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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

FILE: **JUN 01 2012** Office: CALIFORNIA SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

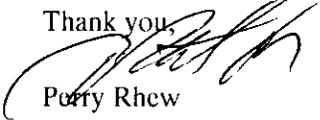
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) (3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b) (3)

ON BEHALF OF PETITIONER:



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

The petitioner is a full-services dry cleaners. It seeks to employ the beneficiary permanently in the United States as an alterations expert. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the beneficiary possessed the requisite employment experience as of the visa priority date, and denied the petition accordingly.

On appeal, the petitioner, through former counsel, submitted additional evidence and asserted that the petitioner had demonstrated that the beneficiary possessed the requisite experience.

The AAO maintains plenary power to review each appeal on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

At the outset, it is noted that the agent identified on the original Form ETA 750 contained in the record of proceedings was [REDACTED] of [REDACTED]. It is signed by the petitioner's representative, [REDACTED]. On Part B of the ETA 750 offered in support of the request to substitute the original beneficiary for the current beneficiary,¹ the alien's agent is named as [REDACTED] of the Law Offices of [REDACTED] in Van Nuys, California.² Mr. [REDACTED] and his law office also represented the petitioner in filing the Immigrant Petition for Alien Worker (I-140).

On December 23, 2009, the AAO issued a notice of intent to deny to the petitioner, advising Mr. [REDACTED] that his son, [REDACTED] had been interviewed by telephone by the AAO on November 2, 2009. On November 2, 2009, [REDACTED] stated that the petitioning company had never filed a petition on behalf of the instant beneficiary, and that the signature on the submitted petition did not belong to his

¹ As of July 16, 2007, substitution requests are no longer permitted according to 20 C.F.R. §§ 656.11 and 656.30(c).

² It is noted that on September 6, 2006 [REDACTED] pleaded guilty to conspiracy, two counts of immigration fraud and two counts of money laundering and was sentenced to 30 months in federal prison on March 16, 2007. In the plea agreement, [REDACTED] admitted he aided as many as 99 foreign nationals obtain visas through fraudulent visa applications. *See* [REDACTED] (accessed March 24, 2011). Electronic records also indicate that [REDACTED] pleaded guilty to conspiracy to commit immigration fraud and one count of immigration fraud. As of April 11, 2007, she was expelled from the practice of law. *See* <http://www.justice.gov/> [REDACTED] (accessed March 24, 2011). She was one of the principals associated with the Law Offices of [REDACTED]

father, [REDACTED] In response to the AAO's December 23, 2009 notice of intent to deny, current counsel, who took over the petitioner's representation on appeal, submits a response. Counsel provides copies of two letters from [REDACTED] and his son [REDACTED] Both are dated January 7, 2010. [REDACTED] letter recants his statement to the AAO and states that his father in fact did file a petition for the beneficiary and that "any negative effect of my conversation was and is error. The company does seek her employment." The letter from [REDACTED] states that his son was wrong and that "we intend that she will be employed with us on a permanent basis." 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. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on January 2, 2002.³

³ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

Part 5 of the I-140, which was filed on April 22, 2004, indicates that the petitioner was established in 1995, claims a gross annual income of \$1,637,88, a net annual income of \$415,897 and employed 40-45 workers. The beneficiary of the I-140 petition is a substitution for the original beneficiary sponsored.

Item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. In this matter, item 14 states that an applicant must have two years of work experience in the job offered as an alterations expert, by the time of the January 2, 2002 priority date. The job duties of the certified position of alterations expert are described as follows:

Meet with customers, discuss required alteration. Write measurement of customer or pin garments according to alteration required. Alterations performed are shortening or lengthening of legs, sleeves skirts, dresses, expanding or narrowing waist. Iron all altered garments. Using a single needle sewing machine, measuring tapes, thread and needle.

Relevant to the beneficiary's employment experience, Part B of the ETA 750, signed by the beneficiary under penalty of perjury, on April 19, 2004, lists two separate periods of employment and unemployment:

1. From February 2, 1991 to March 1995, it is claimed that the beneficiary worked as an alterations expert for [REDACTED] located at [REDACTED]. The kind of business is stated as a full service/dry cleaners and the number of hours worked per week is stated to be 20-25 hours.
2. From March 2004 to the present (date of signing), it is claimed that the beneficiary has been an unemployed housewife.

The beneficiary listed her education in Section 11 of Form ETA 750B as "public education," with no stated dates and the degree or certificate received as "high school diploma." The form's instructions state to list "names and addresses of Schools, Colleges and Universities Attended (Include trade or vocational training facilities).

In support of the beneficiary's claimed employment experience, the petitioner submitted a letter, dated February 2, 2004, from the [REDACTED] stated to be located at the same address as was listed in Part B of the ETA 750 for [REDACTED]. The letter, signed by [REDACTED] on behalf of the workshop management of the firm, states the following:

Hereby certifies: [The beneficiary] has been working as a part-time tailor and darning, from February 1991 to March 1995, weekly 20-25 hours, in [REDACTED] tailoring and darning workshop. She has been working in repairing and darning of all kind of apparel as per customers' orders and requests, and her skills and professionalism is confirmed and appreciated by the management of this workshop.

The petitioner also submitted a copy of a "Completion Certificate of Technical & Professional Course" from the Iranian Ministry of Labour & Social Affairs, Technical & Professional Training Organization. No address is given. The certificate indicates that it was issued March 18, 1990 and states that the beneficiary passed the "Dress-Making Course." The date of the test is stated as November 11, 1988. The name of the author is not identified except as the "[H]ead of (illegible) & Professional Training Dept." The translation of this document indicates "True Translation Certified."⁴

The director denied the petition on December 17, 2004, finding that the beneficiary's required work experience was not established by the petitioner. The director noted that the experience gained for the [REDACTED] store was part-time, not full-time, and further questioned how the beneficiary's claimed length of employment for the [REDACTED] store in Iran ended in March 1995, when the record indicates that she was living in the United States as of 1994 thus calling into question the veracity of the letter. It is additionally noted that the beneficiary's two nonimmigrant visas were issued in Toronto, Canada, indicating status in that country prior to her 1994 entries into the United States via Niagara Falls, New York.⁵ It is further noted that the translation was inaccurate in that the beneficiary is stated to have been a part-time employee from January (not February) 1991 to February 1995.

On appeal, the petitioner, through former counsel, provides another English translation of the beneficiary's employment at [REDACTED] and states that the previous translation contained an error as the letter actually stated that her employment ended in March 1994 not March 1995. Counsel provides another translation giving the end date as March 1994. The letter similarly states that her employment was 20 to 25 hours per week.⁶

⁴ A third document, dated January 10, 2005, translator's registry [REDACTED] has no value since the certificate is not professionally executed and appears that it has been pieced together with another document. Based on the year of issuance, the document likely would have been typed as it is from the "Technical Services Department," and not handwritten. Additionally, on the letterhead, "Ministry of Justice," and "Technical Services Department," appear to be in different font sizes. All of these aspects cast doubt on the veracity of the document. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

⁵ Form G-325A filed with the beneficiary's I-485 Application to Register Permanent Residence or Adjust Status states that the beneficiary has resided in Philadelphia, PA since November 1994. The Form I-94 Departure Record shows a November 27, 1994 entry date.

⁶ A translation completed internally shows the translated date of this letter is stated as March 2, 2004 and not February 2, 2004 in the first translation. While a small difference, this calls into question the accuracy of both translations. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988)

Counsel further states that the petitioner's first attorney erred in failing to supply the beneficiary's qualifying employment experience working for a different employer. This employer is identified as

[REDACTED] in Iran. According to a copy of a facsimile provided by counsel on appeal, the beneficiary worked for this firm as a dressmaker and darner, full-time, for 40 hours per week from September 23, 1988 through September 23, 1990. Based on an internal review, it is noted that this "certificate" is written on a sales invoice document. This employment is also not listed on Part B of the Form ETA 750. *See Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

It is additionally noted that subsequent to these submissions, the petitioner has submitted a copy of a letter from [REDACTED] which is dated January 10, 2005. The translation indicates that it is signed and sealed by the director of technical and vocational training, but the identity of the author is not given. The certification states that the beneficiary:

. . . worked as a dress darner and dress maker and studied as a full time student of dressmaking from May 1985 and graduated in the field of dressmaking in October 1988 and worked at dressmaking workshop in full time basis on March 1990. (She worked in various dress repairing and darning in favorable size of customers' order and the manger of this institute is satisfied and appreciated with her manner of working and skill).

The AAO does not find the petitioner's contentions on appeal to be persuasive or credible. If the U.S. Citizenship and Immigration Services (USCIS) fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, USCIS is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(i) of the Act. USCIS jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the Act, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *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 v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). 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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

In this case, the beneficiary's technical and vocational training at the [REDACTED] accredited by the Ministry of Labor & Social Affairs was completely omitted from item 11 of the ETA 750-B instructing the applicant to give the names and address of schools, colleges and universities.

including trade or vocational training facilities and was additionally omitted from item 15 of Part B of the ETA 750 as a claim of qualifying employment. *See Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.) It is also noted that the ETA 750B failed to identify a specific high school attended by the beneficiary and merely states "Public Education", Tehran, Iran. The degree or certificate received is described as a "high school degree." It is noted that the Form ETA 750 requires the completion of a high school education and the petitioner failed to provide a copy of any high school diploma. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the [REDACTED] certificate of completion was issued on March 18, 1990. It is not clear from either of the documents submitted relating to this training whether any of this period of time represented paid employment. While relevant post-secondary education may be used as training, it cannot be used to satisfy the experience requirement. *See* 8 C.F.R. § 204.5(l)(2). Additionally, as noted above, the beneficiary's claimed employment for [REDACTED] from September 23, 1988 to September 23, 1990 was omitted from her employment experience listed on item 15 of Part B of the ETA 750 and also overlapped her alleged vocational training at the [REDACTED] which was also not listed on Form ETA 750. 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. *See Matter of Ho*, 19 I&N Dec. 582, at 591-592. Further, the letter submitted to confirm the [REDACTED] employment did not contain an English translation which complied with the terms of 8 C.F.R. § 103.2(b)(3) providing that documents in a foreign language must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

It is noted that in response to the AAO's notice of intent to deny, current counsel provides copies of the original letter from [REDACTED] stating the end date of the beneficiary's employment as March 1995, a date before which, she had been living in the United States.⁷ The petition was denied based on discrepancies in the record related to the beneficiary's experience. Nothing the petitioner submitted on appeal sufficiently overcomes these discrepancies. Given the numerous omissions and inconsistencies noted above, the AAO does not find that the petitioner has credibly established that the beneficiary acquired the required two years of employment experience to meet the terms of the certified labor certification. Doubt cast on any

⁷ Given the inconsistencies in the claimed translation, the AAO had the document translated by an individual proficient in Farsi, and the translation was stated as January 1991 to February 1995, thus calling into question prior counsel's attempt to resolve the inconsistencies with a translation, which stated her employment terminated in 1994. 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. *Matter of Ho*, 19 I&N Dec. 582, at 591-592.

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. 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. *Matter of Ho*, 19 I&N Dec. 582, at 591-592.⁸

Beyond the director's decision, the AAO additionally finds that the petitioner failed to establish its continuing financial ability to pay the proffered wage as of the January 2, 2002 priority date established by the ETA 750. An application or petition that fails to comply with the technical requirements of the

⁸ It is noted that the file contains a letter from the beneficiary, dated February 24, 2006, in which she disclaims any knowledge of Mr. [REDACTED] involvement with any criminal enterprise, claiming that she gave appropriate employment information to him and was not aware of errors in her file because she signed *blank forms*. It is noted that Part B of the ETA 750 requires the alien to declare that "[P]ursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct." Additionally, the failure to apprise herself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve the beneficiary of responsibility for the content of his petition or the materials submitted in support. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993). To allow a beneficiary to absolve himself or herself of responsibility by simply claiming that he or she had no knowledge or participation in a matter where he or she provided all the supporting documents and signed a blank document would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

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. 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. *Matter of Ho*, 19 I&N Dec. 582, at 591-592.

It is noted that the beneficiary simultaneously claimed on the ETA 750 B that she had worked in Iran from February 1991 until March 1995 and then was an unemployed housewife from March 1994 to date of signing (April 19, 2004).

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*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(AAO has recognized *de novo* authority).

The regulation at 8 C.F.R. § 204.5(g)(2) also 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

As stated above, the I-140 petition was filed on April 22, 2004. The petitioner was directed to provide additional evidence of its ability to pay the proffered wage of \$14.50 per hour, (annualized to \$30,160 per year) by the director on July 16, 2004, through a request for evidence. Although the petitioner provided its 2002 federal income tax return, it failed to provide relevant financial evidence in the form of federal income tax returns, audited financial statements, or annual reports (supported by audited financial statements) for 2003 and 2004. The petitioner's response to the director's request for evidence on this issue included a statement that it had filed a request for an extension of time to file its 2003 income tax return with the Internal Revenue Service, but this does not relieve the petitioner of its burden to demonstrate a continuing ability to pay the proffered wage. It is noted that all of the copies of the Forms 941 Employer's Quarterly Federal Tax Return, Form 940-EZ Employer's Annual Federal Unemployment (FUTA) Tax Return and accompanying state quarterly wage and withholding reports contained in the record, although naming the petitioner and the same address as is given on the instant Form I-140, related to an employer with a different tax identification number, which cannot be regarded as the same employer as the petitioner.⁹ The petitioner could have alternatively submitted audited financial statements or annual reports for the years, in accordance with the regulations. In this regard, the AAO considers that the record does not establish the petitioner's continuing ability to pay the proffered wage. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying a petition. *See* 8 C.F.R. § 103.2(b)(14).

USCIS records indicate that the petitioner has filed at least four other petitions. The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date

⁹ Pursuant to the regulation at 20 C.F.R. § 656.3: "An employer must possess a valid Federal Employer Identification Number (FEIN)." Tax identification numbers are unique identifiers issued by the Internal Revenue Service that may distinguish employers with the same or similar names but with different operations. If two companies have separate tax identification numbers, they would be considered separate employers.

until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). Further, the petitioner would be obligated to pay each H-1B petition beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715. The record does not contain evidence that would demonstrate the petitioner's ability to pay all the sponsored workers. The petitioner must address this issue in any further filings and establish that it can pay the proffered wage of the instant beneficiary as well as the other sponsored workers from the priority date onward and should include such evidence as the other worker's priority dates, proffered wages, and evidence of any wages paid during the time period relevant to this petition.

The petitioner has not established that the beneficiary possessed the requisite qualifying employment experience as of the priority date or established that the petitioner had the continuing financial ability to pay the beneficiary the proffered wage.

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.