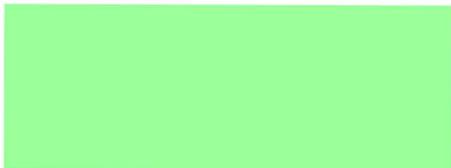




U.S. Citizenship
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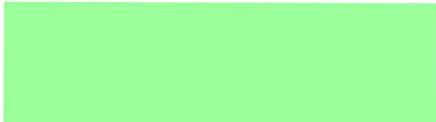


Date: JUN 14 2012

Office: TEXAS SERVICE CENTER

FILE: 

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 with the field office or service center that originally decided your case by filing a 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a resort/training facility. It seeks to employ the beneficiary permanently in the United States as a tennis professional. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed 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.

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

As set forth in the director's April 8, 2009 denial, the issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

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

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

¹ The 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).

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is a base pay of \$25,000 per year. However, the Form ETA 750 states the beneficiary would be working 10 hours of overtime per week, which based on the base annual wage, would equate to an additional \$6,250 per year, for a total proffered wage of \$31,250 per year. The Form ETA 750 states that the position requires four years of training, and four years of experience in the offered position.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation.² On the petition, the petitioner claimed to have been established in 1997 and to currently employ 6 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 29, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the 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 established that it employed and paid the beneficiary partial wages during any relevant timeframe including the period from the priority date in April 2001, and subsequently. Forms W-2 and 1099s issued to the beneficiary demonstrate wages paid to the beneficiary as shown in the table below.

² The petitioner was a C Corporation from 2001 to 2004. As of January 24, 2005, it elected to become an S Corporation.

- In 2002, the Form 1099 stated nonemployee compensation of \$4,740.
- In 2005, the Form 1099 stated nonemployee compensation of \$ 660.
- In 2005, the Form W-2 stated Wages, tips and other compensation of \$1,808.³
- In 2006, the Form W-2 stated Wages, tips and other compensation of \$1,640.
- In 2007, the Form W-2 stated Wages, tips and other compensation of \$ 440.

The petitioner also submitted a list of checks that were purportedly issued to the beneficiary, [REDACTED] from March 2000 to January 31, 2005. However, no evidence in the form of cancelled checks was submitted.

Therefore, for the years 2001 through 2007, the petitioner did not establish that it employed and paid the beneficiary the proffered wage.⁴

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).

³ If this matter is pursued any further, the petitioner must explain why the beneficiary was issued both IRS Forms 1099 and W-2 in 2005.

⁴ The AAO acknowledges as part of the record copies of Schedule C from what appears to be the beneficiary's Form 1040 for years 2001 through 2007. The Schedules C demonstrate self-employment income claimed by the beneficiary on his personal tax return Form 1040. The Schedule C will not be considered as income from the petitioner in the ATP calculation because there is no evidence that these funds came from the petitioner.

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 record before the director closed on March 23, 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 through 2007, as shown in the table below.

- In 2001, the Form 1120 stated net income⁵ of -\$14,166.
- In 2002, the Form 1120 stated net income of \$13,002.
- In 2003, the Form 1120 stated net income of -\$ 2,542.
- In 2004, the form 1120 stated net income of \$ 8,917.
- In 2005, the Form 1120S stated net income⁶ of \$194,904.

⁵ 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.

⁶ 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

- In 2006, the Form 1120S stated net income of \$211, 275.
- In 2007, the Form 1120S stated net income of \$ 85,898.

Therefore, for the years 2001 through 2004, 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.⁷ 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 2001 through 2007, as shown in the table below.

- In 2001, the Form 1120 stated net current assets of -\$16,796.
- In 2002, the Form 1120 stated net current assets of -\$ 5,794.
- In 2003, the Form 1120 stated net current assets of \$10,929.
- In 2004, the Form 1120 stated net current assets of \$18,561.
- In 2005, the Form 1120S stated net current assets of -\$17,707.
- In 2006, the Form 1120S stated net current assets of \$ 3,466.
- In 2007, the Form 1120S stated net current assets of \$13,956.

Therefore, for the years 2001 through 2007, 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

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 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 3, 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 deductions shown on its Schedule K for 2005, and additional income shown on Schedule K for 2007, the petitioner's net income is found on Schedule K of its tax returns for 2005 and 2007.

⁷According 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.

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 petitioner utilizes a practice of maintaining minimal income and cash balance in order to minimize its year-end tax obligations, and that excess income is often paid out in the form of employee bonuses.

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.

Counsel claims a totality of the circumstances approach should be taken. 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.

The record does not contain any newspapers or magazine articles, awards, or certifications indicating the company's milestone achievements. Unlike *Sonogawa*, the petitioner in this case has not shown any evidence reflecting the company's reputation or historical growth since its inception in 1997. Nor has the petitioner presented evidence of any uncharacteristic business expenses or losses contributing to its inability to pay the proffered wage. 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.

Finally, according to USCIS records, the petitioner has filed one I-129 application on behalf of another beneficiary. Accordingly, the petitioner must establish that it has had the continuing ability to pay the

combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The evidence in the record does not document the dates of employment, proffered wage paid to this other beneficiary, whether the application was withdrawn, revoked, or denied, or whether the other beneficiary has obtained lawful permanent residence. Thus, it is concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiary of its other petition for this additional reason.

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

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).

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 four years of training and four years of experience as a tennis professional. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a self-employed tennis instructor from 1998 to the present; as a tennis instructor for [REDACTED] Houston, Texas from 1998 to the present; and, as a tennis pro for [REDACTED] (no address given) from 1998 to the present.

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 experience letters from the following:

- Statement from [REDACTED] President on the petitioner's letterhead stating that the company employed the beneficiary as a tennis instructor from March 2000 to the present;

- Letter from [REDACTED] tennis professional, on [REDACTED] letterhead, stating that the company employed the beneficiary from February 1998 until January 2000;
- Letter from [REDACTED] Owner/Director, on [REDACTED] letterhead stating that the company employed the beneficiary from August 1986 through July 1989;
- Letter from [REDACTED] "Personell" Manager, on [REDACTED] letterhead stating that the company employed the beneficiary as "assistant, sports and entertainment";
- Letter from [REDACTED] "Personell" Manager, on [REDACTED] letterhead stating that the company employed the beneficiary as "assistant, sports and entertainment from August 16 to December 8, 1991;
- Letter from [REDACTED] president, on [REDACTED] letterhead stating the beneficiary was employed with Club: [REDACTED];
- Letter from [REDACTED] Resident Manager, on [REDACTED] letterhead, stating that the company employed the beneficiary as an animador;
- Letter from [REDACTED] with Human Resources, on [REDACTED] letterhead, stating that the company employed the beneficiary as an animador from October 15, 1992 to May 10, 1993; and
- Letter from [REDACTED] Director, on [REDACTED] letterhead, stating that the company employed the beneficiary as a tennis pro.

However, none of these letters state the beneficiary's employment was full-time, or describe the beneficiary's duties in detail. The letters from [REDACTED] do not state the title of the beneficiary's position. The letters from [REDACTED] do not specify the dates of employment.

Further, none of the above employers are listed on the labor certification as prior employers where the beneficiary gained qualifying experience. 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.

The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has failed to establish that the beneficiary is qualified for the offered position.

Additionally, the record contains the following with regard to the beneficiary's training:

- A Diploma from [REDACTED] for participation in a training course for teachers and instructors, in tennis, by the [REDACTED] for February 12 to March 1, 1986 (2 weeks);
- A Diploma from [REDACTED] for participation in a training course for Teachers and Instructors in tennis, from February 1 to February 7, 1987 (1 week);
- A Diploma from [REDACTED] for participation in a training course for Teachers and Instructors in tennis, on April 1, 1989 (1 day);
- A Diploma from [REDACTED] for participation in a training course for Teachers and Instructors in

tennis, on February 14, 1992 (1 day):

- Eleven certificates from the [REDACTED] to establish the beneficiary completed all tests and examinations and qualified for PTR certification as a Professional or a Professional 2A;
- Three certificates of attendance from the [REDACTED] to establish the beneficiary participated in three tennis teacher workshops, (totaling two weeks);
- Certificate of Attendance from the [REDACTED] to establish the beneficiary attended a [REDACTED] tennis teacher workshop on June 28, 1998 (1 day);
- Certificate of Attendance from the [REDACTED] to establish the beneficiary attended a Play Action Drills Workshop on March 10, 2000 (1 day);
- Certificate of Achievement, which establishes the beneficiary fulfilled the necessary requirements and obtained the additional Merit Achievement Program rating of 2A;
- Diploma from [REDACTED] for participation in the committee to work together on school tennis;
- To Whom It May Concern letter, from [REDACTED] stating the beneficiary “practiced the techniques on tennis classes for children as well as adults. Two courses with different teachers and in different institutions dedicated to teaching the different techniques during the period of 1994 to 1996, with [REDACTED]” and
- To Whom It May Concern letter, from [REDACTED] Director of Tennis at [REDACTED] [REDACTED] Houston, TX, stating the beneficiary trained and worked under his supervision between November 1997 and January 2000.

The certificates establish the beneficiary attended approximately 5 weeks and 5 days of training. No evidence was submitted to establish the number of days/weeks the beneficiary attended training, before he completed all tests and examinations to become qualified for PTR certification as a Professional or a Professional 2A.

The statement from [REDACTED] does not state the name of the course, the length of the courses, and/or a specific time-frame within this 1994 to 1996 period that the beneficiary was to be teaching. Finally, with regard to the statement from [REDACTED] again, there are no specific dates, or description of the training the beneficiary took part in.

It is also noted that the beneficiary claimed on the Form I-485 Application to Register Permanent Residence or Adjust Status, filed on March 28, 2008 that his last entry into the U.S. was in December 1998. On the instant form I-140 filed January 11, 2008, the beneficiary claims his last entry was March 1999. Therefore, if the beneficiary’s last entry into the U.S. was on December 1998 or March 1999, it is unclear how he would have attended training with [REDACTED] in Texas starting in November 1997. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 591, 592.

Therefore, the above-referenced evidence do not establish the beneficiary had the required four years of training by the priority date of April 30, 2001, and the petition will be denied for this additional reason.

Beyond the decision of the director, according to the beneficiary's Form 1040 Schedule C that were submitted for 2001 through 2007, the beneficiary has been self-employed for the duration of this petition (11 years). Therefore, it casts doubt on whether the present petition represents a bona fide, full-time job offer. Doubt 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).

Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). Any future filings must address this issue.

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.