

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

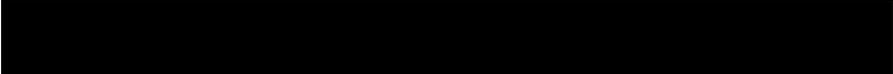
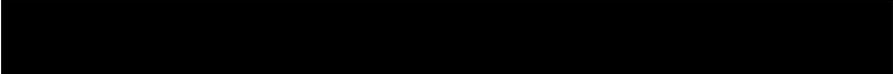


U.S. Citizenship
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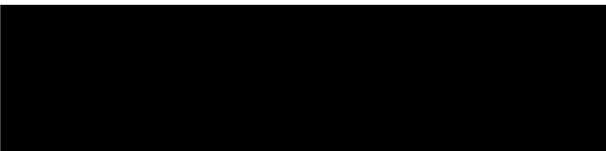


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DATE: **OCT 22 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

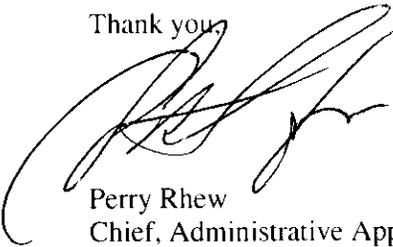
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

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

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's October 20, 2009 denial, the issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

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

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

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

Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$10.80 per hour (\$22,464.00 per year).¹ 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 currently employ six workers, but it did not state when it had been established. According to the tax returns in the record, the petitioner was incorporated in 2001 and the petitioner's fiscal year is based on the calendar year. On the Form ETA 750B, signed by the beneficiary on April 28, 2001, the beneficiary claimed to have worked for the petitioner beginning in November 1997.

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

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date onward. The petitioner did, however, submit W-2 Forms for the beneficiary for 2003 and 2005 and an Earnings

¹ The wage contains white-out over the initial wage with a new amount written on top. A page attached to the Form ETA 750 states in part that the wage was amended to read \$10.80 per hour. Nothing in the record shows that DOL accepted this change. In any other filings, the petitioner should submit confirmation that DOL approved this change.

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).

Statements demonstrating a year-to-date amount of pay for the period ending July 27, 2007, as shown in the table below.^{3,4,5}

- 2003 - \$2,705.00⁶
- 2005 - \$12,631.00
- 2007 - \$22,035.00

Thus, for those years the petitioner must establish the ability to pay the difference between the proffered wage and wages paid to the beneficiary if it can resolve the issue related to the beneficiary's social security number. Those amounts are:

- 2003 - \$19,759.00
- 2005 - \$9,833.00
- 2007 - \$429.00

³ The job offer must be for a permanent and full-time position. *See* 20 C.F.R. §§ 656.3; 656.10(c)(10). The amount of wages paid to the beneficiary listed in the W-2 Forms for 2003 and 2005 are not consistent with full-time employment. DOL precedent establishes that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994). While the petitioner does not need to employ the beneficiary in the position offered until the beneficiary obtains permanent residency, the beneficiary's employment on a part-time basis raises the question whether the petitioner needs a full-time mechanic. Therefore, it is unclear whether a full-time *bona fide* job exists.

⁴ The W-2 Forms and the Earnings Statements in the record list a social security number (SSN) for the beneficiary beginning with the number "6." However, the beneficiary's personal tax returns, Forms 1040, submitted, show a tax payer identification number beginning with a "9," and the Form I-140 does not state a social security number. These discrepancies call into question the veracity of the W-2 Forms submitted. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

⁵ The record also contains payroll documentation in the beneficiary's name regarding the beneficiary's pay as of December 24, 2002 and December 24, 2003. These payroll reports do not state the name or address of the petitioner and it is unclear what entity paid the beneficiary these amounts. Therefore, the AAO will not consider this evidence in the analysis of the petitioner's ability to pay the proffered wage from the priority date onward.

⁶ The petitioner did not submit any W-2 Forms for 2001 or 2002. The petitioner submitted the beneficiary's W-2 Form for a separate employer in 2004 and did not submit any W-2 Form for 2006.

In 2001, 2002, 2004, and 2006, the petitioner must establish its ability to pay the full proffered wage. If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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

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

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

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the net income figures in determining petitioner's ability to pay. Plaintiffs' argument that these figures

should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on May 12, 2009, the date the response to the director’s request for evidence (RFE) was due. The petitioner did not submit a response to this RFE.⁷ As of that date, the petitioner’s 2009 federal income tax return was not yet due. Therefore, the petitioner’s income tax return for 2008 is the most recent return available. On appeal the petitioner submitted tax returns for 2001 through 2008 and Earnings Statements demonstrating a year-to-date amount of pay for the period ending July 27, 2007. The petitioner’s tax returns demonstrate its net income for 2001 through 2008, as shown in the table below.

- In 2001, the Form 1120 stated net income of \$17,803.00.
- In 2002, the Form 1120 stated net income of (\$87,661.00).
- In 2003, the Form 1120 stated net income of \$15,253.00.
- In 2004, the Form 1120 stated net income of \$4,175.00.
- In 2005, the Form 1120 stated net income of \$22,496.00.
- In 2006, the Form 1120 stated net income of (\$3,375.00).
- In 2007, the Form 1120 stated net income of (\$24,812.00).
- In 2008, the Form 1120 stated net income of (\$2,920.00).

According to USCIS records, the petitioner has filed an I-140 petition on behalf of another beneficiary with a priority date of April 30, 2001. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg’l Comm’r 1977). USCIS records indicate that the other beneficiary’s proffered wage is \$24,960.00 per year. Therefore, the petitioner must also demonstrate its ability to pay this other beneficiary’s wage for all of the above years as well.

As shown above, for the years 2001, 2002, 2003, 2004, 2006, 2007, and 2008, the petitioner did not have sufficient net income to pay the instant beneficiary’s proffered wage or the difference between the proffered wage and wages paid. The petitioner only had sufficient net income to pay the instant beneficiary’s proffered wage for 2005, but this would not be sufficient to pay the other beneficiary’s proffered wage as well.⁸

⁷ The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14); *see also Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

⁸ The record related to the second sponsored worker reflects, upon resolution of a similar social security number issue, that the petitioner has paid the second worker that beneficiary’s respective

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.⁹ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2001 through 2008, as shown in the table below.

- In 2001, the Form 1120 stated net current assets of \$5,030.00.
- In 2002, the Form 1120 stated net current assets of \$2,810.00.
- In 2003, the Form 1120 stated net current assets of \$3,236.00.
- In 2004, the Form 1120 stated net current assets of (\$13,001.00).
- In 2005, the Form 1120 stated net current assets of (\$17,059.00).
- In 2006, the Form 1120 stated net current assets of (\$24,536.00).
- In 2007, the Form 1120 stated net current assets of \$5,575.00.
- In 2008, the Form 1120 stated net current assets of \$3,388.00.

Therefore, for the years 2001, 2002, 2003, 2004, 2005, 2006, and 2008, the petitioner did not have sufficient net current assets to pay the proffered wage or the difference between the proffered wage and the wages paid. The petitioner would have sufficient net current assets to pay the difference between the proffered wage and the wages paid to the instant beneficiary for 2007, if the petitioner resolves the social security issue discussed above. However, as stated above, the petitioner is unable to demonstrate its ability to pay the other beneficiary the proffered wage for 2007 or any other year in question, other than 2005.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage (or the second sponsored worker's 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 Sonegawa*, 12 I&N Dec. 612

proffered wage in 2005, and the petitioner could therefore pay both beneficiaries in this year only.

⁹According 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.

(Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* 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 *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 record reflects that the petitioner has been in business since 2001 and, as stated on the Form I-140, that it employs six workers. The record reflects low or negative net income and net current assets for 2001, 2002, 2003, 2004, 2006, 2007, and 2008. The petitioner's tax returns do not show any wages or officer compensation aid in 2005, 2006, 2007 or 2008, only costs of labor. Although the petitioner would be able to establish its ability to pay the instant beneficiary's proffered wage for 2005 and 2007 only, if it resolves the issue related to the beneficiary's social security number, as stated above, the evidence does not establish that the petitioner had the ability to also pay the other beneficiary's proffered wage for these years. Therefore, the petitioner cannot establish its ability to pay both sponsored workers in any year. The petitioner has not demonstrated any uncharacteristic expenses or business losses for any of the other years at issue. The petitioner has not submitted any evidence of the petitioner's reputation in the industry. 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 has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional

requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires two years of experience in the job offered. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as an auto mechanic with [REDACTED] from February 1990 to February 1992.¹⁰

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(1)(3)(ii)(A). The record contains a letter from the owner of [REDACTED] which states that the beneficiary worked under his supervision at the [REDACTED] ("previously known as [REDACTED] from February 1990 to February 1992 "working previously in general mechanics, tune-ups, hoses, brakes, and other things." The wording of this letter appears to state that the beneficiary worked as an auto mechanic at the [REDACTED] (previously known as [REDACTED] and that prior to this he worked in general mechanics. The record does not reflect any evidence to corroborate whether the [REDACTED] was also known as [REDACTED] or whether either of these companies are the same as [REDACTED] as listed on the labor certification. It is unclear whether the beneficiary actually worked at [REDACTED]. It is also unclear what the beneficiary's duties were while allegedly working at [REDACTED] because the experience letter tends to show that he performed the duties listed while working in "general mechanics" prior to working there. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

On appeal, counsel asserts that the beneficiary worked for [REDACTED] from February 1990 to February 1992 and that he has the two years of experience as required by the labor certification. As stated above, the experience letter does not make it clear whether the beneficiary actually worked at [REDACTED].¹¹ Instead it appears that the owner of [REDACTED] also worked at the [REDACTED] (stated in the experience letter to be known as [REDACTED]. As stated above, it is

¹⁰ The amendment to the Form ETA 750 that the petitioner submitted states that the beneficiary was unemployed from March 1992 to October 1997, and employed with the petitioner from 1997 to the present.

¹¹ Even if the beneficiary had worked for [REDACTED] as counsel claims, this employment is not listed on the labor certification. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

unclear whether [REDACTED] is the same entity as [REDACTED]. Even if [REDACTED] is the same entity as [REDACTED] which is unresolved, it is also unclear whether the owner of [REDACTED] was the beneficiary's employer at [REDACTED] because he stated he was the beneficiary's supervisor at [REDACTED]. The experience letter is printed on letterhead for [REDACTED] which is not the employer listed on the labor certification.¹²

Counsel's assertions on appeal cannot be concluded to establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered 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.

¹² The other sponsored worker also claims to have experience with this entity. This raises questions as to the credibility of the evidence without independent objective evidence in support, such as records from the appropriate ministry in Mexico of employment as confirmation. In any further filings, the petitioner should submit such evidence. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).