

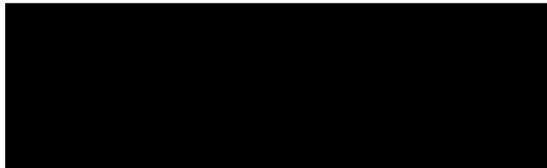
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B6



Date: **FEB 10 2012**

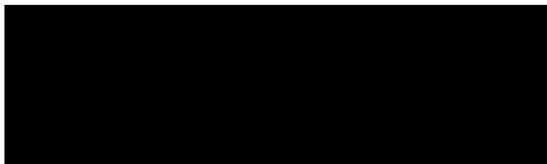
Office: TEXAS SERVICE CENTER

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a commercial real estate development and management company.¹ It seeks to employ the beneficiary permanently in the United States as a maintenance engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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

As set forth in the director's July 14, 2008 denial, the issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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

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

¹ The petitioner's tax returns state the petitioner's business activity as "lease of flea market," product "sublease." It is unclear that these two activities are the same. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$54,642 per year. The Form ETA 750 states that the position requires a bachelor's degree in any engineering field and one year of experience in the proffered position.

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.²

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1997, to have a gross annual income of \$2,255,925,³ and to currently employ 10 workers. According to the tax returns in the record, the petitioner's fiscal year runs on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 23, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of 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'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 Sonogawa*, 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

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ Although the petitioner claims on the Form I-140 to have a gross annual income of \$2,255,925, its tax returns from 2001 through 2007 show its highest gross annual income during those years as \$1,497,160.

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 not established that it employed and paid the beneficiary the full proffered wage from the priority date. The petitioner did submit, however, copies of W-2 Forms showing wages paid to the beneficiary by the petitioner in 2005 (\$9,720), 2006 (\$10,712) and 2007 (\$23,780). The petitioner must establish the ability to pay the difference between wages paid to the beneficiary and the full proffered wage in those years. Those sums are as follows:

- 2005 - \$45,372
- 2006 - \$43,930
- 2007 - \$30,862

The petitioner must show the ability to pay the full proffered wage of \$54,642 in all other years, 2001, 2002, 2003 and 2004.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. 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 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).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on June 12, 2008 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 income tax return was not yet due. Therefore, the petitioner’s income tax return for 2007 is the most recent return available. The petitioner’s tax returns demonstrate its net income for 2001 through 2007, as shown in the table below.

- In 2001, the Form 1120 stated net income of \$52,399.
- In 2002, the Form 1120 stated net income of \$59,527.
- In 2003, the Form 1120 stated net income of \$48,921.
- In 2004, the Form 1120 stated net income of \$55,344.
- In 2005, the Form 1120 stated net income of \$36,053.
- In 2006, the Form 1120 stated net income of \$22,701.
- In 2007, the Form 1120 stated net income of \$65,694.⁴

Therefore, for the years 2002, 2004 and 2007, the petitioner’s tax returns would state sufficient net income to pay the present beneficiary’s proffered wage, or the difference between wages paid to the beneficiary and the full proffered wage, however, the petitioner has sponsored a second worker and must establish its ability to pay the proffered wages of both sponsored workers. The petitioner’s tax returns do not state sufficient net income to pay the present beneficiary’s full proffered wage, or the

⁴ The petitioner submitted its 2007 tax return on appeal.

difference between wages paid to the beneficiary and the full proffered wage, in years 2001, 2003, 2005 and 2006.

USCIS records show that the petitioner filed another Form I-140 (priority date – November 17, 2003) and a Form I-129 for another worker. The Form I-129 was filed on July 22, 2002 and approved on July 11, 2002. The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). Further, the petitioner would be obligated to pay each H-1B petition beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715. From the record, it is unclear that the petitioner's net income or net current assets could support payment of both workers from 2003 onward.⁵ The record does not, therefore, establish that the petitioner has the continuing ability to pay the proffered wage of the instant beneficiary in all the respective years, or the both sponsored worker from each respective priority date onward.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁶ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2001 through 2007 as shown in the table below.

- In 2001, the Form 1120 stated net current assets of \$66,442.
- In 2002, the Form 1120 stated net current assets of \$39,961.
- In 2003, the Form 1120 stated net current assets of (\$41,440).
- In 2004, the Form 1120 stated net current assets of \$20,302.

⁵ A review of the USCIS file of the other sponsored worker contains no evidence of wages paid to that worker by the petitioner, but shows that the petitioner must pay a proffered wage to that beneficiary of \$48,195 from that 2003 priority date onward. In any further filings, the petitioner would need to address its ability to pay both sponsored workers from each respective priority date onward, to include evidence of any wages paid to the other sponsored worker from the 2003 priority date onward. Without such evidence we cannot conclude that the petitioner can pay both sponsored workers in all the years at issue.

⁶According 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.

- In 2005, the Form 1120 stated net current assets of \$24,887.
- In 2006, the Form 1120 stated net current assets of \$48,182.
- In 2007, the Form 1120 stated net current assets of \$96,163.

Therefore, for the years 2001, 2006 and 2007, the petitioner's tax returns would state sufficient net current assets to pay the present beneficiary's full proffered wage or the difference between wages paid to the beneficiary and the full proffered wage. However, from the record, it is not clear that the petitioner could pay both sponsored workers in 2006 from its net current assets. As previously stated, the petitioner's tax returns would state sufficient net income to pay the present beneficiary's full proffered wage, or the difference between the proffered wage and wages actually paid to the beneficiary in years 2002, 2004 and 2007. However, again, the petitioner would need to establish that it could pay the respective wage to both sponsored workers in 2004. The information before us is insufficient to conclude that the petitioner can pay both sponsored workers in 2003 through 2006.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner has not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets in years 2003 and 2005, or the wages of both sponsored workers in 2003 through 2006.

On appeal, counsel states that the petitioner has established the ability to pay the present beneficiary's proffered wage from the priority date onward. Specifically, counsel states that the director erred in not considering wages paid to the beneficiary when determining the petitioner's ability to pay the proffered wage. The AAO notes the petitioner's concern and has considered those wages in determining the petitioner's ability to pay as set forth above individually, as well as in combination with either the petitioner's net income or net current assets.⁷ The petitioner also states

⁷ Net income and net current assets may not be combined when determining the ability to pay the proffered wage because net income and net current assets are not, in the view of the AAO, cumulative. The AAO views net income and net current assets as two different methods of demonstrating the petitioner's ability to pay the wage--one retrospective and one prospective. Net income is retrospective in nature because it represents the sum of income remaining after all expenses were paid over the course of the previous tax year. Conversely, the net current assets figure is a prospective "snapshot" of the net total of petitioner's assets that will become cash within a relatively short period of time minus those expenses that will come due within that same period of time. Thus, the petitioner is expected to receive roughly one-twelfth of its net current assets during each month of the coming year. Given that net income is retrospective and net current assets are prospective in nature, the two figures cannot be combined in a meaningful way to illustrate the petitioner's ability to pay the proffered wage during a single tax year. Moreover, combining the net income and net current assets could double-count certain figures, such as cash on hand and, in the case of a taxpayer who reports taxes pursuant to accrual convention, accounts receivable.

that the petitioner should not be required to show its ability to pay the proffered wage set forth on the Form ETA 750 in years 2001 through 2006 as that wage (\$54,642, certified by the DOL on July 16, 2007) was not the correct prevailing wage in years 2001 through 2006. The petitioner notes that the prevailing wages for those years were less than the present proffered wage.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

In a letter dated September 24, 2004, Enterject, Inc. (a government contractor used to expedite processing of applications before DOL), stated that the prevailing wage, as determined in accordance with the provisions of 20 C.F.R. § 656.40 was "\$41,205 per year for DOT Code 638.281-014 Wage Source OES."⁸ Counsel states that the petitioner should not be required to pay the proffered wage of \$54,642 per year certified by the DOL on the Form ETA 750 for earlier years when the prevailing wage would not then have been that high. The Form ETA 750 shows that DOL coded the position as "17-2141, mechanical engineer." DOL would have assessed the proffered wage from the 2001 priority date onward. Even if it "assigned" or asked the petitioner to revise the wage later, the wage would be based on the wage from the year of the priority date. Additionally, the Form ETA 750 shows that the petitioner initialed the wage change on the form and approved the change to \$54,642. 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). If the petitioner wished to contest the wage, it must have done so before DOL and prior to certification.⁹ USCIS must read the terms of the labor certification as it is written and certified.

⁸ The DOT code referenced by Enterject, Inc. was for a "maintenance mechanic." DOL coded the Form ETA 750 "17-2141, mechanical engineer." The difference may have resulted in the change between the Enterject letter and the wage assigned.

⁹ Enterject's September 24, 2004 letter referenced above noted that: "If the employer does not agree with the prevailing wage determined by Enterject, the case will be transmitted to the Department of Labor for review and determination before the recruitment phase can begin. It should also be noted that the refusal to increase the wage may result in the denial of the application by the Certifying Officer." *See Also* 20 C.F.R. § 656.21 (2001) Basic labor certification process which provides:

- (e) The local office shall calculate, to the extent of its expertise using wage information available to it, the prevailing wage for the job opportunity pursuant to § 656.40 and shall put its finding into writing. If the local office finds that the rate of wages offered is below the prevailing wage, it shall advise the employer in writing to increase the amount offered. If the employer refuses to do so, the local office shall advise the employer that the refusal is a ground for denial of the application by the Certifying Officer; and that if the denial becomes final, the application will have to be refiled at the local office as a new application.

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 (Reg'l Comm'r 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 overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner failed to establish the ability to pay the present beneficiary the full proffered wage, or difference between wages paid to the beneficiary and the full proffered wage, in 2003 and 2005. The petitioner sponsored an additional beneficiary and that record does not reflect any wages paid, or that the petitioner could pay both sponsored workers from 2003 through 2006. The petitioner pays salaries commensurate with those paid by small business enterprises. The record does not establish that the petitioner's reputation in the industry is such that it is more likely than not that the petitioner had the continuing ability to pay the proffered wage from the 2001 priority date onward and the wages of the second sponsored worker. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage of the present beneficiary, or the required wages of another sponsored worker. In any further filings, the petitioner would need to establish that it could pay both the instant beneficiary and the second sponsored worker, and would need to address its total wage obligation and submit evidence of pay to the other sponsored workers. Should the petitioner seek to rely on the totality of the circumstances to establish its ability to pay all required wages, in any further filings, the petitioner should submit evidence of its reputation, or any short term unexpected losses that may have adversely impacted the business.

Beyond the decision of the director, the petitioner has not definitively established that the beneficiary has one year of experience in the proffered profession as required by the Form ETA 750. 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).

To determine whether a beneficiary is eligible for an employment based immigrant visa, United States Citizenship and Immigration Services (USCIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). According to the plain terms of the labor certification, the applicant must have one year of experience in the job offered as a maintenance engineer.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(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.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Experience letters must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A). To establish that the beneficiary has one year of experience in the proffered position as required by the labor certification, the petitioner submitted a "Certificate of Retirement" signed by the president of [redacted] on February 10, 2001. That document indicates that the beneficiary worked for that organization from December 3, 1996 until March 30, 1998. The document indicates that the beneficiary worked in the position of "engineer" in the boiler department. The document does not, however, specifically detail the duties of the position as required by 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A). The certificate additionally does not state the number of hours worked and whether the position was full-time or part-time to calculate the full length of employment. As such, it cannot be definitively determined that the beneficiary has the one year of experience required by the Form ETA 750. For this additional reason, the petition must be dismissed. In any further filings, the

petitioner should submit additional evidence in accordance with the regulations that addresses these deficiencies.

Accordingly, 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.