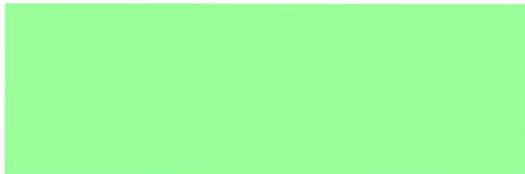


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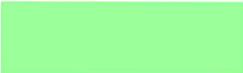
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

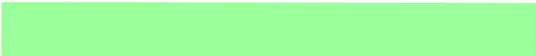


U.S. Citizenship
and Immigration
Services



Date: **MAY 01 2012** Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an auto and truck full style package kits business. It seeks to employ the beneficiary permanently in the United States as a line production 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 submitted all the required initial evidence. 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.¹

As set forth in the director's February 23, 2009 denial, the issues in this case are: 1) whether or not the petitioner had the continuing ability to pay the proffered wage beginning on the priority date; and 2) whether or not the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. The director noted that the required initial evidence regarding these issues was not submitted with the petition.

If all required initial evidence is not submitted with the application or petition, or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS), in its discretion, may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii)(rule effective for all petitions filed on or after June 18, 2007). The petitioner filed its petition with USCIS on July 28, 2007, and is thus subject to this provision. Therefore, the director was not obligated to issue a Request for Evidence (RFE) seeking the missing initial evidence of the petitioner's eligibility. A labor certification certified by the Department of Labor was filed with the petition.

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

¹ The record of proceeding contains a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by the petitioner. The representative on the Form G-28 is not accredited. Therefore, the AAO will not recognize the representative in this proceeding. See 8 C.F.R. §§ 1.1(j), 103.2(a)(3), 292.

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 April 27, 2001. The proffered wage as stated on the Form ETA 750 is \$26.39 per hour (\$54,891.20 per year). The Form ETA 750 states that the position requires two years of experience in the job offered.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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 1980 and to currently employ 30 workers. On the Form ETA 750B, signed by the beneficiary on April 20, 2001, the beneficiary did not claim to have worked for the petitioner, [REDACTED]

On appeal, the petitioner asserts that it has the ability to pay the proffered wage and that it has been employing the beneficiary at a wage equal to or above the proffered wage. In support of the appeal, the petitioner submits copies of: a letter from [REDACTED] the CFO of [REDACTED] stating that it employs 150 workers and has the ability to pay the proffered wage; the first page of [REDACTED] Forms 1120, U.S. Corporate Income Tax Return for 2005, 2006, and 2007; a letter from [REDACTED] president of [REDACTED] stating that [REDACTED] is wholly owned by [REDACTED] Articles of Incorporation for [REDACTED] signed by [REDACTED] on April 17, 2001; three pay stubs for wages paid to the beneficiary by [REDACTED] in 2009; a letter from [REDACTED] payroll administrator for [REDACTED] dated March 20, 2009, stating that [REDACTED] currently employs the beneficiary and has since September 19, 1994; and Forms W-2, Wage and Tax Statement for wages paid to the

² 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).

(b)(6)

beneficiary from [REDACTED] for 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008.

The AAO notes that [REDACTED] is not listed as the petitioner on the Form I-140 or the Form ETA 750. The only evidence submitted into the record to establish the relationship between the two companies is the letter from [REDACTED] president of [REDACTED]. However, this letter is written on [REDACTED] letterhead rather than one which names [REDACTED] as the company and it accompanied a copy of the articles of incorporation for [REDACTED], thus indicating that the petitioner registered with the state of California as a separate company. Further, the letter was not accompanied by probative evidence sufficient to demonstrate any financial obligations or ownership between the two entities. The AAO further notes that the petitioner and [REDACTED] were presented as two separate and distinct companies on the Form ETA 750 which listed [REDACTED] as the prospective employer and [REDACTED] as a prior employer. In addition, the Form ETA 750 stated that the beneficiary began his employment with [REDACTED] in April of 1994 and ended his employment in April of 2001. Moreover, the Form I-140 indicates that the petitioner employs 30 workers, while the letter from [REDACTED] states that [REDACTED] employs 150 workers. From the evidence submitted, it is clear that the petitioner and [REDACTED] are two different corporations.

Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

In the instant case, the petitioner has failed to demonstrate that any other entity has a legal obligation to pay the proffered wage as stated on the Form ETA 750 labor certification.

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, 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 has not established that it employed and paid the beneficiary the full proffered wage from the priority date, April 27, 2001.

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).

In the instant case, the petitioner has failed to provide copies of its annual reports, federal tax returns, or audited financial statements. The petitioner’s failure to provide such required initial evidence for each year from the priority date is sufficient cause to dismiss this appeal. While additional evidence may be submitted to establish the petitioner’s ability to pay the proffered wage, it may not be substituted for evidence required by regulation.

Accordingly, the petitioner has failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

However, the petitioner has asserted that another company which it claims to be its parent entity has the ability to pay the proffered wage and has on appeal submitted evidence in support of the assertion. Although, as previously discussed, the petitioner has failed to establish that the two companies are related or that any other entity has the legal obligation to pay the proffered wage, an analysis of the claimed parent company’s ability to pay the proffered wage follows.

In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. See 8 C.F.R. § 204.5(g)(2).

The petitioner submitted a letter from the CFO of [REDACTED] stating that it employs 150 workers. However, as previously noted, the evidence in the record does not establish that [REDACTED] pays or has an obligation to pay the employees of the petitioner, a separate corporation, and the Form I-140 filed by the petitioner states that only 30 employees worked for the petitioner.

The petitioner also submitted copies of Forms W-2, Wage and Tax Statement for wages paid to the beneficiary from [REDACTED] for 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008. The AAO has already noted that according to the Form ETA 750, which the beneficiary and the petitioner’s president signed under penalty of perjury, the beneficiary began his employment with Foam Molders & Specialties in April of 1994 and ended his employment in April of 2001. No explanation or evidence to address this inconsistency has been submitted.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless

the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Forms W-2 listed wages, tips, and other compensation in box 1 as shown in the table below.

- In 2001, the Form W-2 listed wages of \$38,224.58
- In 2002, the Form W-2 listed wages of \$43,427.90
- In 2003, the Form W-2 listed wages of \$41,796.86
- In 2004, the Form W-2 listed wages of \$47,833.68
- In 2005, the Form W-2 listed wages of \$46,175.88
- In 2006, the Form W-2 listed wages of \$48,110.72
- In 2007, the Form W-2 listed wages of \$51,210.80
- In 2008, the Form W-2 listed wages of \$53,522.60

The AAO notes that none of these Forms W-2 list wages equal to or greater than the proffered wage of \$54,891.20.

The petitioner also submitted three pay stubs for wages paid to the beneficiary by [REDACTED] in 2009. The forms reflect weekly pay for the periods ending: February 22, 2009; March 1, 2009; and March 8, 2009. However, the AAO notes that the amount of gross pay on each form is \$1,000 rather than the \$1,055.60 indicated on the Form I-140 and the Form ETA 750 (\$26.39 per hour x 40 hours per week). In addition, the period ending February 22, 2009 shows a year to date amount ("YTD Amt") of \$9,000, while the year to date amount for the period ending March 1, 2009, has restarted and reflects \$1,000. Considering that [REDACTED] tax returns indicate that their fiscal year begins on March 1st and ends on the last day of February, it appears that they did not pay the beneficiary the proffered wage according to that year to date total, but only a maximum of \$9,000, which is less than the proffered wage of \$54,891.20.

Therefore, it is not clear that [REDACTED] which has not been established to be related to the petitioner or responsible for the petitioner's financial obligations, paid the beneficiary the proffered wage in any year.

[REDACTED] is a C corporation, and for C corporations, 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 September 25, 2007, with the filing of the initial petition. The director did not issue an RFE. The AAO notes that the petitioner did not submit any initial evidence to demonstrate the ability to pay the proffered wage, and now submits partial returns for another business entity. Foam Molders & Specialties tax returns demonstrate its net income for 2005, 2006, 2007 as shown in the table below.

- In 2005, the Form 1120 stated net income of -\$650,295.
- In 2006, the Form 1120 stated net income of \$1,349,492.
- In 2007, the Form 1120 stated net income of -\$440,304.

Therefore, for the years 2005 and 2007, [REDACTED] did not have sufficient net income to pay the proffered wage as each year suffered a net loss. Moreover, the AAO notes that only the first page of the above tax returns was submitted, and no tax returns were submitted for 2001, 2002, 2003, 2004, or 2008. Thus even if Foam Molders & Specialties were associated with the petitioner and responsible for the payment of its wage obligations, it would not have demonstrated the ability to pay the proffered wage based on its net income in 2001, 2002, 2003, 2004, 2005, 2007, or 2008.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.³ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net 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.

In the instant case, the petitioner failed to submit tax returns or other evidence of its net current assets. The petitioner also did not submit complete returns for the entity it claims is its parent company, [REDACTED]. Therefore, for the years 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008, the petitioner did not demonstrate that it had 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 the priority date through an examination of wages paid to the beneficiary, or its net income, or net current assets.

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

³According 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.

clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner's gross receipts, net gains or losses, wages paid, and officer compensation are not in the record as the petitioner has failed to provide them. The entity that the petitioner claims is its parent company did not provide complete tax returns, but demonstrated that its gross income varied while it experienced net losses in two of the three years shown, as well as a net operating loss deduction carryover in 2006 which reduced its taxable income to \$0. Additionally, there are no other factors present in the record such as reputation, uncharacteristic expenditures or losses, replacement of employees or intent to forego officer's compensation, which would indicate that the financial condition of the petitioner should be given less weight. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

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

The petitioner must also demonstrate whether or not the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. No evidence regarding this issue was submitted with the initial filing of the Form I-140.

As stated previously, 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 petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its labor certification application, 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). As stated above, the labor certification application was accepted on April 27, 2001.

On appeal, the petitioner submits a letter from [redacted] payroll administrator for [redacted] dated March 20, 2009, stating that [redacted] currently employs the

beneficiary and has since September 19, 1994. Other relevant evidence in the record includes copies of Forms W-2 for wages paid by [REDACTED] to the beneficiary from 2001 through 2008 and three paystubs from 2009, but these documents do not establish the number of hours worked or whether the beneficiary was working full-time. The record does not contain any other evidence relevant to the beneficiary's qualifications.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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). According to the plain terms of the labor certification, the applicant must have two years of experience in the job offered.

Block 13. of the Form ETA 750, Part A. Offer of Employment states that the applicant will be required to do the following:

[D]etermine conditions impeding flow of work on assembly line and notify responsible personnel that corrective action is necessary. Inform worker of supervisor's instructions. Notify supervisor of substandard assembly work and defective parts, tools, equipment, and material, or other conditions which hinder assembly process. Notify supervisor of excessive number of damaged or defective parts, and request replacement supply of standard parts to expedite work flow. Discuss methods of resolving recurring production problems with workers and supervisors, utilizing knowledge of assembly process. Observe material stock along assembly line and notify materials-handling personnel or supervisor of impending shortages.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's work experience, he represented that he has seven years of experience with [REDACTED] from April 1994 to April 2001. On the section describing the duties performed, he describes his duties to be exactly those listed in Block 13. of the Form ETA 750, Part A. Offer of Employment. He does not provide any additional information concerning his employment background on that form.

The record of proceeding also contains a Form G-325, Biographic Information sheet submitted in connection with the beneficiary's application to adjust status to lawful permanent resident status. On that form under a section eliciting information about the beneficiary's most recent employment, he represented that he worked for [REDACTED] from April 2001 to the present. The beneficiary signed the form on July 3, 2007, above a warning for knowingly and willfully falsifying or concealing a material fact. He did not list employment with [REDACTED]

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 AAO notes that although the Form ETA 750 specifies that the applicant for the certified position must have two years of experience in the job offered, the letter dated March 20, 2009, from [REDACTED] payroll administrator for [REDACTED] lists the beneficiary's duties as follows:

Supervises and coordinates activities of production workers by performing the following duties: Responsible for performing & development of all subordinate employees. Responsible for identification of training needs & actual training of such employees. Interprets company policies to worker & enforces safety regulations. Also interprets specification and job orders to workers and assigns duties.

The letter makes no mention of the following duties in the record as requirements for the position: determining conditions impeding the flow of work on the assembly line; notifying responsible personnel that corrective action is necessary; notifying supervisors of substandard assembly work and defective parts, tools, equipment, and material, or other conditions which hinder assembly process; notifying supervisors of excessive number of damaged or defective parts, and requesting replacement supply of standard parts to expedite work flow; discussing methods of resolving recurring production problems with workers and supervisors, utilizing knowledge of assembly process; or observing material stock along assembly line and notifying materials-handling personnel or supervisors of impending shortages. Therefore, the letter does not demonstrate that the beneficiary had the necessary experience.

In addition, the dates of employment in the letter (September 19, 1994 to the date of the letter, March 20, 2009) conflict with the dates of employment attested to on the Form ETA 750 (beginning April of 1994 and ending in April of 2001). As previously mentioned, these employment details also conflict with those provided on the Form G-325, which list employment only with the petitioner from April 2001 to the date of the form, July 3, 2007. Moreover, the Forms W-2 submitted reflected employment with [REDACTED] from 2001 through 2008.

(b)(6)

Page 12

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).

The AAO also notes that 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*, 299 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 AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired two years of experience from the evidence submitted into this record of proceeding. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.