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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



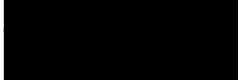
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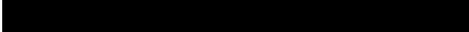


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Date: **FEB 27 2012**

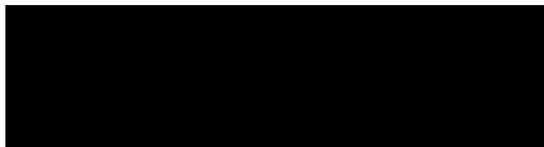
Office: NEBRASKA CENTER

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a legal and tax service provider.<sup>1</sup> It seeks to employ the beneficiary permanently in the United States as an administrative assistant. 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.

On appeal, counsel maintains that the petitioner has the ability to pay the proffered wage.

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.<sup>2</sup> It is noted that on the Form I-290B, filed on October 24, 2008, counsel indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days. As nothing further has been received by this office, this decision will be rendered on the record as it currently stands.

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.

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

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<sup>1</sup> It is noted that counsel and the petitioner share the same address, her revenue is included among the figures reported for the petitioner's sales transactions and counsel is listed as a shareholder on the tax returns. Therefore, the petitioner is self-represented. It is further noted that counsel and the beneficiary share the same surname. Under 20 C.F.R. § 626.20(c)(8) and §656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000). When or if further filings are submitted, the petitioner must address the issue of the beneficiary's relationship, if any, and establish that a valid *bona fide* job offer exists.

<sup>2</sup> 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).

skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation 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.

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, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on April 11, 2003, which establishes the priority date.<sup>3</sup> The proffered wage as stated on the Form ETA 750 is \$19.72 per hour (\$41,225.60 per year). The Form ETA 750 states that the position requires the beneficiary coordinate files and records, conduct preliminary screening and interviews, receive calls and messages, translate documents and assist clients with court and immigration issues. It also requires that the beneficiary have two years of employment experience in the job offered. Additional special requirements state that the beneficiary is required to have at least 2 years of college education or at least 2 years' experience as assistant to office administrator or related field and be fluent in English and Filipino languages. Part B of the Form ETA 750, signed by the beneficiary on April 8, 2003, does not indicate that the petitioner has employed the beneficiary.

On Part 5 of the Immigrant Petition for Alien Worker (Form I-140), filed on June 29, 2007, it is claimed that the petitioner was established on September 9, 1999, reports a gross annual income of \$600,000, a net annual income of \$310,000 and currently employs five workers.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant

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<sup>3</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, 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 Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In support of its continuing ability to pay the proffered wage of \$41,225.60 per year, the petitioner has submitted copies of its Form 1120S, U.S. Income Tax Return for an S Corporation<sup>4</sup> for 2003, 2004, 2005, 2006, and 2007. They indicate that the petitioner's fiscal year is based on a calendar year. The tax returns contain the following information:<sup>5</sup>

Year	2003	2004	2005	2006
Net Income	\$13,943	\$ 40,016	-\$122,932	-\$44,061
Current Assets	\$-0-	\$112,532	\$ 34,827	\$-0-
Current Liabilities	\$-0-	\$ 17,506	\$ 2,823	\$-0-
Net Current Assets	\$-0-	\$ 95,026	\$ 32,004	\$-0-

<sup>4</sup> 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 23 (2003), line 17e (2004, 2005) and on line 18 (2006, 2007) of Schedule K. *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 21 of page 1 of the 2003, 2004, and 2006 returns and on Schedule K, line 17e of the 2005 return and on Schedule K, line 18 of the 2007 tax return.

<sup>5</sup>It is noted that on the figures on Schedule L for the end-of-the year assets in 2004 do not correlate to the beginning of the year figures on Schedule L assets in 2005. No explanation has been offered. 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).

Year	2007
Net Income	-\$119,124
Current Assets	\$208,004
Current Liabilities	\$ 3,728
Net Current Assets	\$204,276

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. Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>6</sup> 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.<sup>7</sup>

The petitioner has submitted a 2007 list of sales transactions and a customer balance summary. Additionally, it has provided copies of 2007 and 2008 bank statements. The petitioner's reliance on these statements is misplaced. Bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Bank statements do not reflect a petitioner's complete financial profile. Further, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its corresponding tax return(s) that were provided, such as the petitioner's taxable income (income minus deductions) or the cash specified on the 2007 Schedule L that is already considered in determining the petitioner's net current assets.

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<sup>6</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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.

<sup>7</sup> 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 would not, therefore, become funds available to pay the proffered wage.

The director denied the petition on October 29, 2008. He noted that the petitioner had established its ability to pay the proffered wage in 2004 and 2007 but that it had not established its ability to pay the proffered wage of \$41,225.60 in 2003, 2005, or 2006.

On appeal, in support of the petitioner's ability to pay the proffered salary, counsel asserts that the *Memorandum by* [REDACTED] "Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2)," HQOPRD 90/16.45 (May 4, 2004) supports the petitioner's ability to pay the proffered wage. In that memo, the adjudicators were 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.<sup>8</sup> Similarly, the 2004 AAO case cited by counsel is not legally binding precedent. 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. See *N.L.R.B v. Ashkenazy Property Management Corp.*, 817 F.2d 74,75 (9<sup>th</sup> Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit).

The AAO consistently adjudicates appeals in accordance with the Yates memorandum. However, counsel's interpretation of the language in that memorandum is overly broad and does not comport with 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. The regulation requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. If USCIS and the AAO were to interpret and apply the Yates memorandum as counsel urges, then in this particular factual context, the clear language in the regulation would be usurped by an interoffice guidance memorandum without binding legal effect. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is April 11, 2003, as established by the labor certification. Demonstrating that the petitioner is paying (the petitioner here has not submitted any evidence of wages paid) or could pay 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.

Counsel also cites *Masonry Masters, Inc. v. Thornburgh*, 875 F.2d 898 (D.C. Cir. 1989), in support of the proposition that the beneficiary's ability to generate income can be used in the determination of the petitioner's ability to pay the proffered wage. Although part of this decision mentions the ability of the beneficiary to generate income, the holding is based on other grounds and is primarily a criticism of USCIS for failure to specify a formula used in determining the proffered wage. Further, in this instance, other than petitioner's statement that the beneficiary can speak Tagalog, no detail or documentation has been provided to explain how the beneficiary's employment as an administrative assistant will significantly increase profits for a

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<sup>8</sup>See also, *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968).

legal and tax service firm. This hypothesis cannot be concluded to outweigh the evidence presented in the corporate tax returns. A petitioner must establish the elements for the approval of the petition at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Counsel also asserts on appeal that somehow a due process violation has occurred in denying the petition. It is noted, however, that there are no due process rights implicated in the adjudication of a benefits application. *See Blam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9<sup>th</sup> Cir. 2008), *see also Lyng v. Payne*, 476 U.S. 926, 942 (1986) (“We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.”)

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, as discussed above, the record does not indicate that the petitioner has employed the beneficiary or paid the beneficiary any wages.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner’s federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1<sup>st</sup> Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner’s ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9<sup>th</sup> 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 (7<sup>th</sup> Cir. 1983). Reliance on the petitioner’s gross receipts and wage expense is misplaced. Showing that the petitioner’s gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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 USCIS 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).

Premised on the clarification of the figures in Schedule L (footnote 5 herein), the petitioner established its ability to pay the proffered wage of \$41,225.60 in 2004 because its net current assets of \$95,026 were sufficient to cover the proffered wage. Similarly, in 2007, its net current assets of \$204,276 were enough to cover the proffered wage and demonstrate its ability to pay in this year.

As shown above, however, in 2003, neither the petitioner’s \$13,943 in net income nor its \$-0- in net current assets could cover the proffered wage.

Similarly, in 2005, neither the petitioner’s -\$122,932 in net income, nor its -\$32,004 in net current assets provided sufficient funds to pay the proffered wage or establish its ability to pay in this year.

Finally, in 2006, neither the petitioner’s -\$44,061 in net income, nor its \$-0- in net current assets could cover the proffered wage or establish the petitioner’s ability to pay in this year. The petitioner has not demonstrated its *continuing* financial ability to pay the proffered wage. 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)).

In some cases, as counsel indicates and as the director noted, 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 Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). 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. 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, and the occurrence of any uncharacteristic business expenditures or losses.

In this case, it is noted that three out of five corporate tax returns failed to demonstrate an ability to pay the proffered wage out of net income or net current assets. Its gross receipts have declined slightly from 2003 to 2007. The petitioner's tax returns for 2006 list no salaries, cost of labor, or officer compensation for this year. Further, the petitioner has submitted no particularly analogous unique or unusual evidence comparable to that which prevailed in *Sonegawa*, from which to make a positive finding. Thus, assessing the overall circumstances, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The evidence submitted does not establish that the petitioner had the *continuing* financial ability to pay the proffered wage beginning on the priority date pursuant to 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed two years of experience in the job offered of administrative assistant as required by the terms of the labor certification.

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.

As set forth by the labor certification in item 14, the petitioner requires that the beneficiary have two years of work experience as an administrative assistant. Additionally, in item 15, the beneficiary must have two years of college or two years of experience as an assistant office administrator or related field.<sup>9</sup> The record contains copies of college transcripts indicating that the beneficiary has two years of college. However the record does not contain any letter or certification from any employer that affirms that the beneficiary has two full-time years of work experience in the job offered as an administrative assistant.<sup>10</sup> 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)).

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 See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(AAO's *de novo* authority is well-recognized.)

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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<sup>9</sup> Form ETA 750, section 14 does not contain an asterisk or any qualifiers to show that this is an alternative to the two years of experience in the job offered requirement, and will therefore be read as a separate requirement. Section 15 reads "other special requirements." Nothing shows that this modifies section 14. Should the petitioner assert that this is a single requirement of only two years of experience or two years of college, the petitioner must submit evidence in any further filings to show how the minimum requirements were expressed to potential U.S. workers to clarify the labor certification's requirements.

<sup>10</sup> On Part B of the ETA 750, the beneficiary claims two previous jobs: 1) as a registration assistant working 32 hours per week for the Los Angeles [REDACTED] from January 2001 to February 2001 and; 2) as a registration assistant working 32 hours per week for the Los Angeles [REDACTED] from January 2000 to December 2000.