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



U.S. Citizenship
and Immigration
Services

Date: **JUL 30 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. On September 2, 2008, the petitioner filed a motion to reopen and reconsider the decision and submitted additional evidence. The director approved the motion and found that the evidence submitted with the motion did not overcome the grounds of denial. Therefore, on November 24, 2008, the director affirmed the denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pizza cafe. It seeks to employ the beneficiary permanently in the United States as a pizza restaurant manager. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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

As set forth in the director's July 28, 2008 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 ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, Application for Permanent Employment

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

Here, the ETA Form 9089 was accepted on June 25, 2006. The proffered wage as stated on the ETA Form 9089 is \$34,154.00 per year. The ETA Form 9089 states that the position requires 24 months of experience in the job offered as a pizza restaurant manager, or 24 months of experience as a pizza assistant manager.

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

To demonstrate its ability to pay the proffered wage, the petitioner provided the following evidence:

- A copy of the first page of the 2004 federal tax returns (Form 1120S) of [REDACTED]
- Copies of the first pages of [REDACTED] Quarterly Federal Tax Return (Form 941) for the first, second, third, and fourth quarters of 2006.
- Copies of paystubs issued to the beneficiary by [REDACTED]
- Copies of Forms W-2 for 2006 and 2007 issued to the beneficiary by [REDACTED]
- A copy of Form W-2 for 2007 issued to the beneficiary by [REDACTED]
- [REDACTED] bank statement from the [REDACTED] for March, April and May 2006.

The record also includes the following:

- A copy of the letter dated August 27, 2008, and signed by [REDACTED] an accountant with [REDACTED] stating that [REDACTED] was terminated as a corporation and [REDACTED] assumed all [REDACTED] assets and liabilities.
- A letter dated February 15, 2008, signed by [REDACTED] in the capacity of the petitioner's owner, asserting that the petitioner was under the company [REDACTED] and due to reorganization; it is currently under [REDACTED]
- A copy of the correspondence from the IRS assigning [REDACTED] an employer identification number.
- A copy of the certificate of assumed business name issued by the Indiana Secretary of State on April 3, 2007, stating that [REDACTED] will be doing business under the assumed name of [REDACTED]

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).

- A copy of [REDACTED] request for business closure for filed with the Indiana Department of Revenue on December 14, 2007.
- A copy of the first page of a Service Agreement between [REDACTED] and [REDACTED]

On the petition, the petitioner claimed to have been established in 1996 and to currently employ four workers. On the ETA Form 9089, signed by the beneficiary on February 13, 2008, in response to the director's request for evidence, the beneficiary claimed to have worked for the petitioner since December 7, 1998.

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. In the instant case, the beneficiary's paystubs show that [REDACTED] paid the beneficiary \$1,325 in each pay-period for January 6, 2008, August 3, 2008, December 7, 2008 and December 21, 2008. Even if the beneficiary received \$1,325 every two weeks for one entire year, the total is \$31,800 per year, which is less than the proffered wage. The beneficiary's 2006 and 2007 Forms W-2 were not issued by the petitioner. Rather, the Forms W-2 were issued to the beneficiary by [REDACTED] and cannot be accepted as evidence of wages paid by the petitioner.²

In addition, the AAO cannot accept the beneficiary's Forms W-2 as proof of wages paid to the beneficiary by the petitioner. The beneficiary's Social Security number (SSN) shown on the 2007 Form W-2 issued by [REDACTED] does not correspond to the beneficiary's SSN shown on the 2007 Form W-2 issued by [REDACTED]. Neither of these SSNs corresponds to the SSN shown on the beneficiary's 2006 individual federal tax return (Form 1040). Further research revealed that the SSNs listed on Forms W-2 and claimed by the beneficiary either do not exist or have been used by other individuals. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the

² Even if the Forms W-2 were accepted as evidence of wages paid by the petitioner, the total wages paid in 2006 (\$21,450) and in 2007 (\$26,450) are less than the proffered wage.

(b)(6)

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 SSN shown on the beneficiary's Form 1040 appears to be an individual taxpayer identification number (ITIN) temporarily issued by the IRS to the beneficiary. An ITIN is a tax-processing number issued by the IRS to those individuals who do not have a SSN for filing tax returns and other tax-related documents.³

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 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.*

³ The instructions to IRS Form W-2 state that an employer should not accept an ITIN for employment purposes. When an employer prepares a Form W-2, it should show the correct SSN for the employee. See <http://www.irs.gov/instructions/iw2w3/ch01.html> (accessed February 16, 2012).

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.

Therefore, the petitioner has not established that it paid the beneficiary the proffered wage for any period of time from the priority date in 2006, onward.

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 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).

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.⁴ 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 failed to submit at least one of the three types of regulatory prescribed evidence of its ability to pay the proffered wage.⁵ Instead, the petitioner elected to submit the beneficiary's pay stubs and Forms W-2 as evidence of wages paid to the beneficiary. As discussed above, the inconsistencies in the issuing entity and the beneficiary's SSN prevent the AAO from considering this evidence. The petitioner's failure to submit one of the three types of evidence of ability to pay set forth in the regulations prevents the AAO from fully analyzing the petitioner's ability to pay the beneficiary the proffered wage of \$34,154, based on the petitioner's net income and net current assets for all relevant years. Therefore, from the date the ETA Form 9089 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.

On appeal, counsel claims that the petitioner is currently paying the beneficiary the proffered wage, and that the beneficiary's periods of absence from the job in 2006 and 2007 required the petitioner to hire two employees to replace the petitioner temporarily. Counsel asserted that the petitioner spent in wages \$106,046.38 in 2006 and \$87,742.50 in 2007. However, counsel's assertions are not supported by independent material evidence. The petitioner has not specified the names of the employees that replaced the beneficiary, nor how many hours they worked, the positions they

⁴According 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.

⁵ In the request for evidence issued by the director on January 10, 2008, the director specifically requested the petitioner's 2006 federal tax returns. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

occupied, and the duties they performed. 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. Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's reliance on the balances in the petitioner's bank account is misplaced. First, 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. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, although the petitioner did not submit its tax returns for any of the relevant years, 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 tax return(s).

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as, the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner failed to provide regulatory-prescribed evidence of its ability to pay the proffered wage. The evidence of record falls short in allowing the AAO to conduct a totality of the circumstances analysis based on *Sonegawa*. The petitioner submitted no evidence that it enjoys a reputation like that in *Sonegawa*. Thus, it is concluded that the petitioner has not established its continuing ability to pay the proffered wage beginning on the priority date to present.

Beyond the decision of the director,⁶ the petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the beneficiary's employer is now a different entity than the petitioner/labor certification employer and appellant, it must establish that it is a successor-in-interest to that entity. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of business transfer until the beneficiary adjusts status to lawful permanent resident.

The record contains a letter dated August 27, 2008, and signed by [REDACTED] an accountant with [REDACTED] stated that [REDACTED] was terminated as a corporation and [REDACTED] assumed all [REDACTED] assets and liabilities. The record also contains a copy of the correspondence from the IRS providing [REDACTED] with an employer identification number, and a copy of [REDACTED] request for business closure filed with the Indiana Department of Revenue on December 14, 2007.

A search on Indiana's Secretary of State Website revealed that [REDACTED] was incorporated on July 12, 1993 and administratively dissolved on April 3, 1999.⁷ While the Indiana's

⁶ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

⁷ See https://secure.in.gov/sos/online_corps/view_details.aspx?guid=E6C65128-40EA-4298-AE76-

Secretary of State Website shows that [REDACTED] was administratively dissolved on April 3, 1999, the evidence of record shows that [REDACTED] filed its request for business closure with the Indiana Department of Revenue on December 14, 2007. This discrepancy casts doubts on when [REDACTED] ceased to exist. 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).

Public Record information also shows that [REDACTED] was incorporated on February 2, 2007. [REDACTED] registered business address is [REDACTED] Indianapolis, IN 46220.⁸ This is the address stated by the petitioner, [REDACTED] on Part 1 of Form I-140 and the address shown on [REDACTED] 2004 federal tax return (IRS Form 1120S). A search on Google Maps indicated that this is a residential address.⁹ In addition, Public record information also shows that [REDACTED] assumed [REDACTED] on April 3, 2007.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of [REDACTED] from [REDACTED]. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

Also beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). See also, *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires 24 months of experience in the job offered as a pizza restaurant manager, or 24 months of experience as a pizza assistant manager. On the labor certification, the beneficiary claims to qualify for the offered position based on experience gained while employed with [REDACTED] located at [REDACTED]

23EFF8B4F28C (accessed April 12, 2012).

⁸ See <https://secure.in.gov/> [REDACTED] (accessed April 12, 2012).

⁹ See <http://g.co/maps/> [REDACTED] (accessed April 10, 2012).

Greenwood, IN 46142, as a full-time assistant pizza manger from June 6, 1994 to February 2, 2007. The beneficiary also represented his employment with the petitioner at ~~St. Vincent Hospital~~, in Indianapolis, IN, as a pizza restaurant manager from December 7, 1998. The beneficiary signed the labor certification on February 13, 2008 and did not fill out Section K.a.7. (End date).

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter from [REDACTED] signed by its president [REDACTED] is located at [REDACTED] Indianapolis, IN 46217. [REDACTED] stated that the beneficiary worked for [REDACTED] now [REDACTED] as an assistant pizza manager from June 1994 to February 2007. The letter does not mention whether the beneficiary's employment was full-time or part-time and, therefore, fails to comply with the regulations.

The record also contains Form G-325A submitted by the beneficiary in connection with his Form I-485 application to adjust status, and signed on July 25, 2007. On Form G-325A, the beneficiary represented that he has been working for [REDACTED] located at [REDACTED] Indianapolis, IN 46220, as a manager since December 1998. The beneficiary's work experience represented on the labor certification cannot be reconciled with the work experience history shown on his Form G-325A of record. Furthermore, it is noted that on the beneficiary's 2006 individual federal income tax return (Form 1040) the beneficiary represented himself as a cook and not as a manager or an assistant manager. No reference is made on Form G-325A to the beneficiary's employment with [REDACTED] as an assistant manager from June 1994 to February 2007. 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 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.