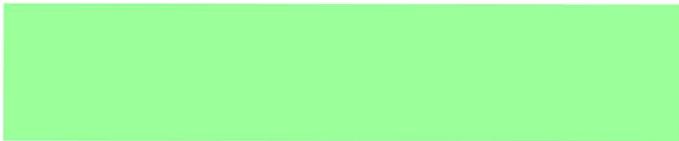


(b)(6)

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

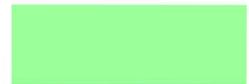


U.S. Citizenship  
and Immigration  
Services



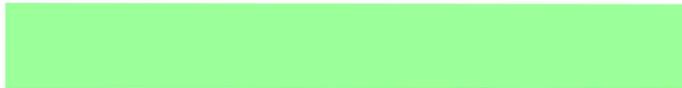
DATE: APR 18 2013

OFFICE: NEBRASKA SERVICE CENTER FILE:



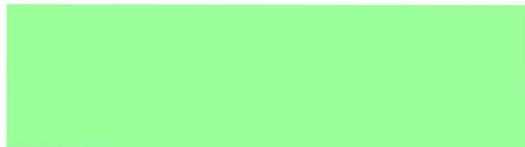
IN RE:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center (director), denied the preference visa petition. The director granted the petitioner's motion to reopen and affirmed the petition's denial. The petitioner appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner owns and operates restaurants specializing in Chinese and Japanese food. It seeks to employ the beneficiary permanently in the United States as a general accountant at an annual offered wage of \$39,499. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the United States Department of Labor (DOL).<sup>1</sup> The priority date of the petition is May 9, 2003, the date the DOL accepted the petitioner's request for certification. *See* 8 C.F.R. § 204.5(d).<sup>2</sup>

As set forth in his March 9, 2009 decision, the director determined that the petitioner failed to establish its continuing ability to pay the offered wage from 2003 through 2008. The director reached his conclusion after considering evidence of the wages that the petitioner paid the beneficiary, its net income, its net current assets, and the overall magnitude of its business activities.

On appeal, the AAO found that the petitioner demonstrated its ability to pay the offered wage in 2005. But the AAO affirmed the director's decision, finding that the petitioner failed to establish its ability to pay the proffered wage in the other relevant years. The AAO dismissed the appeal accordingly.

The record shows that the motion is properly filed, timely and meets the applicable requirements for a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). 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.

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<sup>1</sup> The DOL certified the job opportunity at the petitioner's former restaurant, [REDACTED] at [REDACTED] in San Francisco, California. On December 19, 2012, the AAO sent a notice of intent to dismiss/notice of derogatory information to the petitioner based on evidence that its restaurant at [REDACTED] no longer existed. In response to the notice, the petitioner submitted evidence that it sold the restaurant at [REDACTED] in 2012, but that it continues to offer the same job opportunity to the beneficiary at one of its other restaurants, [REDACTED] in San Francisco. As both worksites appear to be in the same Metropolitan Statistical Area (MSA), the petitioner's labor certification remains valid. *See* 20 C.F.R. §§ 656.3, 656.30(c)(2) (explaining that a labor certification remains valid only for the stated "area of intended employment" and defining that term as including worksites within the same MSA).

<sup>2</sup> Although the labor certification indicates that the DOL received the application on May 9, 2003, the ETA Forms 750 that the petitioner and the beneficiary signed are dated February 1, 2006. There is no explanation in the record as to why the labor certification forms are dated after the priority date.

The AAO conducts review on a *de novo* basis. The AAO's *de novo* authority is well recognized by federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

*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.

In its motion, the petitioner submits evidence that it opened a new restaurant at [REDACTED] in San Francisco in August 2010 after spending about \$400,000 to remodel and equip the premises. The petitioner submits a copy of a business plan, which projects gross annual sales for the new restaurant of more than \$3 million, and evidence that it purportedly hired 27 employees for the restaurant in 2010. The petitioner also submits a copy of an August 24, 2009 cashier's check for \$400,000 that counsel asserts it issued to an escrow account to fund construction at the new restaurant site.

In determining the petitioner's continuing ability to pay the offered wage, counsel urges U.S. Citizenship and Immigration Services (USCIS) to reconsider the totality of the circumstances in light of its establishment of the new restaurant. Counsel first asserts that the petitioner's operation of three restaurants merits favorable consideration.

The record, however, shows that the petitioner no longer operates three restaurants. In a December 28, 2012 affidavit, the petitioner's president/sole shareholder states that the petitioner sold its restaurant at [REDACTED] in May or June of 2012. Besides its newest restaurant at [REDACTED] in San Francisco and its older restaurant, [REDACTED] in Redwood City, California, the petitioner has not submitted evidence of any other restaurants that it owns or operates. Thus, the record shows that the petitioner may have operated three restaurants only from August 2010 to May or June of 2012.

Counsel also asserts that the petitioner's investment in its new restaurant is a favorable factor when considering its ability to pay the proffered wage. The AAO acknowledges the petitioner's submission of evidence regarding the investment in its new restaurant. But the petitioner has not submitted evidence of the source of the investment funds. The petitioner's tax returns from 2003 to 2008 do not show that it accumulated sufficient profits or maintained cash reserves sufficient to invest \$400,000 in its new restaurant. Rather, the tax returns show that it lost money three of those six years and reported only \$6,218 in cash on hand at the end of 2008.

The petitioner may have raised about half of its investment for the new restaurant from the sale of its former restaurant at [REDACTED] as the petitioner previously submitted a February 2009 appraisal that valued that property between \$200,000 and \$225,000. But the petitioner's

president/sole shareholder states that the petitioner did not sell its former restaurant until 2012, after its purported initial investment in the new restaurant.

Even with the proceeds from the sale of its former [REDACTED] restaurant, the record shows the petitioner would have still needed additional funding for the \$400,000 escrow account. If the petitioner's president/sole shareholder, for example, used his personal funds to establish the new restaurant, then the investment would provide little evidence of the petitioner's financial ability, as opposed to the personal financial resources of its president. Or if the petitioner borrowed money to establish the new restaurant, the resulting debt would have to be considered in determining its financial abilities. The record does not provide any reason to determine that amount reflects assets belonging to the petitioner, as it has not explained or documented the source of the investment funds for the new restaurant.

Moreover, of the more than 40 invoices and receipts from 2009 and 2010 that the petitioner submits regarding the remodeling and equipping of its new restaurant, the AAO counted only four in the name of the petitioner, [REDACTED]. Many more were in the names of the petitioner's president, the beneficiary, and/or "[REDACTED]". The invoices and receipts therefore do not establish that the corporate petitioner paid for most of the remodeling and equipping of its newest restaurant. Further, the investment in the new restaurant in 2009 and 2010 cannot evidence the petitioner's ability to pay the beneficiary's proffered wage since the 2003 priority date. *See Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977) (a petitioner cannot establish a priority date for visa issuance for a beneficiary without establishing that it could pay the proffered wage at the time it made the job offer).

In addition, the business plan and the lease to the new restaurant identify the lessees/tenant as the petitioner's president and the beneficiary, rather than the corporate petitioner. The president and the beneficiary did not sign the lease on behalf of the petitioner, indicate the capacity in which they were signing, or affix a corporate seal as the lease's instructions on the bottom of the signature page require for corporate tenants. For the foregoing reasons, the AAO finds that the petitioner has not demonstrated that it, rather than its president, other individuals and/or other entities, funded the establishment of its new restaurant. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (the petitioner must resolve any inconsistencies in the record by independent, objective evidence).

Counsel next asserts that the petitioner has been in business for at least 18 years, tending to show its continuing ability to pay the proffered wage. On appeal, however, the AAO found that the petitioner established that it has been doing business only since July 14, 1999, its date of incorporation. On its Form I-140, Petition for Alien Worker, the petitioner also stated July 14, 1999 as its date of establishment. The AAO therefore continues to find that the petitioner has demonstrated that it has been in operation only since July 14, 1999. Therefore, at the time of filing the labor certification, the petitioner had been in operation for four years, and at the time of filing the Form I-140, the petitioner had been in operation for eight years.

Counsel argues that the petitioner's number of employees also merits favorable consideration in determining its ability to pay the proffered wage. Counsel asserts that the petitioner employs more

than 47 people in its three restaurants. However, the petitioner submits a copy of its January 6, 2011 Payroll Journal, which shows 27 employees. Counsel asserts that these 27 employees work only at the petitioner's new restaurant on [REDACTED], but that the petitioner employs 12 more employees at its [REDACTED] restaurant and about 10 others at its restaurant in Redwood City.

Because the record shows that the petitioner sold its [REDACTED] restaurant after counsel submitted his brief, the AAO finds it unlikely that the petitioner now employs more than 47 people. On its Form I-140, which was filed on July 23, 2007, the petitioner stated that it employed only 14 people. A copy of its Internal Revenue Service (IRS) Form 941 Employer Quarterly Federal Tax Return indicates that the petitioner paid wages to 44 employees during the fourth quarter of 2010, when it appears to have operated three restaurants. Subtracting the 12 [REDACTED] employees that counsel asserts from the 44 employees shown on the 2010 wage tax form, the AAO finds that the petitioner likely now employs no more than 32 employees. However, it is unclear if these employees are full- or part-time, temporary, seasonal, or permanent employees. The record contains a copy of the petitioner's 2010 IRS Form 940 indicating it paid \$255,837.36 in wages that year, but only \$86,961.65 in wages to each employee over \$7,000. Thus, it appears that the majority of the petitioner's employees are part-time or temporary employees.

Counsel also argues that the petitioner's ability to sustain its business in a recessionary economy and in a competitive restaurant market in San Francisco merits favorable consideration. The record of proceeding, however, contains no evidence of those market conditions and no evidence specifically linking the petitioner's business decline to those conditions. A mere broad statement by counsel that economic conditions hurt the petitioner's business cannot, by itself, demonstrate the petitioner's continuing ability to pay the proffered wage. Rather, such a general statement merely suggests, without supporting evidence, that the petitioner's financial status might have appeared stronger had it not been for those conditions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998), citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972); see also *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (the assertions of counsel do not constitute evidence).

Finally, counsel asserts that the petitioner's employment of the beneficiary since 2003 is another favorable factor towards demonstrating its ability to pay the proffered wage. But, besides an IRS Form W-2 Wage and Tax Statement for 2008 and various payroll records from 2009 to 2012, the petitioner has not provided evidence to support counsel's assertion that it has continuously employed the beneficiary since 2003. See *Obaighena*, 19 I&N Dec. at 534; *Ramirez-Sanchez*, 17 I&N Dec. at 506 (the assertions of counsel do not constitute evidence).

Moreover, the record contains conflicting evidence of the beneficiary's start date of employment with the petitioner. In a June 29, 2009 affidavit, the beneficiary stated that, before receiving an Employment Authorization Document in September 2007, the petitioner paid her \$2,103.30 a month for her work in the offered position of general accountant. The beneficiary did not state in the affidavit when she began working for the petitioner. On the Form G-325A, Biographic Information, however, which the

beneficiary signed on July 13, 2007 and submitted with her application for adjustment of status, she stated that, since January 2002, she worked only as a "Housewife." Further, on ETA Form 750B, filed on May 9, 2003, she stated that she last worked in 1996 for [REDACTED] Restaurant in San Francisco. Because of the discrepancies in the record, the AAO finds that the petitioner has failed to demonstrate that it has employed the beneficiary since 2003 as counsel asserts. *See Matter of Ho*, 19 I&N Dec. at 591-92 (the petitioner must resolve any inconsistencies by independent, objective evidence).

As the AAO explained in its previous decision, USCIS may consider the overall magnitude of the petitioner's business activities in its determination of its ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioner 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, however, 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 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 its business; its overall number of employees; the occurrence of any uncharacteristic business expenditures or losses; its reputation in its industry; and whether the beneficiary is replacing a former employee or an outsourced service.

Like the petitioner in *Sonegawa*, the petitioner in the instant case appears to have been doing business for more than 10 years, as it has been almost 14 years since its date of incorporation. However, as of the petition's priority date, the petitioner had been operating for only four years. It operates multiple restaurants and, according to a wage tax record, employed 44 people in late 2010. However, it pays relatively low salaries in the relevant years, suggesting these employees are part-time, temporary or otherwise employed less than full-time. The petitioner's federal tax returns show that both its gross annual sales and its annual payroll expenses were less in 2008 than in 2003.<sup>3</sup>

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<sup>3</sup> The petitioner submits unaudited revenue and expense statements of the three restaurants it claims to have operated in 2010, showing total gross annual sales and payroll amounts substantially higher than the 2003 figures on its tax returns. The regulation at 8 C.F.R. § 204.5(g)(2), however, requires audited financial statements to demonstrate a petitioner's ability to pay the proffered wage. Unaudited financial statements are the representations of management. The unsupported

Unlike the petitioner in *Sonegawa*, however, the petitioner in the instant case has not submitted evidence of an outstanding reputation in its industry or of uncharacteristic business expenditures or losses. Thus, assessing the totality of the circumstances in this individual case in accordance with *Sonegawa*, the AAO concludes that the petitioner has not established its continuing ability to pay the proffered wage from the petition's priority date of May 9, 2003 onward.

Further, according to USCIS records, the petitioner in the instant case has filed multiple immigrant visa petitions for workers. The petitioner must demonstrate its ability to simultaneously pay the proffered wage for each I-140 beneficiary from the priority date of each petition until the corresponding beneficiary obtains permanent residence or the petition is denied. *See Great Wall*, 16 I&N Dec. at 144-145; 8 C.F.R. § 204.5(g)(2).

Since submitting the petition in the instant case, USCIS records show that the petitioner has filed two other I-140 petitions for alien workers. The records show that USCIS approved one petition, which the petitioner filed in the name of its Redwood City restaurant, [REDACTED], and denied the other, which, like the instant petition, the petitioner filed in the name of its former restaurant, [REDACTED]. The evidence in the record does not provide the following information: the priority dates or proffered wages of the other petitions; the wage amounts paid to the other beneficiaries; whether any of the other petitions have been withdrawn, revoked, or denied; or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, the AAO concludes that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions.

Beyond its previous decision, the AAO also finds that the petitioner has failed to establish its intent to employ the beneficiary in the offered position of general accountant. A labor certification remains valid only for the particular job opportunity stated on the Form ETA 750. *See* 20 C.F.R. § 656.30(c)(2). A petitioner must demonstrate that the proposed employment will be in accordance with the terms of the labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966) (upholding petition denial where the petitioner failed to establish his intention to employ the beneficiary as a live-in domestic worker as set forth in the labor certification).

As indicated previously, the beneficiary's name appears with that of the petitioner's president as co-author of the business plan for the petitioner's new restaurant. Her name and signature also appear with those of the president as co-tenant and co-signer of the new restaurant's lease. The December 11, 2008 business plan also states that the president and the beneficiary "are currently operating two very successful restaurants named [REDACTED] in San Francisco" and "[p]reviously also operated a restaurant for eight years named [REDACTED] on [REDACTED] of the Sunset district."

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representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The beneficiary's co-authorship of the business plan, her signature as a co-tenant on the restaurant lease, and the statements in the business plan regarding her operation of restaurants with the petitioner's president suggest that the petitioner intends to employ the beneficiary in a different job than the offered position of general accountant. The duties of the offered position include: preparing and analyzing financial statements; and handling accounts payable, accounts receivable, employee benefits, payroll taxes, sales taxes, cash management and monthly reconciliation of bank accounts. The duties of the offered position do not include co-authoring business plans for new restaurants and co-signing leases for new restaurants as a co-tenant.

The beneficiary's signing of a lease as a co-tenant suggests that she has assumed personal responsibility for the petitioner's business activities, and her co-authoring of a business plan suggests that she makes strategic business decisions and presentations, like an executive or manager. The evidence also suggests that the beneficiary might have an ownership interest in the petitioner or some other close relationship to the petitioner, calling into question whether the petitioner made a *bona fide* job opportunity available to U.S. workers. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm'r 1986); *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987) (when asked, the employer has the burden to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers); see also *Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000) (a relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or the relationship may "be financial, by marriage, or through friendship"). The level of the beneficiary's involvement in the operations and obligations of the business suggest the beneficiary works as an executive or in a similar position, raising the issue of whether the beneficiary has a degree of ownership or control equating to functional self-employment. See *Matter of Silver Dragon*, 19 I&N Dec. at 405 (the job opportunity must be clearly open to U.S. workers and not merely for self-employment).

In addition, the copies of the beneficiary's paystubs in 2009, 2010 and 2011 show that the beneficiary received "tips," or gratuities, as part of her compensation. The paystubs show that the petitioner separated the beneficiary's total wages into subcategories of "Tipped Wages" and "Reported Tips." For example, copies of the beneficiary's paystubs from January 2010 through December 2010 show that the beneficiary received total wages of \$40,968.02, \$26,400 of which constituted "Tipped Wages" and \$14,568.02 of which constituted "Reported Tips."

Federal law defines tipped employees as those who work in occupations in which they receive more than \$30 a month in tips. See [www.dol.gov/dol/topic/wages/wagestips.htm](http://www.dol.gov/dol/topic/wages/wagestips.htm) (accessed March 6, 2013). Federal law allows employers to pay a tipped employee \$2.13 an hour in wages if the employee receives tips that at least equal the federal minimum wage of \$7.25 an hour when combined with the wages. *Id.* California, however, requires an employer to pay an employee at least \$8.00 an hour and does not allow an employer to deduct a so-called "tip credit" on wages paid. See [www.dol.gov/whd/state/tipped.htm](http://www.dol.gov/whd/state/tipped.htm) (accessed March 6, 2013).

Because the beneficiary's paystubs show that she received compensation from tips, they suggest that the beneficiary is a tipped employee who receives more than \$30 a month in tips. Accountants do not typically receive tips. Rather, hourly workers in service industries, such as restaurant

waitpersons, typically receive tips. The petitioner's labor certification states the proffered wage in an annual salary amount, rather than in an hourly wage rate. The evidence therefore indicates that the beneficiary is not working for the petitioner in the offered position of general accountant.

Based on the beneficiary's co-authorship of the business plan, her signature on the restaurant lease as a co-tenant, the business plan statements indicating that she and the petitioner's president "are operating" restaurants together, and her paystubs reflecting income from tips, the AAO finds that the petitioner has not established that it intends to employ the beneficiary in the offered position of general accountant as set forth on the labor certification.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Also beyond the AAO's previous decision, the petitioner has not established that the beneficiary is qualified for the offered position of general accountant. 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 Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981).

In the instant case, the labor certification states that the offered position requires three years of full-time experience in the offered position, or three years of full-time experience in bookkeeping, accounting, or as an auditing clerk. On the labor certification, the beneficiary claims more than 10 years of experience in the offered position of general accountant. She claims to have worked in the offered position from December 1991 to August 1996 at [REDACTED] Restaurant in San Francisco, from December 1989 to February 1991 at [REDACTED] in Papua New Guinea, and from February 1984 to June 1989 at [REDACTED] Restaurant in China.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The petitioner submitted a September 20, 1996 letter from [REDACTED] Restaurant in San Francisco, which states that it employed the beneficiary full-time as a general accountant from December 1991 to August 1996. The letter contains a description of the beneficiary's experience there and otherwise meets the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter is signed by the restaurant's purported owner.

Restaurant appears to be the same restaurant referred to in the petitioner's business plan for its new restaurant. The business plan states that the petitioner's president and the beneficiary, before establishing the petitioner's current restaurants, "also operated a restaurant for eight years named [REDACTED] on [REDACTED] of the Sunset district." The letter from [REDACTED] Restaurant identifies its address as [REDACTED] San Francisco, CA 94116. According to a March 2008 statement for the San Francisco Mayor's Office of Economic and Workforce Development, [REDACTED] Parkside district, which is part of San Francisco's Sunset district. See [www.outsidelands.org/parkside-statement.pdf](http://www.outsidelands.org/parkside-statement.pdf) (accessed March 15, 2013). The petitioner was incorporated on July 14, 1999, the same date on which it states it was established on its Form I-140. Eight years before the petitioner's incorporation date includes the period of the beneficiary's purported employment by [REDACTED] on [REDACTED] from December 1991 to August 1996.

The business plan's statement that the petitioner's president and the beneficiary "operated" a restaurant named [REDACTED] on [REDACTED] suggests that they owned the restaurant. But the 1996 letter from [REDACTED] Restaurant on [REDACTED] identifies someone else as the restaurant's owner. The petitioner's tax returns for the years 2001 to 2005 indicate the petitioner did business as "[REDACTED] Restaurant." The returns for 2001 to 2004 also state the petitioner's address as "[REDACTED]" in San Francisco. The inconsistencies in the record regarding the beneficiary's prior employment at a restaurant on [REDACTED] and the identity of that restaurant's owner(s) cause the AAO to question the validity of the beneficiary's experience letter, which was the only evidence submitted of her qualifications for the offered position. The petitioner must resolve any inconsistencies in the record by independent, objective evidence. See *Matter of Ho*, 19 I&N Dec. at 591-592. Doubt cast on any aspect of the petitioner's proof may also lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.*, at 591. The petitioner has therefore failed to establish that the beneficiary possessed the required experience set forth on the labor certification.

In summary, after granting the petitioner's motion to reopen and carefully reconsidering its decision based on the record and in light of the new evidence, the AAO finds that the petitioner has failed to demonstrate its continuing ability to pay the offered wage rate since the priority date. The AAO also finds that the petitioner has not demonstrated its intent to employ the beneficiary in the offered position of general accountant and has not established the beneficiary's qualifications for the offered position as set forth in the labor certification.

The petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion to reopen is granted and the decision of the AAO dated February 3, 2011 is affirmed. The petition remains denied.