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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

PUBLIC COPY



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Date:

MAR 14 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,

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 restaurant. It seeks to employ the beneficiary permanently in the United States as a cook, O*Net-SOC job code 35-2014.00 (Cooks, Restaurant).¹ 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 denied the petition, finding 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, that the beneficiary had the minimum requisite work experience as of the priority date, and that the job offer was *bona fide*.

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 March 11, 2009 denial, the issues in this case are (1) 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, (2) whether the beneficiary has the requisite work experience in the job offered as of the priority date, and (3) whether the job offer is *bona fide*.

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

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.

1. The Ability to Pay

Concerning the ability to pay, the regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

¹ O*Net-SOC job code can be accessed online at <http://www.onetonline.org> (last accessed February 13, 2011).

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).

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 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

In the instant proceeding, the Form ETA 750 was filed for processing and accepted by the DOL on August 11, 2003. The rate of pay or the proffered wage as shown on the Form ETA 750 is \$11.36 per hour or \$23,628.80 per year. In the ETA Form 9089, the petitioner specifies that all job applicants, including the beneficiary, in order to qualify for the position should have a minimum of two years of experience in the job offered.

To show that the petitioner has the continuing ability to pay \$11.36 per hour or \$23,628.80 per year from August 11, 2003, the petitioner submitted the following evidence:

- A copy of the Internal Revenue Service (IRS) Form 1120, U.S. Corporation Tax Return, for 2003-2006;
- Copies of the beneficiary's Forms W-2 for 2003 and 2004; and
- A copy of the petitioner's payroll report for part of 2007 showing that the beneficiary was paid \$1,599.75 every month from January 2007 to June 2007.

The evidence in the record of proceeding shows that the petitioner was structured as a C Corporation. On the petition, the petitioner claimed to have been established on July 24, 2007, to currently employ six people, and to have gross annual income and net annual income of \$248,313 and \$0, respectively.

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. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the

evidence warrants such consideration. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the beneficiary received the following compensation from the petitioner in 2003 and 2004:

<i>Tax Year</i>	<i>Actual wage (AW) (Box 1, W-2)</i>	<i>Yearly Proffered Wage (PW)</i>	<i>AW minus PW</i>
2003	\$19,200	\$23,628.80	(\$4,428.80)
2004	\$24,000	\$23,628.80	Exceeds the PW
2005	\$19,200	\$23,628.80	(\$4,428.80)
2006	\$22,800	\$23,628.80	(\$828.80)

Thus, in order for the petitioner to meet its burden of proving by a preponderance of the evidence that it has the continuing ability to pay the proffered wage from the priority date, the petitioner must show that it has the ability to pay \$4,428.80 in 2003 and 2005; and \$828.80 in 2006. The petitioner can pay these amounts through either its net income or net current assets.

If the petitioner chooses to use its net income to pay the proffered wage during that period, USCIS will examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d at

881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. “[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner’s ability to pay. Plaintiffs’ argument that these figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

The petitioner’s tax returns demonstrate its net income (loss) for the years 2003, 2005, and 2006, as shown below:

<i>Tax Year</i>	<i>Net Income (Loss)³ – in \$</i>	<i>The Remainder of the PW – in \$</i>
<i>2003</i>	(2,914)	4,428.80
<i>2005</i>	842	4,428.80
<i>2006</i>	4,008	828.80

Therefore, the petitioner has sufficient net income to pay the remainder of the proffered wage in 2006 but not in either 2003 or 2005.

³ 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.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁴ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner's tax returns demonstrate its end-of-year net current assets for the years 2003, 2005, and 2006, as shown below:

<i>Tax Year</i>	<i>Net Current Assets – in \$</i>	<i>The Remainder of the PW – in \$</i>
<i>2003</i>	N/A ⁵	4,428.80
<i>2005</i>	10,722	4,428.80

Therefore, the petitioner has sufficient net current assets to pay the remainder of the proffered wage in 2005 but not in 2003. Based on the net income and net current asset analysis, the AAO agrees with the director that the petitioner does not have the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives legal permanent residence, particularly in 2003.

On appeal, the petitioner offers copies of the business bank statements for the periods December 1, 2005 to December 31, 2005 and December 1, 2006 to December 29, 2006 as evidence of the petitioner's ability to pay.

The AAO will not accept the bank statements as evidence of the petitioner's ability to pay. Even though the regulation at 8 C.F.R. § 204.5(g)(2) allows the petitioner to submit or the director to accept additional evidence, such as those submitted by the petitioner, such evidence is supplementary in nature and does not replace or eliminate the requirement that the petitioner must file either federal tax returns, annual reports, or audited financial statements to establish the ability to pay. In the instant case, the petitioner has submitted its federal tax returns for the years 2003 through 2006. The petitioner has not demonstrated why the information on its tax returns (e.g. Schedule L, Balance Sheet per Books) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a

⁴ 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.

⁵ The petitioner's tax return for 2003 does not include Schedule L, Balance Sheet per Books.

given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return(s), such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L.

On appeal, the petitioner also contends that it should be allowed to add back the depreciation deduction to boost the company's net income or reduce the net loss. The petitioner indicates that accumulated depreciation expenses are artificial losses and not actual expenses.

The AAO declines to accept the petitioner's contention as persuasive, as the court in *River Street Donuts* has held that a depreciation expense is a real expense, and for that reason, it should not be added back to boost or reduce the company's net income or loss. As noted above, 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.

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

We acknowledge that the petitioner is an ongoing business; however, the record is devoid of evidence regarding the petitioner's reputation. Further, unlike the *Sonogawa* case the petitioner in this case has not provided any evidence reflecting the company's reputation or historical growth since its inception. Nor does it include any evidence or detailed explanation of its milestone achievements. Similarly, the tax records submitted do not reflect the occurrence of an

uncharacteristic business expenditure or loss that would explain the petitioner's inability to pay the proffered wage particularly in 2003. In addition, as noted below the IRS Forms 1120 reflect that the beneficiary and his daughter are the sole shareholders of the petitioner, calling into question the reliability of the evidence.

Assessing the totality of the circumstances in this individual case, the AAO determines that the petitioner has failed to meet its burden of proving by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives permanent residence.

2. The Beneficiary's Qualifications

The director also found that the record did not reflect that the beneficiary had the requisite work experience in the job offered as a chief cook as of the priority date.

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that, on the priority date, the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

To determine whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the beneficiary is, in fact, qualified for the certified job. 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, 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).

Here, as previously noted, the Form ETA 750 was filed and accepted for processing by the DOL on August 11, 2003. The name of the job title or the position for which the petitioner seeks to hire is "Chief Cook." Under box 13, job description, the petitioner wrote:

1. Season and cook a variety of Chinese dishes;
2. Supervise kitchen helper(s).

Further, the petitioner set the following requirements under box 14 (the minimum education, training, and experience for a worker to perform satisfactory the job duties described in box 13 above):

Education:	6 years of grade school
Training:	0
Experience:	2 years in the job offered

To demonstrate that the beneficiary has the requisite two-year work experience as of the priority date, the petitioner submits a copy of a letter of employment dated July 15, 2003 from [REDACTED] who stated that the beneficiary worked as a chief cook from October 1997 until February 2001. The letter does not include the title of the writer and a sufficient description of the experience, as prescribed by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A).⁶ Merely stating that the beneficiary was employed as a “Chief Cook” does not establish the reliability of the assertion and does not establish the beneficiary’s qualification for the job offered. Therefore, the AAO finds that the beneficiary is not qualified to perform the duties of the position.

3. *Bona Fide Job Offer*

As noted earlier, the director found that the job offer was not *bona fide* because the beneficiary owned 50% of the business.⁷

On appeal, the petitioner claims that the company is actually owned by [REDACTED] a.k.a. [REDACTED], even though the beneficiary’s name appears as the incorporator (agent) on the registration of the business with the State of Ohio. The petitioner further states that when the business was registered in December 2002, [REDACTED] did not have a work authorization document and thus, she asked if the beneficiary could sign the registration document to start the business. To show that the assertions are the truth, the petitioner offers the following evidence:

- An affidavit dated May 12, 2009 from [REDACTED] stating that she is the owner of the petitioning business; and
- A copy of a business bank statement (the date is not clear) listing the name of [REDACTED] as the sole owner of the petitioning business.

The AAO is not persuaded by the evidence submitted. The record shows that the beneficiary is the sole shareholder of the petitioning company beginning in 2006.⁸ Under 20 C.F.R. §§

⁶ 8 C.F.R. § 204.5(l)(3)(ii)(A) provides:

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.

⁷ The director observed that the beneficiary’s name appeared on the tax returns submitted as one of the officers of the company, and the amounts of compensation as shown on Schedule E, Compensation of Officers in 2003 and 2004 - \$19,200 and \$24,000 – matched with the amounts shown on the beneficiary’s Forms W-2 for 2003 and 2004. The beneficiary’s Form W-2 for 2006 also reflects the same total as the amount paid to compensation of officers, \$22,800.

⁸ The beneficiary owns 50% of the company from 2003 to 2005. His daughter, [REDACTED] a.k.a. [REDACTED], is the remaining 50% shareholder from 2003 to 2005. Beginning in

626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to all qualified, willing, or able U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise, for example, where the beneficiary is related to the petitioner by “blood” or it may “be financial, by marriage, or through friendship.” See *Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000). Where the person applying for a position owns the petitioner, it is not a *bona fide* offer. See *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992) (denied labor certification application for president, sole shareholder and chief cheese maker even where no person qualified for position applied). In *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986), the commissioner noted that while it is not an automatic disqualification for an alien beneficiary to have an interest in a petitioning business, if the alien beneficiary’s true relationship to the petitioning business is not apparent in the labor certification proceedings, it causes the certifying officer to fail to examine more carefully whether the position was clearly open to qualified U.S. workers and whether U.S. workers were rejected solely for lawful job-related reasons. That case relied upon a Department of Labor (DOL) advisory opinion in invalidating the labor certification.

In this case, the Application for Alien Employment Certification (Form ETA 750) was signed on August 1, 2003 by [REDACTED]. The DOL approved the Form ETA 750 on June 7, 2007. It is not clear from the evidence in the record that the DOL was aware of the beneficiary’s true relationship to the petitioning company.

The regulation at 20 C.F.R. § 656.30(d) provides that: “after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies’ procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application.” The law of materiality will control the agency’s determination that the application should be invalidated. Under *Matter of S & B-C-*, 9 I&N Dec. 436 (A.G. 1961), a misrepresentation is material where it shuts off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he or she is inadmissible. An alien’s misrepresentation of his or her relationship to a company’s owner during the labor certification process would close off a line of relevant inquiry which would have revealed that the labor certification should actually have been denied. Further, on the Form ETA 750, the beneficiary certified to the DOL that the job opportunity “has been and clearly is open to any qualified U.S. worker.” If the job opportunity was not, in fact, open to qualified U.S. workers, this misrepresentation would also close off a line of relevant inquiry which would have revealed that the labor certification should actually have been denied. Accordingly, USCIS may invalidate the labor certification based on the alien’s misrepresentations.

The record in this case, as currently constituted, fails to establish that the petition is based on a *bona fide* offer of employment. Given that the beneficiary and his daughter are the sole shareholders of the petitioning company at the time of recruitment, the job opportunity may not

2006 the beneficiary owns 100% of the petitioning business.

have been available to U.S. workers, and/or that this may be the functional equivalent of self-employment. The observations noted above suggest that further investigation, including consultation with the DOL may be warranted under our consultation authority at 204(b) of the Act, in order to determine whether any family, business, or personal relationship between the petitioner and the beneficiary represents an impediment to the approval of any employment-based visa petition filed by this petitioner on behalf of this beneficiary. No consultation with the DOL will be conducted at this time, but this issue should be addressed in any future filings, and it may result in finding of fraud or willful misrepresentation. In summary, the AAO agrees with the director that the job offer is not *bona fide*, and the petition cannot be approved for this additional reason.

The appeal will be dismissed 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.