the employer's on the Form I-140 as [REDACTED] will not be included in this review of the petitioner's ability to pay the proffered wage of \$26,000. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." 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. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Additionally, the markings on Item 14 of the original Form ETA 750 reflect that information relating to the applicant's required experience has been changed and that there is no corresponding stamp by DOL indicating that the change was approved. The original requirement for the alien's work experience was stated as "2" years in the job offered as a cook. This number has been changed to "5" months. The corresponding notation instructs "Delete 1/9/2007" the two year requirement and to "Add 1/9/2007" the 5 month requirement. Without evidence that these changes were specifically approved by DOL as would be shown by the corresponding DOL stamp, we do not regard the work experience requirement as 5 months, but as remaining the original requirement of two years as set forth on the Form ETA 750. Additionally, the labor certification specified that the alien must have a minimum of two years of on-the-job training. In this regard, it may be concluded that the Form I-140 filed on February 12, 2008, sought a visa classification that is not supported by the approved labor certification. The regulation at 8 C.F.R. § 204.5(l) states 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.

The petitioner sought visa classification (Part 2, paragraph g of I-140) of the beneficiary as an unskilled worker (requiring less than two years of training or experience) under section 203(b)(3)(A)(iii) of the Act. As noted above, the Form ETA 750 submitted in support of this visa classification required two years of on-the-job training and two years of work experience in the job offered as a cook.<sup>3</sup> In order to

<sup>3</sup> Even if the petitioner could demonstrate that DOL accepted a change to 5 months, which the

be classified as an unskilled worker, the Form ETA 750 must require less than two years of training or experience.<sup>4</sup>

Further, it may not be concluded that either the beneficiary's training or experience was corroborated by the evidence provided. In this respect, the petitioner provided a letter, dated March 9, 2009, signed by [REDACTED] owner." The letter indicates that the beneficiary is a full-time employee of [REDACTED] aka [REDACTED] and that he has been with the company since July 2000. The letter affirms his quality of work as a cook and indicates that he works 40 hours per week at a salary of \$500 per week (cash). In view of the fact that the I-140 petitioner has stated that it was not established until October 3, 2005, this letter is not probative as to either the beneficiary's required training (which is not mentioned) or his work experience acquired as of the priority date of April 30, 2001. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, it is noted that on Part B of the Form ETA 750, the beneficiary claims employment with two employers. He states that he has worked as a cook from April 1995 to March 1999 for La [REDACTED] in Azoguez, Ecuador and also works for the petitioner but fails to state either a commencement or end date of the employment.<sup>5</sup> None of these inconsistencies relevant to the labor certification requirements, the beneficiary's training or experience or the *bona fides* of the job offer made by this petitioner whose existence did not commence until 2005, has been clarified or resolved by the petitioner. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

---

certified labor certification does not establish, the requirement of two years training would require filing as a skilled worker.

<sup>4</sup> Corroboration of experience may be submitted in the form of employment verification letters from the relevant employers who provided the training or experience pursuant to the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). The individual's title must be specified and the letter should clearly describe the alien's dates of employment, duties, job title and whether the experience was part-time or full-time. The regulation at 8 C.F.R. § 204.5(l)(3) provides in pertinent part:

(ii) *Other documentation—*

- (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

<sup>5</sup> *See also Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

Relevant to the ability to pay the proffered wage, the record suggests that the petitioner is structured as a sole proprietorship. In support of the petitioner's ability to pay the proffered wage, it has submitted to the underlying record or on appeal, copies of the sole proprietor's Form 1040, U.S. Individual Income Tax Return for 2005 and its Amended U.S. Individual Income Tax Return, as well as copies of the sole proprietor's individual tax returns for 2006, 2007, and 2008. The returns indicate that the sole proprietor filing status was head of household on the 2005, 2006 and 2007 returns with one dependent claimed. In 2008, she filed jointly with her spouse and claimed three dependents. The returns contain the following information:

Year	2005	2006	2007	2008
Adjusted Gross Income <sup>7</sup>	\$7,801 (amended)	\$7,575	\$14,482	\$23,894

It is noted that in 2007 and 2008, the petitioner filed Schedule C, Profit or Loss From Business identifying the business located at the same address as the petitioner's as [REDACTED]. Although we accept the variation of the petitioner's name as stated on Schedule C of the 2005 and 2006 tax returns as [REDACTED] because the same EIN number is given as is stated on the Form I-140, we do not accept, without further convincing evidence that the business named as [REDACTED] on the 2007 and 2008 returns without an EIN given, represents the same employer with merely a change in name or a different entity or a successor to the prior entity. It is noted that the Form I-140 was filed in 2008 but did not use this name. Counsel states on appeal that this was a change of name, but the submission of a copy of a 2009 business license for [REDACTED] does not establish that it and the petitioner should be regarded as the same entity or that the petitioner is the fictional business name of this business.

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 record does not establish that the petitioner has employed or paid compensation to the beneficiary.

In this case, in view of the lack of evidence establishing a successor-in-interest relationship with any other entity as discussed above, the AAO will only consider wages paid by the entity using the same EIN as the petitioner specified on the Form I-140. The only W-2 contained in the record that was issued by an employer using the [REDACTED] was [REDACTED]<sup>8</sup> who issued the W-2 in 2005 stating the beneficiary's wages were \$3,600. However, as this document is not confirmed by the

<sup>7</sup>Adjusted gross income is found on line 19 in 2001; line 35 in 2002; line 34 in 2003; line 36 in 2004; line 37 in 2005, 2006 and 2007.

<sup>8</sup>It is noted that she issued this W-2 in her own name and not under the petitioner's name.

sole proprietor's 2005 Schedule C, Profit or Loss from Business, which shows no wages paid on line 26 and no cost of labor on line 37, we decline to consider this as evidence of wages paid. As with other documentation noted above, this inconsistency has not been clarified or explained. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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).

In this case, where the petitioner is a sole proprietorship, the analysis is slightly different. A sole proprietorship is 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 (7<sup>th</sup> Cir. 1983). For that reason, individual household expenses are given consideration where the petitioner is a sole proprietor. In this case, the sole proprietor did not provide a summary of her personal household monthly expenses.

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

In this case, as shown above, and as noted by the director, even without considering monthly household expenses, the respective amounts of adjusted gross income of \$7,801 in 2005; \$7,575 in 2006 were each well below the proffered wage of \$26,000 and insufficient to establish the petitioner's ability to pay. Even if reviewing the sole proprietor's adjusted gross income of \$14,482 and \$23,894 in 2007 and 2008, respectively, without consideration of household expenses, these figures additionally were insufficient to cover the proffered wage of \$26,000 and failed to establish

the petitioner's *continuing* financial ability to pay the proffered salary as required by 8 C.F.R. § 204.5(g)(2).

Finally, it is noted that the petitioner submitted no income tax returns, audited financial statements or annual reports as required by 8 C.F.R. § 204.5(g)(2) for 2001, 2002, 2003 or 2004.<sup>9</sup> Therefore, the petitioner failed to demonstrate its continuing ability to pay the certified salary in those years as well.

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

In this case, counsel asserts on appeal that the beneficiary is an asset and his loss would affect the petitioner's business. We do not find that the record supports this hypothesis. Counsel's undocumented assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, as noted above, the petitioner's tax returns provided to the record show insufficient adjusted gross income to pay the proffered wage even without considering relevant household expenses. In 2001, 2002, 2003 or 2004, no financial information was provided that was relevant to the petitioner to establish that the company with the EIN that filed the Form I-140 could pay the proffered wage. Nothing demonstrates any successorship of earlier entities for which W-2 statements were submitted. Nothing demonstrates that the petitioner's job offer for the full-time employment was realistic from the priority date. There is no evidence analogous to the factors in *Sonogawa* that would support

---

<sup>9</sup> If the present I-140 petitioner is a successor to the initial labor certification applicant, the predecessor ETA 750 applicant must show its ability to pay until the time of transfer of ownership, and the successor entity must establish its ability to pay the proffered salary from the date of transfer. *See Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm. 1986).

approving the petition. Thus, assessing the petitioner's overall circumstances, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The petitioner has failed to establish its continuing ability to pay the proffered wage. Further, the petitioner has failed to establish that it made a *bona fide* job offer because it failed to confirm its identity as the sponsoring employer or its date of commencement of operation as of the priority date. Additionally, the petitioner failed to demonstrate that the beneficiary had acquired the minimum two years of on-the-job training and two years of experience in the job offered as of the priority date, or that the labor certification submitted supported the requested category.

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.