

(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: JUL 16 2012

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 welding – sheet metal fabrication company. It seeks to employ the beneficiary permanently in the United States as a welder. As required by statute, the petition is accompanied by an ETA Form 750, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the I-140 petition was submitted without all of the required initial evidence, specifically evidence of the petitioner's ability to pay the proffered wage and evidence of the beneficiary's experience. In addition, the director noted that the petition was submitted without the original labor certification. The director denied the petition accordingly.

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

As set forth in the director's February 25, 2009 denial, the petitioner failed to submit initial evidence of the beneficiary's experience and of the petitioner's ability to pay the proffered wage.

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

The 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 crux of counsel's appeal is that during the initial adjudication of the petition, the director should have asked the petitioner to provide evidence already required by regulation. Counsel implies that the director abused his discretion by not requesting additional evidence after determining that all required evidence was not submitted with the initial petition.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states in pertinent part:

¹ 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).

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, [United States Citizenship and Immigration Service] (USCIS) in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

In the instant case, the petitioner failed to submit initial evidence of its continuing ability to pay the proffered wage as well as evidence that the beneficiary met the requirements of Form ETA 750 as of April 30, 2001, the priority date, and therefore, the director was not obligated to issue a Request for Evidence (RFE) seeking the missing initial evidence of the petitioner's eligibility. Utilizing his discretion, he adjudicated the case on the existing record.

On appeal, the petitioner submitted the following evidence:

- Copies of the beneficiary's 2001, 2002, 2005, 2006, 2007 and 2008 Forms W-2.
- Copies of the petitioner's 2000, 2002, 2003, 2004, 2005, 2006, and 2007 federal tax returns.²
- Copies of the beneficiary's diplomas of "Electrical Steel Welding in the Horizontal Position," and "Electrical Steel Welding in the Vertical and Overhead Position," received on January 12, 1989 and May 12, 1989, respectively.
- A letter dated March 4, 2009, signed by [REDACTED], attesting to the beneficiary's employment with [REDACTED] as a full-time welder, from February 1992 to October 1994.
- A printout from the U.S. Department of Labor website, obtained on March 27, 2009 for ETA case number [REDACTED] showing a "certified" status.

The labor certification submitted with the instant petition shows several alterations made in 2007. The alterations match amendments requested by the petitioner and beneficiary in requests dated December 4, 2006. The changes appear to have been made by a DOL officer and are dated July 3, 2007. Both Form ETA 750A and 750B are photocopies and include a copy of the petitioner's and beneficiary's signatures, as well as an original signature next to the copy. It further appears that DOL certified a copy of the originally filed ETA Form 750A. However, Form ETA 750B does not include any stamp from the DOL on page 3 of the Form ETA 750B to indicate that DOL accepted this copy. 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). On appeal, counsel asserts that the petitioner submitted the original labor certification. Counsel supports her assertions with the printout from the U.S. Department of Labor website, obtained on March 27, 2009 for ETA case number [REDACTED]

² The petitioner failed to provide a copy of its 2001 tax return. This evidence would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage in 2001. The petitioner's failure to submit its 2001 tax return cannot be excused. The failure to submit required evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

█ displaying a “certified” status. The regulations at 8 C.F.R. §§ 204.5(a)(2) and 204.5(l)(3)(i) require that any Form I-140 petition filed under the preference category of section 203(b)(3) of the Act be accompanied by a labor certification. Merely submitting evidence that the application was certified by the DOL is not sufficient.

The petitioner has failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 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 ETA Form 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 \$16.64 per hour, which is \$34,611.20 per year based on forty hours per week. The Form ETA 750 states that the position requires nine years of grade school, three years of high school and two years of college, with a major field of study in welding. It also requires two years of experience in the job offered as a welder.

The evidence in the record shows that the petitioner was first structured as a C Corporation, and then elected to become an S Corporation in 2003.³ According to the petitioner's 2002 tax return in the

³ The petitioner's most recent federal tax return of record indicates that the petitioner is a Controlled Group. A search conducted on the California Secretary of State website reveals that █ both listed on Form 1120S as the petitioner's subsidiaries, are now dissolved, while the petitioner, █ (also listed on Form 1120S as a subsidiary) have an active status. See █ (accessed May 23, 2012). Corporations are classified as members of a controlled group if they are connected through certain stock ownership. All corporate members of a controlled group are treated as one single entity for tax purposes (i.e., only one set of graduated income tax brackets and respective tax rates applies to the group's total taxable income). Each member of the group can file its own tax return rather than the group filing one consolidated return.

record (Form 1120) the petitioner's fiscal year was from July 1, 2002 to June 30, 2003. From 2003 onward the petitioner's fiscal year is the calendar year.⁴ On the petition, the petitioner claimed to have been established in 1974 and to currently employ sixty workers.⁵ On the Form ETA 750 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 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. On appeal, the petitioner provided copies of the beneficiary's 2001, 2002, 2005, 2006, 2007, and 2008 Forms W-2, showing that in those years the petitioner paid the beneficiary the following amounts:

- In 2001, the petitioner paid the beneficiary \$24,669.85.

However, members of a controlled group often consolidate their financial statements and file a consolidated tax return. The controlled group of corporations is subject to limitations on tax benefits to ensure the benefits of the group do not amount to more than those to which one single corporation would be entitled. Taxpayers indicate they are members of a controlled corporate group by marking a box on the tax computation schedule of the income tax return. If the corporate members elect to apportion the graduated tax brackets and/or additional tax amounts unequally, all members must consent to an apportionment plan and attach a signed copy of the plan to their corporate tax returns (Schedule O to IRS Form 1120).

⁴ The petitioner's 2003 tax return (Form 1120S) states that the 2003 tax year began on July 1, 2003 and ended on December 31, 2003.

⁵ Public Records information shows that [REDACTED] was incorporated on July 1, 1981. *See* [REDACTED] (accessed May 23, 2012). On the petition, the petitioner claimed to have been established in 1974. 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).

- In 2002, the petitioner paid the beneficiary \$21,931.37.
- In 2005, the petitioner paid the beneficiary \$30,247.50.
- In 2006, the petitioner paid the beneficiary \$37,043.19.
- In 2007, the petitioner paid the beneficiary \$36,997.15.
- In 2008, the petitioner paid the beneficiary \$38,139.02.

The petitioner did not provide the beneficiary's 2003 and 2004 Forms W-2. While the petitioner paid the beneficiary an amount equal or greater than the proffered wage in 2006, 2007, and 2008, the AAO cannot accept the Forms W-2 of record as evidence of wages paid to the beneficiary by the petitioner. The Social Security Number (SSN) listed on the beneficiary's 2001, 2002, 2005, 2006 and 2007 Forms W-2 is different than the SSN listed on the beneficiary's 2008 Form W-2 in the record.⁶ It is noted that in Part 3 of the Form I-140 filed on August 17, 2007, the petitioner marked "none,"

⁶Misuse of another individual's SSN is a violation of Federal law and may lead to fines and/or imprisonment and disregarding the work authorization provisions printed on your Social Security card may be a violation of Federal immigration law. Violations of applicable law regarding Social Security Number fraud and misuse are serious crimes and will be subject to prosecution.

The following provisions of law deal directly with Social Security number fraud and misuse:

- **Social Security Act:** In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Act made it a felony to...*willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.*

Violators of this provision, Section 208(a)(6) of the Social Security Act, shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both. See the website at http://www.ssa.gov/OP_Home/ssact/title02/0208.htm (accessed on April 26, 2011).

- **Identity Theft and Assumption Deterrence Act:** In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act (Public Law 105-318) to address the problem of identity theft. Specifically, the Act made it a Federal crime when anyone...*knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.*

Violations of the Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

indicating that the beneficiary does not have a SSN. On Form G-325A signed by the beneficiary on August 9, 2007, the beneficiary also stated "none" in the box reserved for the SSN. USCIS may reject a fact stated in the petition if it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Further, doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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 discrepancy in the beneficiary's SSN must be addressed in any further filings.

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 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).

The petitioner's tax returns demonstrate its net income for 2000, 2002, 2003, 2004, 2005, 2005, 2006, and 2007 as shown in the table below.

- In 2000,⁷ the Form 1120 stated net income⁸ of \$83,710
- In 2001, no tax return was submitted.
- In 2002, the Form 1120 stated net income of \$77,933.
- In 2003, the Form 1120S stated net income⁹ of \$13,662.
- In 2004, the Form 1120S stated net income of \$ (252,996).
- In 2005, the Form 1120S stated net income of \$5,225.
- In 2006, the Form 1120S stated net income of \$(127,391).
- In 2007, the Form 1120S stated net income of \$(482,396).

⁷ The petitioner's 2000 tax return covers the period July 1, 2000 through June 30, 2001, which includes the priority date.

⁸ 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.

⁹ Where an S corporation's income is exclusively from a trade or business, 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. However, 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 (1997-2003) line 17e (2004-2005) line 18 (2006-2011) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed May 23, 2012) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional income, credits, deductions, and other adjustments shown on its Schedule K for 2003, 2004, 2005, 2006, and 2007, the petitioner's net income is found on Schedule K of its tax returns.

The petitioner has demonstrated that it had the ability to pay the proffered wage in 2000 and 2002, through an examination of its net income. However, for the years 2001, 2003, 2004, 2005, 2006, and 2007, the petitioner did not have sufficient net income to pay the proffered wage.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.¹⁰ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. 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 2003, 2004, 2005, 2006, and 2007, as shown in the table below.

- In 2001, no tax return was submitted.
- In 2003, the Form 1120S stated net current assets of \$138,374.
- In 2004, the Form 1120S stated net current assets of \$(22,083).
- In 2005, the Form 1120S stated net current assets of \$(72,457).
- In 2006, the Form 1120S stated net current assets of \$160,486.
- In 2007, the Form 1120S stated net current assets of \$82,828.

The petitioner has demonstrated that it had the ability to pay the proffered wage in 2003, 2006 and 2007, through an examination of its net current assets. For the years 2001, 2004, and 2005 the petitioner did not have sufficient net current assets to pay the proffered wage.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had 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.

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

¹⁰According 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.

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. As in *Sonegawa*, 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 claimed to be in business since 1974 and started to operate as an S Corporation in 2003. The figures on the petitioner's tax returns do not establish its ability to pay the proffered wage for years 2004 and 2005. The petitioner failed to provide its 2001 tax return, which prevents the AAO from examining the petitioner's ability to pay for this relevant year. Therefore, the petitioner did not establish ability to pay the proffered wage for 2001, 2004, and 2005. No evidence was provided to explain any temporary or uncharacteristic disruption in its business activities during those years. No evidence was provided to establish an outstanding reputation in the industry comparable to the petitioner in *Sonegawa*. 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.

The petitioner has also not established that the beneficiary is qualified for the offered position. To determine whether a beneficiary is eligible for an employment based immigrant visa, 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'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).

The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of a carpenter. In the instant case, the applicant must have nine years of Grade School, three years of High School, and two years of College education in Welding. The box for "College Degree Required" shows "Mexico." Further, the employer requires two years of experience in the job offered as a welder. The duties for the position are delineated at Item 13 of the Form ETA 750A. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11,

eliciting information of the beneficiary's education, the beneficiary represented that he attended grade school from September 1976 to June 1982 at the school named [REDACTED] in Mexico; high school from September 1982 to June 1985 at [REDACTED] in Mexico; College from September 1985 to June 1988 at [REDACTED] in Mexico, and; English as a Second Language (ESL) classes from 1991 to 1993 at [REDACTED]. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has worked as a full-time welder with [REDACTED] in California from June 1991 to December 1991, and as a welder with [REDACTED] in California from February 1992 to October 1994. The beneficiary's period of employment with [REDACTED] listed on the labor certification cannot be reconciled with his arrival in the United States as listed on Form I-140 (November 1991). Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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).

With the appeal, the petitioner submitted copies of the beneficiary's diplomas of "Electrical Steel Welding in the Horizontal Position," and "Electrical Steel Welding in the Vertical and Overhead Position," received on January 12, 1989 and May 12, 1989, respectively, from [REDACTED] in Mexico. The record also contains copies of the beneficiary's transcripts, indicating that each course was completed after 280 hours of training. It is noted that on the labor certification, the beneficiary listed that from September 1985 to June 1988 he attended and completed College [REDACTED]. The record contains a certificate issued on June 30, 1988, indicating that the beneficiary completed his secondary level of education. The record does not contain an academic evaluation of the beneficiary's credentials.

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.¹¹ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.¹²

¹¹ See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

¹² In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court

EDGE's credential advice provides that a Certificate of Secondary Education in Mexico is awarded upon completion of three years of lower secondary education in a vocational track, and it is comparable to less than senior high school in the United States. The evidence of record shows that the beneficiary completed three years of secondary education in Mexico

According to the Educational Ladder in Mexico provided by EDGE, Secondary Education leads to an additional three years of Upper Secondary Education, and to the attainment of a Baccalaureate Certificate (*Bachillerato*) or Technical Baccalaureate Certificate (*Bachillerato Tecnico*). The evidence of record does not demonstrate that the beneficiary possesses either a Certificate of Secondary Education, a *Bachillerato*, or a *Bachillerato Tecnico*. The *Bachillerato* is a requirement for entrance into a two- to three- year program of technical or vocational Post-Secondary education at a *Universidad Tecnologica*. The *Bachillerato* is also a requirement to obtain a *Título de Técnico Superior Universitario*, which is comparable to two to three years of university study in the United States. The labor certification requires nine years of grade school, three years of high school and two years of College in Mexico. The petitioner has not submitted sufficient evidence to demonstrate that the beneficiary met the requirements of the labor certification as of the priority date.

Regarding the experience requirements of the labor certification, and pursuant 8 C.F.R. § 204.5(I)(3)(ii)(A), 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. On appeal, the petitioner submitted a letter dated March 4, 2009, signed by attesting to the beneficiary's employment with as a full-time welder from February 1992 to October 1994. This letter is accompanied by 1994 and 1995 Forms W-2 issued by located at Long Beach, CA 90801. The letter does not provide title or an explanation of how he knows of the beneficiary's experience. Therefore, the letter of record does not comply with the requirements of the regulation. No other evidence was submitted to demonstrate that the beneficiary possessed the required two years of experience in welding or two years of experience in pipe exhaust welding as of the priority date.

The evidence in the record does not establish that the beneficiary possessed the required education

determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

(b)(6)

and experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.