

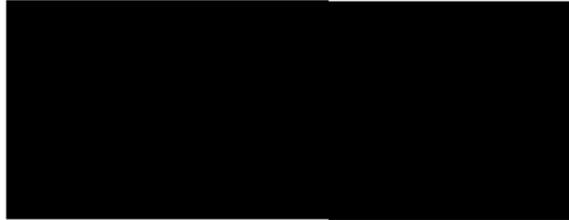
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:



JUL 11 2012

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

The petitioner is a hair salon. It seeks to employ the beneficiary permanently in the United States as a hair stylist/supervisor. 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, 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 May 27, 2008 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.

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 June 7, 2004. The proffered wage as stated on the Form ETA 750 is \$600 per week (\$31,200.00 per year). The Form ETA 750 states that the position requires two years of experience in the job offered and a NYS Cosmetology license.

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 1990, to have a gross annual income of \$1,079,516, and to currently employ 17 workers. According to the tax returns in the record, the petitioner's fiscal year of November 1 to October 31 of the following year. On the Form ETA 750B, signed by the beneficiary on April 5, 2004, the beneficiary did not claim to have worked for the petitioner.

In this instance, Form ETA 750 was initially submitted by [REDACTED], d/b/a Dramatics NYC, [REDACTED]. The name of the employer on the Form ETA 750 was subsequently changed to [REDACTED], showing an address of [REDACTED]. The correction stamp states that DOL approved this change on December 4, 2006. The Form I-140 lists the petitioning employer as [REDACTED] with an Internal Revenue Tax number (EIN) of [REDACTED].

The regulation at 20 C.F.R. § 656.30(c)(2) provides as follows:

656.30 - Validity of and invalidation of labor certifications.

...

(c) Scope of validity. For certifications resulting from applications filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

...

(2) A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the Application for Alien Employment Certification (Form ETA 750) or the Application for Permanent Employment Certification (Form ETA 9089).

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 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.

When the present Form ETA 750 was filed and accepted by the U.S. Department of Labor, (DOL), the DOL would permit the substitution of a successor employer² if it occurred before a final determination where the particular job opportunity was preserved in the same area of intended employment consistent with 20 C.F.R. § 656.30(c)(2). *See Horizon Science Academy*, 06-INA-46 (BALCA Mar. 8, 2007) [when the present Form ETA 750 was filed, employers could not be substituted unless the alien was working in the exact same position, performing the same duties, in the same area of intended employment, and for the same wages]; *See also American Chick Sexing Assn'n & Accu. Co.*, 89-INA-320 (BALCA Mar. 12, 1991) [substitution made before final rebuttal to CO]; *Int'l Contractors, Inc. & Technical Programming Services, Inc.*, 89-INA-278 (BALCA June 13, 1990). DOL would also allow a new employer to substitute where it is the same job opportunity in the same area of intended employment. *See also Law Offices of Jean-Pierre Karnos*, 03-INA- (BALCA May 20, 2004) [where there was a new employer who took over the law practice of Karnos on his death, a new labor certification does not have to be filed for an accountant applicant where it is the same job opportunity in the same area of intended employment including the same job duties and wages.]

USCIS has not issued regulations governing immigrant visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986), a binding, legacy Immigration and Naturalization Service ("INS") decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

The facts of the precedent decision, *Matter of Dial Auto*, are instructive in this matter. *Matter of Dial Auto* involved a petition filed by [REDACTED] on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, [REDACTED]

² Substitutions or modifications of the labor certification are no longer permitted. 20 C.F.R. § 656.11. Although the regulation addresses changes to the identity of the beneficiary on the application, it also states that requests for modification of the labor certification "will not be accepted." 20 C.F.R. § 656.11(b).

filed the underlying labor certification. On the petition, [REDACTED] claimed to be a successor-in-interest to [REDACTED]. The part of the Commissioner's decision relating to the successor-in-interest issue follows:

Additionally, the representations made by the petitioner concerning the relationship between [REDACTED] and itself are issues which have not been resolved. In order to determine whether the petitioner was a true successor to [REDACTED], counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of [REDACTED] and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the *petitioner's claim of having assumed all of [REDACTED] rights, duties, obligations, etc.,* is found to be untrue, then grounds would exist for invalidation of the labor certification under 20 C.F.R. § 656.30 (1987). Conversely, if the claim is found to be true, and it is determined that an actual successorship exists, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

19 I&N Dec. at 482-83 (emphasis added).

In order to establish eligibility for the immigrant visa in all respects, the petitioner must support its claim with all necessary evidence, including evidence of ability to pay. The petitioning successor must prove the predecessor's ability to pay the proffered wage as of the priority date and until the date of transfer of ownership to the successor. In addition, the petitioner must establish the successor's ability to pay the proffered wage in accordance from the date of transfer of ownership

[REDACTED] Here, similar to a successor, the change in business was accepted by the Department of Labor on December 4, 2006. The initial entity, [REDACTED] must establish its ability to pay the proffered wage from June 7, 2004 until the date of amendment. [REDACTED] must establish its ability to pay the proffered wage from December 4, 2006 onward. Nothing shows that [REDACTED] and [REDACTED] are the same entity or operate under the same tax identification number, or that [REDACTED] Inc. is the successor to [REDACTED]. New York State corporation records show that [REDACTED], and [REDACTED] are separately registered corporations. The petitioner must address and resolve this issue in any further filings.

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 or any wages from the priority date of June 7, 2004 and continuing 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 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.

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 April 18, 2008 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 2007 federal income tax return was not yet due. Therefore, the petitioner’s income tax return for 2006 is the most recent return available. As noted above, the initial entity listed on the labor certification, [REDACTED] d/b/a [REDACTED] did not submit its tax returns for the time period of the priority date to the date of substitution.” The tax returns for 2003, 2004, 2005, and 2006, show the following:

- In 2003, the Form 1120 stated no net income.⁴
- In 2004, the Form 1120 stated net income of \$26,009.00.
- In 2005, the Form 1120 stated net income of (\$1,842.00).
- In 2006, the Form 1120 stated net income of \$2,491.00.

Therefore, for tax year 2006, covering the time period from November 1, 2006 to October 31, 2007, the petitioner did not have sufficient net income to pay the proffered wage. If the tax returns submitted may properly be considered for the initial labor certification applicant, then the tax returns

³ In any further filings, the petitioner should submit the initial labor certification applicant’s tax returns for the time period of the priority date until the date of employer substitution or successorship. The petitioner must resolve this issue in any further filings and submit evidence related to the change and whether it represents a name change, successorship, or employer substitution. 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).

⁴ The 2003 tax return submitted would represent the time period from November 1, 2003 to October 31, 2004 and cover the priority date of June 7, 2004. However, as stated above, in any further filings, the petitioner must explain the change in entity on the labor certification and submit the initial labor certification applicant’s tax return.

for tax years 2003, 2004, and 2005 would also fail to establish that the petitioner's net income was sufficient to pay the proffered wage.

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.⁵ 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 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 tax returns demonstrate its end-of-year net current assets for tax years 2003, 2004, 2005, and 2006, as shown in the table below.

- In 2003, the Form 1120 stated net current assets of \$11,318.00.⁶
- In 2004, the Form 1120 stated net current assets of \$40,104.00.
- In 2005, the Form 1120 stated net current assets of \$35,390.00.
- In 2006, the Form 1120 stated net current assets of \$13,498.00.

Thus, for tax years 2003 and 2006, the petitioner did not have sufficient net current assets to pay the proffered wage. Whether the tax returns submitted for [REDACTED] may properly be attributed to the initial entity is unclear and must be resolved before we can conclude the petitioner can pay the proffered wage in tax years 2004 or 2005.

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, the petitioner submitted a compiled 2007 profit and loss statement (for the two months ending December 31, 2007) from the petitioner's accountant. The petitioner states that the net profit of \$36,623.31 should be used to calculate the net profits for 2007 and is sufficient to pay the proffered wage for that year. The compiled statement is unaudited. Any reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a

⁵ 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.

⁶ As noted above, the 2003 tax return submitted partially covers the time period of the priority date. However, the record lacks tax returns for the initial entity on the labor certification or an explanation of whether the instant taxes are relevant to the initial labor certification applicant.

petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. The bottom of this profit and loss statement states that it is for "management purposes only." 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.

The accountant's letter also references that the petitioner has over \$1 million in gross receipts for six straight years, but fails to attach any documentation to reflect this [the record contains only four tax returns, and as noted above, it is not clear that the tax returns can be attributed to the initial labor certification applicant]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Additionally, the accountant's letter states that approximately \$500,000.00 in non-officer compensation (employee wages) has been paid annually.⁷ Wages paid to others generally will not establish the petitioner's ability to pay the proffered wage. Nothing shows that the petitioner paid the beneficiary any of these wages.

Counsel also asserts that the USCIS should consider the totality of the circumstances in the petitioner's ability to pay the proffered wage in accordance with *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

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. *Id.* 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 [REDACTED]. 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

⁷ Similarly, this statement appears to refer to the petitioner, and as stated above, it is unclear that all of the tax returns can be attributed to the initial entity.

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 states that it has been in business since 1990 and employs 17 workers. The petitioner has submitted evidence of the reputation of a company called [REDACTED] however, there is not objective evidence of the reputation of [REDACTED] or what relationship, if any, these two entities share.⁸ The petitioner has not provided any evidence of historic growth in its business or of any uncharacteristic losses. The 2003 and 2006 tax returns submitted reflects no net income [2003] and low net current assets. The fact that these amounts are so low for 2003 tends to show that the low net income and net current assets for 2006 were not likely the result of any uncharacteristic business losses. The petitioner submitted a statement from its accountant stating that officer compensation was high for 2006,⁹ but there is nothing in the record that demonstrates the officers were willing to forego this compensation to pay the beneficiary's 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.

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

Additionally, the petitioner has also not established that the beneficiary is qualified for the offered position. 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). The petitioner must

⁸ The AAO notes that [REDACTED] was opened by [REDACTED] who is also listed as the Chairman of Chief Executive Officer of [REDACTED], but there is not any evidence that these two entities are the same business or that they are affiliated businesses. An online search conducted on June 26, 2012 of the Division of Corporations website for the New York Department of State lists these two companies as being separate entities that [REDACTED] owns. [REDACTED] is listed as having an address where mail is delivered to "[REDACTED]" and a separate company called "[REDACTED]" is also listed as being owned by [REDACTED]. All three entities list different addresses. *See* http://www.dos.ny.gov/corps/bus_entity_search.html. The key aspect of a reputation deals with the entity's name as it is known in the industry. Therefore, without additional documentation, evidence of the reputation of [REDACTED] cannot be attributed to [REDACTED] and the petitioner did not submit any additional evidence demonstrating the reputation of [REDACTED]. The petitioner should submit evidence of the connection between the two companies, if any, or evidence of [REDACTED]'s reputation in any further filings.

⁹ The 2006 tax return shows that two individuals split the officer compensation resulting in \$52,200 per officer. Other years reflect officer compensation in amounts of almost half of that. Whether the 2006 officer compensation would be considered "high" is relative based on the petitioner's address in New York City.

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. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 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. 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 two years of experience in the job offered as a hair stylist/supervisor. On the labor certification, the beneficiary lists his prior experience as: [REDACTED] from April 1999 to August 2003; and [REDACTED] both as a Hairstylist/Manager from December 1995 to March 1999 and as a Hairstylist/Assistant Manager from December 1992 to December 1995.

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] that does not provide a description of the beneficiary's experience. Although the letter states that the beneficiary was employed as a hairstylist, there is no indication that he was ever employed in a supervisory capacity as required by the labor certification.

Furthermore, Section 15 of the labor certification, "other special requirements," states that the beneficiary must have a "NYS Cosmetology license." However, nothing in the record demonstrates that the beneficiary met this requirement as of the priority date on June 7, 2004.¹⁰

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 denied.

¹⁰ The petitioner should submit evidence of this in any further filings.