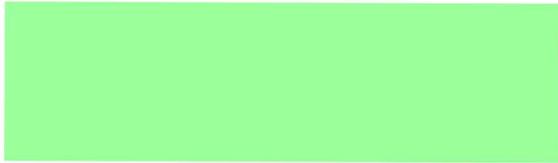




U.S. Citizenship  
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Services

(b)(6)

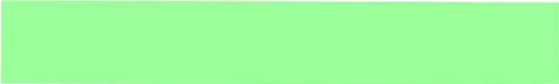


DATE: **AUG 07 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was initially approved by the Director, Texas Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed. The approval of the employment-based immigrant visa petition remains revoked.

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.

The petitioner claims to be a business that develops and promotes musical and entertainment projects. It seeks to employ the beneficiary permanently in the United States as a dance and runway choreographer under a skilled worker category pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, a Form ETA 750, Application for Alien Employment Certification (labor certification) approved by the Department of Labor (DOL), accompanied the petition. As set forth in the October 16, 2012 notice of revocation, the director determined that the petitioner had not established that the beneficiary possessed the minimum experience required for the position offered as of the priority date. The director also determined that the beneficiary is ineligible for the benefit sought due to fraud, and on that basis, invalidated the labor certification pursuant to 20 C.F.R. § 656.30(d). The director further found that the underlying petition was no longer supported by a valid labor certification, as required by 8 C.F.R. § 204.5(l)(3)(i).

The petitioner's Form ETA 750 was filed with DOL on August 12, 2002 and certified by DOL on November 7, 2003. The petitioner subsequently filed a Form I-140 with U.S. Citizenship and Immigration Services (USCIS) on April 2, 2004, which was approved on February 24, 2005. As indicated, the subsequent invalidation of the underlying labor certification and revocation of the approval of the Form I-140 petition resulted from a determination of fraud by the director in connection with the labor certification in this case.

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.<sup>1</sup>

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by

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<sup>1</sup> 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).

the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for “good and sufficient cause” when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The director’s NOIR sufficiently detailed the evidence of the record, describing conflicting employment claims and possible misrepresentations concerning the beneficiary’s qualifying employment experience for the Form I-140, that would warrant a denial if unexplained and unrebutted. Thus, the NOIR was properly issued for good and sufficient cause.

Specifically, the NOIR noted the conflicting employment history the beneficiary set forth on a Form G-325A, Biographic Information Form, submitted with a previously filed Form I-130, Petition for Alien Relative, on her behalf by a former spouse. According to the labor certification, the beneficiary gained qualifying experience in the offered position from February 1985 to February 1987<sup>2</sup> with ██████████ in Brussels, Belgium, and from September 1990 to September 1992 with ██████████ in New York, NY. The NOIR stated that the beneficiary inconsistently stated in her prior G-325A<sup>3</sup> that she was a student in Brussels, Belgium from 1973 until September 1988 and then, unemployed from September 1988 “until the present, July 19, 2000, or when the I-130 was withdrawn.” Further, the NOIR indicated that the beneficiary did not list her experience with ██████████ on the biographic information form. Lastly, the NOIR noted that the attorney of record at that time was also the owner of the petitioning company.

In response to the NOIR, the petitioner submitted a statement from its owner, who is also an attorney, and from the beneficiary. The petitioner asserts that the beneficiary’s Form G-325A, dated July 10, 1989, did not contain fraudulent information because while the beneficiary was attending both regular school, as well as a dance academy, from 1973 and September 1988, her attorney at the time had failed to include that she was also employed full-time as a dancer and choreographer from February 1985 to February 1987. The petitioner further notes that the beneficiary submitted a second G-325A in 1999 with a separate Form I-130 filed on her behalf by a different spouse, which indicated that the beneficiary was self-employed from 1994 to the present. The petitioner notes that the biographic form required only work experience going back five years, and therefore, the beneficiary omitted her work experience with ██████████ as it fell outside of that five year period. Lastly, the petitioner noted that the petitioning company also practices entertainment law, and through the petitioning company, “contracts with and represents many types of entertainers

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<sup>2</sup> The beneficiary would have been 18 years old when she commenced this employment as a “dance and runway choreographer” in February 1985.

<sup>3</sup> The record contains two (2) G-325A forms by the beneficiary. Although the NOR does not indicate which of the two contains the inconsistencies, based on a review of the record, the director appears to be referencing information contained in the beneficiary’s Form G-325A, dated July 10, 1989.

including dancers and choreographers for musical shows, runway fashion shows, and music videos.”

On October 16, 2012, the director revoked the approval of the I-140 visa petition. Citing in error a Form G-325A in the record that was submitted with the Form I-130 filed on November 26, 1999,<sup>4</sup> the director discussed the same previously raised inconsistencies between the beneficiary’s employment experience set forth in the G-325A form and in the labor certification. Having found the petitioner’s response to be insufficient to overcome the derogatory information in the NOIR, the director’s review of the evidence in the case concluded the following:

- The petitioner claimed that the beneficiary was employed by the petitioner from 2005 to 2007. However, the Florida Department of Revenue indicated that the petitioner had been inactive in business since March 31, 2002; thus, a *bona fide* job offer no longer existed.
- The corporate tax returns in the record relate to income from the “owner’s” legal services business rather than the petitioning business. Likewise, the tenant estoppel certificate provided reflects the “owner’s” legal services address and not the petitioner’s address. Further, the addresses on the letterhead of the updated petitioner/employer letter did not match the address on the corporate tax returns.
- The beneficiary’s job experience letter, purported to be from [REDACTED] owner of [REDACTED] could not be validated. Various internet queries identified [REDACTED] as a noted ballet instructor in Belgium associated with various organizations, but no connection could be confirmed with the organization with which the beneficiary claimed to have gained her qualifying experience.

Based on the foregoing, the director: (1) determined that the petitioner failed to demonstrate that the beneficiary possessed the experience required by the terms of the labor certification; (2) determined that the petitioner had committed fraud and misrepresentation of a material fact in filing the petition and falsified documentation; (3) invalidated the underlying labor certification; and (4) ultimately revoked the approval of the Form I-140.

On appeal, the petitioner asserts that the director’s NOIR and NOR are deficient because they misstated the information in the record in identifying inconsistencies in the beneficiary’s qualifying work experience. After careful review of the evidence of record, the AAO concurs in part with this assertion. The record contains two (2) G-325A forms, one dated July 10, 1989, relating to a 1989 Form I-130 for the beneficiary, and another submitted with a second Form I-130 filed in approximately November 1999. The inconsistencies in the beneficiary’s employment history referenced in the NOIR and the NOR relate to information set forth in the July 1989 G-325A. See note 2, *supra*. However, the NOR incorrectly appears to cite to the 1999 G-325A<sup>5</sup> as the source of these inconsistencies. In addition, following the misstatement that the G-325A was from 1999, the

<sup>4</sup> Cf. note 3.

<sup>5</sup> The 1999 G-325A form states only that the beneficiary was self-employed from 1994 until the present time (the 1999 date of submission).

NOIR states that the beneficiary indicated on that form that she was unemployed from September 1988 “until the present, July 19, 2000, or when the I-130 was withdrawn.”<sup>6</sup> See also Notice of Revocation, at 2. As stated, the referenced G-325A is from July 1989 and states that the beneficiary was unemployed from September 1988 until the “present time,” which would have been July 10, 1989, the signature date of the form. Thus, USCIS erred in concluding that the beneficiary had inconsistently stated on the biographic form that she was unemployed from September 1988 until July 2000 (a period of over ten years), when, in fact, the form establishes only that beneficiary was unemployed for a period of less than a year from September 1988 until July 10, 1989. Accordingly, the period of unemployment indicated on the 1989 G-325A form does not conflict with the beneficiary’s claimed work experience with [REDACTED] from 1990 to 1992 referenced in the labor certification. Similarly, the director also noted the beneficiary’s failure to divulge this employment with [REDACTED] on the G-325A form. However, this experience postdates the 1989 biographic form and could not have been included on the form. Further, the petitioner correctly asserts that the November 1999 G-325A form required the beneficiary’s employment history for the previous five years, and thus, the beneficiary’s failure to include her claimed experience with [REDACTED] on November 1999 G-325A form cannot be interpreted as inconsistent, and does not support a finding of fraud.

The NOIR, however, properly noted that the G-325A from July 1989 states that the beneficiary was a student in Brussels, Belgium from 1973 until September 1988, which is inconsistent with information the beneficiary provided in the labor certification, indicating that she was employed from February 1985 to February 1987 with [REDACTED] a dance studio, in Belgium as a full-time “dancer and runway choreographer.” In response to the NOIR, the beneficiary asserted that she reviewed and signed the G-325A, prepared by her former counsel with whom she had discussed her prior employment and educational history, but denies having any intent to defraud in failing to list all of her prior employment. In addressing the aforementioned discrepancy, the beneficiary further stated the following:

Since I was 12 years old I had been attending regular school, and also a daily dancing academy school, [REDACTED], and was also working as a dancer while in both my regular school and the dance school. I was dancing at [REDACTED] since I was 17 and also began doing choreography from 2/1985 until 2/1987.

The beneficiary does not indicate when her schooling ended and is unclear about whether or not she was still attending school when she purportedly commenced working as a dancer and choreographer in February 1985. Instead, she merely restates the dates of the claimed experience on the labor certification from February 1985 to February 1987. Her statement fails to address the inconsistency noted in the 1989 G-325A, which indicates she was a student *during* the period of time that she claimed to have worked in the offered position. Moreover, if she was a full-time student, as well as a dance academy student, during the relevant time period, the record offers no explanation for how

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<sup>6</sup> The record confirms that the July 19, 2000 date cited by the director actually relates to the withdrawal of the second and separate Form I-130 filed in 1999 by the beneficiary’s second spouse and is unrelated to the 1989 G-325A and Form I-130, which was terminated in 1991.

she could also have been employed in a full-time capacity from 10 am to 6 pm, Monday through Friday, as claimed in the employer letter from [REDACTED] dated June 10, 2002. This casts doubt on the beneficiary's claimed full-time employment experience as a "dance and runway choreographer." *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (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. *See id.* at 591-92. Further, the beneficiary's affidavit indicates that she was employed by [REDACTED] as a dancer from age 17, and that she "also began doing choreography from 2/1985 until 2/1987." This experience is not listed on the labor certification or either of the G-325A Forms in the record, and further conflicts with the labor certification, which states that she was employed with [REDACTED] under [REDACTED] during this time period, and with [REDACTED] employer letter. This casts additional doubt on the beneficiary's claimed employment experience. *See id.* The beneficiary's affidavit not only fails to corroborate her claimed experience with [REDACTED] but also now introduces a new, previously unreferenced employer, who also purportedly employed her at the time of her previously claimed employment with [REDACTED]. *See Matter of Ho, supra.* In addition, although the beneficiary indicates in her statement that she studied at the [REDACTED], she does not indicate that she was ever employed under [REDACTED], as set forth in the labor certification. The record lacks any independent competent evidence, such as school records, employment contracts, pay records, or performance notices to overcome or resolve the noted discrepancies.

The petitioner also asserts that USCIS abused its discretion and violated due process rights in revoking the approval of the petition because it failed to give the petitioner and beneficiary an opportunity to respond to new and derogatory evidence, which served as a basis for the revocation but were identified for the first time in the NOR. Pursuant to 8 C.F.R. § 205.2(b), a petitioner must be given the opportunity to offer evidence in support of the petition or in opposition to the grounds alleged for revocation of the approval of the petition.

However, in this case, the NOR relies on derogatory information and evidence that was already presented in the NOIR. Thus, the petitioner was provided an opportunity to rebut the adverse information raised in the NOIR. While the petitioner's response may have clarified some of the issues raised in the NOIR, it did not overcome all the discrepancies in the record relating to the beneficiary's qualifying employment experience. Moreover, as set forth above, the petitioner's response only further conflicted with the record and created additional discrepancies. Accordingly, the AAO concludes that the petition in this case was revoked for "good and sufficient cause" pursuant to section 205 of the Act.

Moreover, based on the record, the petitioner has 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'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 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 (9th 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, as stated above, the beneficiary's experience, as listed on the labor certification and in the letter from [REDACTED] conflicts with the G-325A form in the record; the beneficiary's affidavit contradicts all three said documents; and the record contains no letter from [REDACTED]. Therefore, the petitioner has not established that the beneficiary possessed the experience required by the terms of the labor certification by the priority date.

Further beyond the decision of the director, the approval of the petition may not be reinstated given the confusion in the record as to the identity and status of the petitioning entity. 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

If a petitioning organization is not in good standing or no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of your organization's business. See 8 C.F.R. § 205.1(a)(3)(iii)(D). Moreover, any concealment of the true status of the organization seriously compromises the credibility of the remaining evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The petitioner must resolve any inconsistencies in the record with independent, objective evidence. *Id.*

Here, the Form I-140 and underlying labor certification indicate that the petitioner is [REDACTED] located at [REDACTED] Boca Raton, FL, with Federal Employer Identification Number (FEIN) [REDACTED]. The petitioner's purported federal corporate tax returns in the record for 2002 and 2003, however, are for an entity incorporated December 23, 1997, [REDACTED], a C corporation with the same FEIN, but located at [REDACTED] Miami, FL. Subsequent tax returns in the record for 2004, 2005, and 2009 are also for [REDACTED], now a S corporation since January 1, 2004 with the same FEIN. A search of the website of the Florida Department of State, Division of Corporations, reveals that this entity is active. See [REDACTED] (last accessed June 27, 2013). A query of fictitious names owned by [REDACTED] yielded several results, including the following results:

<u>Fictitious Name</u>	<u>Address</u>	<u>FEIN</u>	<u>Status</u>
• [REDACTED]	[REDACTED] [REDACTED]	None	Active (since July 2004)

- [redacted] [redacted] [redacted] Expired (December 2008)  
Miami, FL
- [redacted] [redacted] None Active (April 2008)  
Miami, FL

See [redacted] (last accessed June 27, 2013). Yet another query of corporation names on the website revealed that [redacted] is also the registered agent of the following corporation:

<u>Entity Name</u>	<u>Address</u>	<u>FEIN</u>	<u>Status</u>
• [redacted]	[redacted] Boca Raton, FL	[redacted]	Active (since January 2004)

See [redacted] (last accessed June 27, 2013).

The petitioner asserts on appeal that [redacted] does business as (dba) under the fictitious name, [redacted] the petitioner on the Form I-140. However, neither that entity nor its fictitious names have addresses that match the address of the employer listed on the labor certification and petition. In contrast, [redacted] has the same name and address as the employer on the labor certification, but its FEIN is not only different, it also did not exist at the time of the 2002 priority date in this case. The record before the AAO does not with any clarity establish which entity is the purported petitioner. Where the record fails to establish that the petitioner is an active business or entity in good standing, the petition must be denied because the petitioner has not shown that a *bona fide* job offer exists. See 8 C.F.R. § 205.1(a)(3)(iii)(D) (termination of employer's business will result in revocation of an employment based petition).

As noted, the petitioner maintains on appeal that the petitioning entity is, in fact, [redacted] and that through this entity, he operates both his law firm and the petitioning entertainment business. However, 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)). Here, the tax returns in the record appear to contradict the petitioner's assertions and indicate that the entity engages in law rather than in the development and promotion of musical and entertainment projects as stated on the Form I-140. Assuming this entity is the petitioner as claimed, there is no indication that it engages in the business identified on the petition, thus, calling into question whether there is a valid job opportunity in the offered position of dance and runway choreographer, as certified on the Form ETA 750. For instance, there is no evidence that [redacted] employs any dancers or runway

models for the beneficiary to develop choreography, or that it provides any employment to dancers at all. A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(c)(2). The petitioner has submitted employment and “agent-entertainer representation” contracts of other beneficiaries in the entertainment field for whom he has filed nonimmigrant petitions. However, the contracts do not establish that “[REDACTED]” or “[REDACTED]” directly employ these individuals to “develop and promote musical and entertainment projects.” To the contrary, they show that “[REDACTED],” located at [REDACTED] West Palm Beach, FL, acted for these beneficiaries in a representative’s capacity or as an agent on their behalf to assist them in obtaining employment with other employers in the entertainment field. As such, the petitioner has not established which entity<sup>7</sup> is the employer listed on the labor certification and Form I-140 and whether the job opportunity certified on the Form ETA 750 is valid.

Additionally, even if the petitioner demonstrated on remand that [REDACTED] is the petitioning entity, or its *bona-fide* successor-in-interest, and that it is in the entertainment field, the record still fails to show that the petitioner will be the beneficiary’s employer and was authorized to file the instant petition. The regulation at 8 C.F.R. § 204.5(c) provides that “[a]ny United States employer desiring and intending to employ an alien may file a petition for classification of the alien under...section 203(b)(3) of the Act.” In addition, the Department of Labor (DOL) regulation at 20 C.F.R. § 656.3 states:

*Employer* means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation.

In determining whether the petitioner will be the beneficiary’s actual employer, USCIS will assess the petitioner’s control over the beneficiary in the offered position. *See* Restatement (Second) of Agency §

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<sup>7</sup> The petitioner also indicates on appeal that in 2003, [REDACTED] became the 100% successor-in-interest to [REDACTED], an entity incorporated in 1992 and did business under the name [REDACTED]. Insofar as the petitioner appears to be acknowledging that it is not the entity listed as the employer on the 2002 labor certification and that such entity no longer exists, the petitioner must establish that it is the successor-in-interest to entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm’r 1986). An appellant may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. The record does not show that all three conditions described above have been satisfied to demonstrate that the job opportunity is still valid.

220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker's relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer's regular business. *See id.*; *cf.* New Compliance Manual, Equal Employment Opportunity Commission, § 2-III(A)(1), (EEOC 2006) (adopting a materially identical test).

In this case, the petitioner has failed to establish what company would actually employ the beneficiary. Although the petitioner describes itself as a company that develops and promotes entertainment projects, the record suggests that it is an entertainment agency that represents entertainers in gaining employment in their specific field. It is unclear from the record whether the purported petitioner, [REDACTED] directly employs any entertainers, such as the beneficiary. For instance, the employment agreements in the record for other nonimmigrant beneficiaries sponsored by [REDACTED] are not for employment with that entity, but rather with other employers. Moreover, the "agent-entertainer representation" in the record between one of those sponsored workers and "[REDACTED]" indicates that the sponsored worker was not an employee, and in fact, paid the agency to represent her as an agent. Further, although, the record contains W-2 forms from 2005 and 2006 for the beneficiary, as well as payroll records showing other employees, they are issued by [REDACTED], rather than [REDACTED]. These pay records do not reflect the beneficiary's or other workers' employment positions, which is relevant as they may have been employed in the legal services field, given the evidence of record indicating that [REDACTED] is engaged in the business of law rather than entertainment promotion. Thus, the record fails to establish that the petitioner will be the beneficiary's actual employer.

Additionally, beyond the decision of the director, the record does not establish the petitioner's ability to pay the beneficiary the proffered wage *as of the priority date and continuing until the beneficiary obtains lawful permanent residence*. *See* 8 C.F.R. § 204.5(g)(2) (emphasis added). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The record before the director contains the corporate tax returns of the purported petitioning entity, [REDACTED], for the years 2002 through 2005 and 2009. It does not contain any annual reports, federal tax returns, or audited financial statements for the petitioner for 2006 through 2008 and 2010 through 2012 as required. While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by the regulation 8 C.F.R. § 204.5(g)(2).

Furthermore, according to USCIS records, the petitioner has filed numerous nonimmigrant (Form I-129, Petition for a Nonimmigrant Worker) and I-140 immigrant petitions on behalf of other beneficiaries. Accordingly, the petitioner is required to 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).

The evidence in the record, however, does not document the priority date, proffered wage or wages paid to each beneficiary, 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 petitioner also failed to establish its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions beginning on the 2002 priority date in this case onward.

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the position offered as set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

The petition's approval will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The approval of the employment-based immigrant visa petition remains revoked.