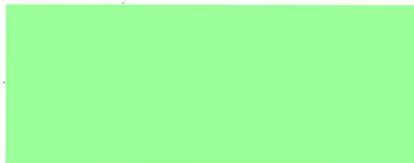


(b)(6)

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

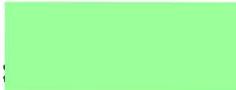


U.S. Citizenship
and Immigration
Services

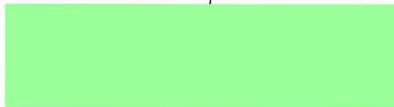


DATE: **DEC 08 2012**

OFFICE: TEXAS SERVICE CENTER

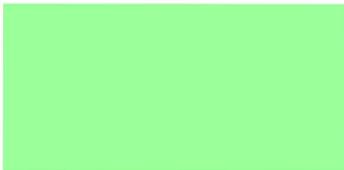
FILE: 

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.

Thank you,

Kiera Polos for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center (director), and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded to the director for further consideration and a new decision.

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

The petitioner is a landscaping company. It seeks to employ the beneficiary permanently in the United States as a stonemason. As required by statute, ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition. 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 and denied the petition accordingly.

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

In his August 5, 2009 denial, the director identified one issue, 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. On appeal, the AAO identified three additional issues: whether or not the petitioner established that the beneficiary possessed the minimum experience required to perform the proffered position by the priority date; whether or not the proffered position is a permanent position; and the petitioner submitted an unsigned labor certification.

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.

Continuing Ability to Pay the Proffered Wage

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the

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).

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 ETA Form 9089, Application for Permanent 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 ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the ETA Form 9089 was accepted on December 20, 2006. The proffered wage as stated on the ETA Form 9089 is \$22 per hour or \$45,760 annually.² The ETA Form 9089 states that the position requires two years of experience as a stonemason.

The record indicates the petitioner is structured as a limited liability company and filed its tax returns on IRS Form 1065.³ On the petition, the petitioner claimed to have been established in 1992⁴ and to currently employ 3 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. The ETA Form 9089 states the beneficiary has been working for the petitioner since November 1, 1996.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains

² The director incorrectly stated the annual proffered wage as \$45,344.

³ A limited liability company (LLC) is an entity formed under state law by filing articles of organization. An LLC may be classified for federal income tax purposes as if it were a sole proprietorship, a partnership, or a corporation. If the LLC has only one owner, it will automatically be taxed as a sole proprietorship unless an election is made to be taxed as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be taxed as a corporation. If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. See 26 C.F.R. § 301.7701-3. The election referred to is made using IRS Form 8832, Entity Classification Election. In the instant case, the petitioner, a multi-member LLC, is considered to be a partnership for federal tax purposes.

⁴ The petitioner's tax returns and the New York Secretary of State website (http://www.dos.ny.gov/corps/bus_entity_search.html) (accessed September 23, 2012) both indicate the petitioner was established in 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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'l Comm'r 1977); see also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has submitted copies of Internal Revenue Service (IRS) Forms W-2 it issued to the beneficiary for 2006 and 2007⁵ which reflect the wages paid to the beneficiary as shown in the table below:

- In 2006, Form W-2 reflects wages of \$33,400.⁶ Wage shortfall of \$12,360.⁷
- In 2007, Form W-2 reflects wages of \$29,700. Wage shortfall of \$16,060.

In 2008, the petitioner issued the beneficiary an IRS Form 1099 and the petitioner also issued the beneficiary's sole proprietorship business an IRS Form 1099. The monies paid to the beneficiary in 2008 are shown in the table below:

- In 2008, the Forms 1099 reflect monies paid of \$33,029.⁸ Wage shortfall of \$12,731.

⁵ On appeal, for the first time, counsel submitted copies of IRS Form 1099 for both 2006 and 2007 which counsel asserts represents monies the petitioner paid to the beneficiary in those years in addition to the wages reflected on the IRS Forms W-2. The director issued a request for evidence on May 8, 2009 specifically requesting all IRS Forms W-2 and Forms 1099 issued to the beneficiary in 2006, 2007, and 2008. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the 2006 and 2007 IRS Forms 1099 submitted on appeal.

⁶ The wage for each year is the amount shown in Box 1.

⁷ The wage shortfall is the difference between the proffered wage and the wages paid.

⁸ The monies paid are shown in Box 7.

Therefore, the petitioner has not established that it paid the full proffered wage to the beneficiary in 2006, 2007, and 2008 and it must establish that it can pay the wage shortfall in those years.

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), *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). Reliance on the petitioner's wage expense is misplaced. Showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food*, 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 118. “[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner’s ability to pay. Plaintiffs’ argument that these figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on June 8, 2009 with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. As of that date, the petitioner’s 2008 federal tax return is the most recent return available. The petitioner’s tax returns stated its net income as detailed in the table below.

- In 2006, the petitioner’s Form 1065⁹ stated net income of \$77,854.¹⁰
- In 2007, the petitioner’s Form 1065 stated net income of \$76,568.
- In 2008, the petitioner’s Form 1065 stated net income of \$176,528.

Therefore, for the years 2006, 2007, and 2008, the petitioner did establish that it had sufficient net income to pay the wage shortfall. The petitioner has overcome the basis for the director’s denial.

⁹ The petition was accompanied by a copy of the petitioner’s 2006 Form 1065. In response to the director’s request for evidence, the petitioner submitted a different version of its 2006 Form 1065. The second version does not indicate that it is an amended return, nor does the record contain evidence that the second version was submitted to the IRS or its receipt or acceptance by the IRS. USCIS requires IRS-certified copies of an amended return to establish that the amended return was actually received and processed by the IRS. 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)). Although the director considered the second version of the 2006 Form 1065, the AAO will only examine the version of the petitioner’s 2006 tax return that was initially submitted.

¹⁰ For an LLC taxed as a partnership, where a partnership’s income is exclusively from a trade or business, USCIS considers net income to be the figure shown on Line 22 of page one of the petitioner’s Form 1065, U.S. Partnership Income Tax Return. However, where a partnership 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 or additional credits, deductions or other adjustments, net income is found on page 4 (before 2008) and page 5 (2008) of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K. See Instructions for Form 1065, at <http://www.irs.gov/pub/irs-pdf/i1065.pdf> (accessed September 24, 2012) (indicating that Schedule K is a summary schedule of all partners’ shares of the partnership’s income, deductions, credits, etc.). In the instant case, the petitioner’s Schedule K for 2006, 2007 and 2008 have relevant entries for additional income and, therefore, its net income is found on line 1 of the Analysis of Net Income (Loss) of Schedule K of its tax returns. The director analyzed the petitioner’s net income in the years 2006, 2007, and 2008 without considering Schedule K.

Beneficiary Qualifications: Experience

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for the offered position.¹¹ 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'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 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'r 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).

In the instant case, the ETA Form 9089 states that the offered position requires two years of experience as a stonemason. On the ETA Form 9089, the beneficiary claims to qualify for the offered position based on experience as a stonemason with [REDACTED] Ecuador from January 1, 1990 until January 1, 1993.

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). The record contains a foreign-language document which according to the accompanying translation is an experience letter. The translation of this document does not comply with the terms of 8 C.F.R. § 103.2(b)(3), which states:

Translations. Any 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.

The translation submitted appears to have summarized some of the information in the letter, and added other information. Because the petitioner failed to submit a certified translation of the purported experience letter, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). 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

¹¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 record contains a number of documents relating to the beneficiary's experience as listed below:

1. The petitioner filed a Form ETA 750, Application for Alien Employment Certification (Form ETA 750) on behalf of the beneficiary on April 30, 2001, which was not approved by the DOL. The Form ETA 750 also requires two years of experience as a stonemason. Part B of Form ETA 750, question 15 requires the beneficiary to list all jobs held during the last three (3) years, as well as any other jobs related to the proffered job. The beneficiary signed Part B of Form ETA 750 under penalty of perjury on April 29, 2001 and listed only one job. The beneficiary listed that he worked 40 hours per week for [REDACTED] as a stonemason from February 1997 until August 1999.
2. The beneficiary filed a Form G-325A in conjunction with his application to adjust status. The Form G-325, signed by the beneficiary on August 15, 2007, requires the beneficiary to list his employment for the previous five years. The beneficiary listed that he worked for [REDACTED] as a carpenter from December 1993 until December 1999.
3. The beneficiary also listed on his Form G-325A that he worked at [REDACTED] (the petitioner) as a stonemason from January 2000 until August 15, 2007, when he signed the Form G-325A.
4. In conjunction with his adjustment of status application, the beneficiary submitted a copy of his 2000 federal income tax return on which he reports that the only income he earned in 2000 was as a construction helper for [REDACTED].
5. In conjunction with his adjustment of status application, the beneficiary also submitted a copy of his 2001 federal income tax return on which he reports that the only income he earned in 2001 was as a landscaper from [REDACTED]. The employer's federal employer identification number (EIN) listed on the 2001 IRS Form 1099 issued to the beneficiary is [REDACTED].²
6. The ETA Form 9089, at Part K requires the beneficiary to list all jobs he has held during the past 3 years as well as any other experience that qualifies him for the job opportunity. The beneficiary lists that he worked 40 hours per week for the petitioner as a stonemason from November 1, 1998 until December 20, 2006 when the Form ETA 9089 was filed.
7. The ETA Form 9089 also lists the beneficiary working 40 hours per week for [REDACTED] as a stonemason from January 1, 1990 until January 1, 1993.

The following inconsistencies are noted regarding the beneficiary's experience:

- Enumeration 1 conflicts with enumerations 2 and 6 because while the beneficiary was purportedly working 40 hours per week for [REDACTED] from February 1997 until August 1999, the beneficiary was also purportedly working for [REDACTED] and 40 hours per week for the petitioner.

¹² The petitioner's EIN is [REDACTED]

- Enumeration 1 is also inconsistent with the ETA Form 9089 because this experience was required to be listed on the ETA Form 9089. As noted above, the ETA Form 9089 at Part K requires the beneficiary to list all experience that qualifies him for the proffered position.
- Enumeration 3 is inconsistent with enumeration 4 because according to the beneficiary's 2000 tax return, the beneficiary only worked for Artistic Outdoors in 2000.
- Enumeration 3 is inconsistent with enumeration 5 because according to the beneficiary's 2001 tax return, the beneficiary only worked for [REDACTED] in 2001.
- Enumeration 3 is also inconsistent with enumeration 6 because the starting dates of employment are inconsistent. Enumeration 3 indicates a starting date of January 2002, whereas enumeration 6 indicates a starting date of November 1, 1996.
- Enumeration 4 is also inconsistent with enumeration 6 because according to the beneficiary's 2000 tax return, the beneficiary only worked for [REDACTED] in 2000.
- Enumeration 5 is also inconsistent with enumeration 6 because according to the beneficiary's 2001 tax return, the beneficiary only worked for [REDACTED]
- Enumeration 7 is inconsistent with the Form ETA 750 because this experience was required to be listed on the Form ETA 750. As noted above, the Form ETA 750B requires the beneficiary to list all jobs related to the occupation for which the beneficiary is seeking certification.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. ...[i]t 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.

The petitioner has not resolved the numerous inconsistencies regarding the beneficiary's work experience with independent, objective evidence.¹³

¹³ Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States. See INA Section 212(a)(6)(C), [8 U.S.C. 1182(a)(6)(C)], regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible." Furthermore, a finding of misrepresentation may lead to invalidation of the labor certification. The regulation at 20 C.F.R. § 656.30(d) provides:

(d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of

Therefore, the petitioner has not established that the beneficiary possessed the minimum experience required to perform the proffered position by the priority date.

Permanent Position

The job offer must be for a permanent and full-time position. *See* 20 C.F.R. §§ 656.3; 656.10(c)(10). The petition at Part 6, question 7 asks “Is this a full-time position?” to which the petitioner has answered “No.” Therefore, beyond the decision of the director, the petitioner has not established that the proffered position is a full-time, permanent position.

Unsigned Labor Certification

Finally, beyond the decision of the director, the labor certification is not signed by the petitioner/employer, the beneficiary, or the attorney that prepared it. USCIS will not approve a petition unless it is supported by an ETA Form 9089 that has been signed by the employer, beneficiary, attorney and/or agent. *See* 20 C.F.R. § 656.17(a)(1).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director’s decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.