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

(b)(6)

DATE: JUL 2 6 2012 OFFICE: NEBRASKA 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 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 an upholstery services business. It seeks to employ the beneficiary permanently in the United States as an upholsterer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor 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 and that the petitioner had not established that the beneficiary met the minimum requirements of the labor certification. 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 March 13, 2009 denial, an 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.

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, 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).

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Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is $12.00 per hour ($24,860.00 per year). The Form ETA 750 states that the position requires two years of experience in the job offered.

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 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 1993, to have a gross annual income of $549,370.85, and to currently employ nine workers. According to the tax returns in the record, the petitioner's fiscal year begins on July 1st and ends on June 30th, thus the priority date falls within the period reported on the 2000 tax return. 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 Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date. The record contains a pay stub indicating payment from the petitioner to the beneficiary under Social Security number [redacted] for the period of November 13, 2008, to November 26, 2008, of $990.00 current pay; and $28,965.00 in gross year-to-date wages; with a description of "driver/sal" indicating work as a driver. The petitioner does not state why the beneficiary appears to be working as a driver as opposed to an upholsterer. The record also contains copies of the petitioner's state of California

[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).

quarterly wage reports for the 4th quarter of 2006 and the 1st and 2nd quarters of 2007 showing wages paid to the beneficiary under Social Security number

On appeal, counsel submitted copies of Forms W-2 for wages paid from the petitioner to the beneficiary under Social Security number in 2001, 2002, 2003, 2005, 2006, 2007, and 2008 according to the table below.

- In 2001, the Form W-2 stated wages paid to the beneficiary of $21,175.00.
- In 2002, the Form W-2 stated wages paid to the beneficiary of $23,658.00.
- In 2003, the Form W-2 stated wages paid to the beneficiary of $25,150.61.
- In 2005, the Form W-2 stated wages paid to the beneficiary of $28,615.73.
- In 2006, the Form W-2 stated wages paid to the beneficiary of $30,745.00.
- In 2007, the Form W-2 stated wages paid to the beneficiary of $30,990.78.
- In 2008, the Form W-2 stated wages paid to the beneficiary of $30,085.00.

No Form W-2 was submitted for 2004. Therefore, as the proffered wage was $24,960.00 per year, the petitioner has submitted evidence in support of the claim that it paid the beneficiary the proffered wage in 2003, 2005, 2006, 2007, and 2008, and failed to submit evidence that it paid the proffered wage in 2001, 2002, and 2004. If the above Forms W-2 are accepted as valid, the petitioner would be obligated to demonstrate its ability to pay the difference between wages it actually paid and the proffered wage as shown in the table below.

Year	Proffered Wage	Wages Paid	Balance
2001	$24,960.00	$21,175.00.	$3,785.00
2002	$24,960.00	$23,658.00	$1,302.00
2003	$24,960.00	$25,150.61	$0
2004	$24,960.00	$0	$24,960.00
2005	$24,960.00	$28,615.73	$0
2006	$24,960.00	$30,745.00	$0
2007	$24,960.00	$30,990.78	$0
2008	$24,960.00	$30,085.00	$0

However, the AAO notes that the petitioner has provided evidence of its payments to the beneficiary under two different Social Security numbers. As previously stated, the pay stub from 2008 reflected payments under while the quarterly reports and Forms W-2 reflected payments under Research conducted in all available databases revealed that both Social Security numbers have been used by other individuals, and that the Social Security number shown on the Forms W-2 above was issued in Puerto Rico in 1959, before the beneficiary was born. No evidence was submitted in the record to explain why these two Social Security numbers used by the beneficiary differed.

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 addition, *Matter of Ho* states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition."

Therefore, absent evidence in the record of proceeding which explains why two different Social Security numbers were used on payment documents issued by the petitioner to the beneficiary, the AAO will not consider the above Forms W-2 in calculating the amount of wages paid by the petitioner.[2]

In addition, USCIS records indicate that the petitioner has filed four additional petitions including three I-140 petitions which were approved. 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

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[2] Further, misuse 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 a 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.

permanent residence. *See* 8 C.F.R. § 204.5(g)(2). In the instant case, the petitioner has not provided evidence of the amounts of these additional salaries of the beneficiaries for whom immigrant petitions were filed or evidence that it has the ability to pay these salaries in addition to that of the beneficiary. The AAO notes that any calculation of the petitioner's ability to pay the beneficiary the proffered wage must include the amounts of these additional salaries it has committed to paying.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's 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.
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> 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 January 9, 2009, with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2008 federal 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, 2002, 2003, 2004, 2005, 2006, and 2007, as shown in the table below.

- In 2001, the Form 1120 stated net income of $35,154.00.
- In 2002, the Form 1120 stated net income of $15,549.00.
- In 2003, the Form 1120 stated net income of $15,105.00.
- In 2004, the Form 1120 stated net income of $16,880.00.
- In 2005, the Form 1120 stated net income of $13,285.00.
- In 2006, the Form 1120 stated net income of $31,095.00.
- In 2007, the Form 1120 stated net income of -$100,960.00.

Therefore, for the years 2001 and 2006, the petitioner did have sufficient net income to pay the proffered wage. The petitioner did not have sufficient net income to pay the proffered wage in 2002, 2003, 2004, 2005, and 2008. The AAO also notes that since the petitioner's fiscal year begins on July 1st and ends on June 30th, the priority date of April 30, 2001, falls within the period reported on the petitioner's 2000 tax return. The Form 1120 from 2000 was not submitted; therefore, the petitioner has not demonstrated its ability to pay the proffered wage on the priority date.

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.[3] 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

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

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, 2002, 2003, 2004, 2005, 2006, and 2007, as shown in the table below.

- In 2001, the Form 1120 stated net current assets of $19,366.00
- In 2002, the Form 1120 stated net current assets of $8,611.00
- In 2003, the Form 1120 stated net current assets of $9,726.00
- In 2004, the Form 1120 stated net current assets of -$12,264.00
- In 2005, the Form 1120 stated net current assets of -$19,848.00
- In 2006, the Form 1120 stated net current assets of -$20,136.00
- In 2007, the Form 1120 stated net current assets of -$188.00

Therefore, for the years 2001, 2002, 2003, 2004, 2005, 2006, and 2007, the petitioner did not have sufficient net current assets to pay the proffered wage. As noted above, the petitioner's fiscal year begins on July 1st and ends on June 30th, thus the priority date of April 30, 2001, falls within the period reported on the petitioner's 2000 tax return. The Form 1120 from 2000 was not submitted; therefore, the petitioner has not demonstrated its net current assets on the priority date.

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.

On appeal, counsel asserts that the Forms W-2 from 2001 through 2008 show that the petitioner has the ability to pay the proffered wage. However, as previously stated, the petitioner has provided payment documents which were issued under two different Social Security numbers, both of which have been used by other individuals. As the petitioner has failed to resolve this inconsistency in the record by independent objective evidence and has failed to submit competent objective evidence pointing to where the truth lies, the claimed payments of the copies of Forms W-2 are not persuasive.

The AAO also notes that the record contains copies of financial statements which were not accompanied by an accountant's report. Any reliance on these unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the 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.

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'l Comm'r 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. 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 demonstrated sufficient net income in 2001 and 2006 to pay the proffered wage; however, it failed to do so in 2002 through 2005, and then experienced a net loss of $100,960.00 in the most recent year shown, 2007. The petitioner's gross receipts during the relevant years varied. The petitioner indicated on the Form I-140 that it employs nine workers. Salaries and wages were not substantial and ranged from $0 to $21,744.00, while labor costs shown under cost of goods sold were more substantial. While the petitioner has been in business eighteen years, it appears to pay modest compensation to its owners. The petitioner did not submit evidence to demonstrate that the owners were willing and able to forego officer compensation in order to pay the beneficiary the proffered wage. In addition, there is no evidence in the record of the historical growth of the petitioner's business, of the occurrence of any uncharacteristic business expenditures or losses from which it has since recovered, or of the petitioner's reputation within its industry. Moreover, the record does not contain evidence of the additional salaries the petitioner has committed to pay the other beneficiaries of I-140 petitions is has filed. 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 evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The director's decision denying the petition also concludes that the beneficiary did not possess the minimum two years of experience required to perform the offered position by the priority date.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION
Grade School: Not required
High School: Not required
College: None
College Degree Required: None
Major Field of Study: None
TRAINING: None Required.
EXPERIENCE: Two (2) years in the job offered.
OTHER SPECIAL REQUIREMENTS: None.

The beneficiary set forth his credentials on the labor certification and signed his name on April 23, 2001, under a declaration that the contents of the form are true and correct under the penalty of perjury.

At Part B, question 15 where the beneficiary is required to list "all jobs held during the last three (3) years" and to "list any other jobs related to the occupation for which [he] is seeking certification," the beneficiary did not list any claimed work experience.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> 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.

The initial filing of the petition included an experience letter from Vice President, on letterhead stating that the company in Canada employed the beneficiary as an installer from January 1998 until March 2000. However, the letter does not provide any description of the beneficiary's work as an "installer" or state if the duties were comparable to those of an upholsterer, which is the position as certified on the Form ETA 750. The letter also fails to state whether or not the employment was full-time.

On appeal, the petitioner submits a letter from on letterhead stating that the company, which is located at Texas 77039, employed the beneficiary as an upholsterer working 40 hours per week from June 1994 until December 1997. However, the letter does not state the title of the trainer or employer who wrote the letter, as is required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A).

The AAO notes that neither of these two prior work experiences were listed on the labor certification. In *Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

Furthermore, the AAO notes that a check of the website maintained by the Appraisal District in Texas available at (accessed June 28, 2012) indicates that the address provided on the letter for of Texas is a residence owned by who resides in California rather than a business property operated by Mr.

As previously noted, *Matter of Ho* states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Supra.* at 591-92. As both letters of experience fail to meet the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), and the letter from Mr. provides a residential address rather than a commercial one, the AAO does not find the letters persuasive in support of the claim that the beneficiary has the required two years of work experience as an upholsterer.

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

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.