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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

DATE: APR 04 2012

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

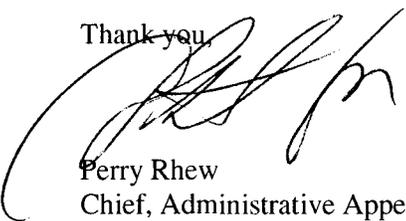
ON BEHALF OF PETITIONER:

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 Director, Nebraska Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a fast food cook. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not submitted any evidence of the beneficiary's job experience or evidence of the petitioner's ability to pay the proffered wage. The director also concluded that the petitioner had not established that the petition requires at least two years of training or experience and, therefore, that the beneficiary cannot be found qualified for classification as a skilled worker. The director denied the petition accordingly on March 30, 2009.

Counsel asserts that the mistake in classification was merely a typographical error and that the director should have issued a request for evidence. Counsel submits an amended Form I-140, Immigrant Petition for Alien Worker on appeal. Counsel also asserts that the director had access to the Form ETA 750 so that, she asserts, it was evident that the beneficiary had the required experience. Counsel submits additional evidence of the beneficiary's experience and the petitioner's ability to pay the proffered wage on appeal. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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

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

Here, the Form I-140 was filed on November 26, 2007. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional or a skilled worker.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹ On appeal, counsel asserts that the designation of a skilled worker

¹The 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).

was a typographical error on Form I-140 and that the petitioner intended to check Part 2.g. indicating that it was filing the petition for an unskilled worker. She submits an amended Form I-140 with a designation for an unskilled worker.

The regulation at 8 C.F.R. § 204.5(i) provides in pertinent part:

(4) Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

In this case, the labor certification indicates that the requirements are eight years of a grade school education, no training and one year of experience required for the offered position. However, the petitioner requested the skilled worker classification on the Form I-140 and submits an amended Form I-140 on appeal. Counsel asserts that the director had access to the "ETA file" and should have recognized the error in classification and issued a request for evidence to permit the petitioner to correct the filing.

It is unclear what counsel means in that the director had access to the "ETA file." The original ETA 750, Application for Alien Labor certification was submitted with the Form I-140. No other evidence was submitted with the filing. 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). Further, the director was not obliged to issue a request for evidence. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) clearly allows the denial of an application or petition, notwithstanding any lack of required initial evidence, if evidence of ineligibility is present. The commentary to this rule, *Removal of Standardized Request for Evidence Processing Timeframe*, 72 Fed. Reg. 19100, 19102 (April 17, 2007), indicates that the rule provides for the discretion to deny "skeletal" petitions that are filed "with little more than a signature and the proper fee" as such "clearly deficient" petitions will not be "permitted."

The initial petition was filed without any supporting documentation and evidenced ineligibility on its face. Counsel attempts to submit the necessary documentation for the first time on appeal. As USCIS clearly expressed that skeletal petitions should not be permitted, and the petition was ineligible for approval, the director did not err in denying the petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii). We uphold the director's decision as consistent with the intent expressed at 72 Fed. Reg. at 19102. The evidence submitted does not establish that the petition requires at least two years of training or experience such that the beneficiary may be found qualified for classification as a skilled worker.

Even if the classification had been designated correctly, the director also noted that the petitioner has also not established that the beneficiary is qualified for the offered position. 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. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145, (3d Cir. 2004). 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*, 381 F.3d at 145, 1002 n. 9.

In the instant case, the labor certification states that the offered position requires eight years of grade school and one year of experience. There is no evidence in the record that demonstrates that the beneficiary has eight years of a grade school education. 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)).²

Additionally, the petitioner has not established its continuing ability to pay the proffered wage of \$7.61 per hour, annualized to \$15,828.80 per year, pursuant to 8 C.F.R. 204.5(g)(2), from the April 30, 2001, priority date onward.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss

² On Part B of the Form ETA 750.

statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [U.S. Citizenship and Immigration Services (USCIS)].

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the 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 petitioner must establish that it has the continuing ability to pay the proffered wage beginning on the priority date, the day the ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d); *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1971). Here, the ETA 750 was accepted for processing on April 30, 2001. The proffered wage as stated on Part A of the ETA 750 is \$15,828.80 as stated above.

On Part B of the ETA 750, signed by the beneficiary on April 12, 2001, under penalty of perjury, the beneficiary makes no claim to have worked for the petitioner. The only job that he lists is as fast food cook for [REDACTED] located in Los Angeles, California from 1995 to 1997. Subsequently, however, on a G-325A, a biographic form submitted in conjunction with the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, also signed by the beneficiary on August 16, 2007, the beneficiary claims employment with the petitioner since 1995. Further, [REDACTED] a 50% shareholder of the petitioner states in a letter, dated April 24, 2009, that the petitioner has employed the beneficiary from May 2, 1997. [REDACTED] had also signed the Form ETA 750 on April 27, 2001, under penalty of perjury, whereby no employment with the petitioner had been claimed.³

It is also noted that on the amended Form I-140, submitted by counsel on appeal, the beneficiary's social security number is claimed to be one number. However, on copies of Wage and Tax Statements purportedly submitted by the petitioner in support of its ability to pay the proffered wage, the beneficiary's social security number is stated as a different number from 2001 through 2006, and for 2007 and 2008, it is only stated as [REDACTED]." In view of this conflicting information regarding both the beneficiary's employment and his discrepant social security numbers, without any explanation offered to clarify either, neither the affirmations of the beneficiary's

³ In any further filings, the petitioner must submit additional persuasive evidence to verify the beneficiary's claimed experience such as payroll documentation, W-2s verified by the pertinent governmental authority, or certified state quarterly employment/unemployment wage reports.

qualifying experience nor claims of wages paid by the petitioner can be considered determinative of either requirement. 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).

On Part 5 of the Form I-140, the petitioner claims to have been established on May 9, 1996 and employ 46 workers. A gross annual income of \$2,740,613 a net annual income of \$111,028 is also claimed.

In determining the ability to pay the proffered wage, USCIS reviews a petitioner's employment and payment of wages to a beneficiary, as well as a petitioner's net income and net current assets for a given period. As discussed above, the petitioner has not submitted persuasive evidence that it has employed and paid wages to the beneficiary.

If the record does not indicate that the petitioner has paid the beneficiary at a wage meeting or exceeding the proffered wage, USCIS will review whether a petitioner's net income of net current assets may cover payment of the proffered wage for a given period 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), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). 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). Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d. 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 116. “[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).

In this case, on appeal, the petitioner submitted copies of its 2005, 2006, and 2007 Form 1120, U.S. Corporation Income Tax Return and a copy of its 2008 U.S. Income Tax for an S Corporation.⁴

⁴ Counsel also submits a copy of the *Memorandum by* [REDACTED] [REDACTED] “Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2),” HQOPRD 90/16.45 (May 4, 2004), in which the adjudicators are advised of three methods by which the ability to pay should be evaluated. With respect to the [REDACTED] Memorandum, it is noted that by its own terms, this document is not intended to create any right or benefit or constitute a legally binding precedent within the regulation(s) at 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), but merely offered as guidance. The AAO is bound by the Act, regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from the circuit where the action arose. Further, it is noted that the [REDACTED] Memo provides guidance to adjudicators to review a record of proceeding and make a positive determination of a petitioning entity’s ability to pay if, in the context of the beneficiary’s employment, “[t]he record contains credible verifiable evidence that the petitioner is not only is employing the beneficiary but also has paid or currently is paying the proffered wage.”

The AAO consistently adjudicates appeals in accordance with the [REDACTED] memorandum. However, the plain language of the regulation at 8 C.F.R. § 204.5(g)(2) set forth in the memorandum as authority for the policy guidance therein requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is April 30, 2001, as established by the labor certification. Demonstrating that the petitioner is paying the proffered wage in a specific year or time period may suffice to show the petitioner's ability to pay for that year or period of time, but the petitioner must still demonstrate its ability to pay for the remainder of the pertinent period of time.

They indicate that the petitioner's fiscal year is a standard calendar year. The returns contain the following information:

Year	2005	2006	2007
Net Income ⁵	\$ 58,288	\$111,028	-\$64,090
Current Assets	\$231,414	\$192,890	\$73,062
Current Liabilities	\$ 95,225	\$ 28,172	\$27,647
Net Current Assets	\$136,189	\$ 164,718	\$45,415

Year	2008
Net Income ⁶	\$ 68,870
Current Assets	\$ 231,388
Current Liabilities	\$ 23,366
Net Current Assets	\$ 208,022

As indicated in the table above, besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, USCIS will examine a petitioner's net current assets.

⁵The petitioner is a C corporation. For the purpose of this review of the petitioner's Form 1120 corporate tax returns, the petitioner's net income is found on line 28 (taxable income before net operating loss deduction and special deductions). USCIS uses a corporate petitioner's taxable income before the net operating loss deduction as a basis to evaluate its ability to pay the proffered wage in the year of filing the tax return because it represents the net total after consideration of both the petitioner's total income (including gross profit and gross receipts or sales), as well as the expenses and other deductions taken on line(s) 12 through 27 of page 1 of the corporate tax return. Because corporate petitioners may claim a loss in a year other than the year in which it was incurred as a net operating loss, USCIS examines a petitioner's taxable income before the net operating loss deduction in order to determine whether the petitioner had sufficient taxable income in the year of filing the tax return to pay the proffered wage.

⁶ The petitioner became an S Corporation as of January 1, 2008. Where an S Corporation's income is exclusively from a trade or business, U.S. Citizenship and Immigration Services (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. 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 18 of Schedule K (2008). See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Here, the petitioner's net income is reflected on line 18 of Schedule K in 2008.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. In this case, the corporate petitioner's year-end current assets and current liabilities are shown on Schedule L of its federal tax returns. Current assets are shown on line(s) 1 through 6 of Schedule L and current liabilities are shown on line(s) 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets.⁸

It is noted that the petitioner has not submitted a federal tax return, audited financial statement or annual report in support of its ability to pay the proffered wage for 2001, 2002, 2003 or 2004. The petitioner has not established its continuing financial ability to pay the proffered wage consistent with the requirements of 8 C.F.R. § 204.5(g)(2). Moreover, USCIS records also show that the petitioner has filed at least two other Form I-140s. The petitioner's ability to pay the instant beneficiary must be considered within the context of the petitioner's sponsorship of other beneficiaries. Where a petitioner files I-140s for multiple beneficiaries, it is incumbent on the petitioner to establish its continuing financial ability to pay all proposed wage offers as of the respective priority date of each pending petition. Each petition must conform to the requirements of 8 C.F.R. § 204.5(g)(2) and be supported by pertinent financial documentation. The petitioner must establish that its Form ETA 750 job offer to the beneficiary is a realistic one for each beneficiary that it has sponsored and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay this beneficiary has not been clearly established for 2001 through 2008 because no information has been provided with this proceeding relevant to the proffered wages of all sponsored beneficiaries of the multiple petitions that it has filed during the relevant period, beginning as of the beneficiaries' respective priority dates.

The insufficiency of the evidence related to the petitioner's continuing ability to pay all beneficiaries' their combined respective proffered wages as well as the lack of evidence for 2001, 2002, 2003, and 2004, precludes a favorable finding with regard to its ability to pay the instant beneficiary, as of his April 30, 2001, priority date.

In some circumstances, the principles set forth in *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) are applicable. That case related to petitions filed during uncharacteristically unprofitable or

⁷ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

⁸ A petitioner's total assets and total liabilities are not considered in this calculation because they include assets and liabilities that, (in most cases) have a life of more than one year and would also include assets that would not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage.

difficult years but only in a framework of profitable or successful years. The petitioning entity in *Sonegawa* 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 *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere.

In the present matter, as set forth above, the petitioner has not established that the petition merits approval under *Sonegawa*. As noted above, the petitioner must demonstrate that it can pay the proffered wage of all sponsored workers, as well as the instant beneficiary's proffered salary. No information relevant to its other sponsored beneficiaries' wages has been provided in this proceeding. The petitioner has not provided its own financial information pertinent to 2001, 2002, 2003, and 2004. The petitioner must address the inconsistencies with respect to the beneficiary's W-2 forms as set forth above. 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)). Further, no unusual business circumstances or reputational factors have been shown to exist in this case that parallel those in *Sonegawa*.

Additionally, and as noted above, given the discrepant information related to the beneficiary's employment with the petitioner, the petitioner has not convincingly established that the beneficiary possessed the required one year of qualifying experience for eligibility for the visa classification. The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

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.



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