

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

(b)(6)

DATE: **AUG 20 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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 (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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner filed a motion to reopen and reconsider which were granted and the appeal was again dismissed by the AAO. The matter is now before the AAO on a second motion to reopen and reconsider. The motions will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner describes itself as a hospitality company. It seeks to permanently employ the beneficiary in the United States as a financial manager. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The director's decision denying the petition concludes that the beneficiary did not possess the minimum level of education required by the terms of the labor certification.

On August 27, 2012, the AAO dismissed the appeal, finding that the petitioner failed to establish that the beneficiary possessed the education required by the terms of the labor certification and that the petitioner failed to demonstrate its ability to pay the proffered wage from the priority date onwards. The petitioner then filed a motion to reopen and reconsider the AAO decision. The AAO issued a decision on May 30, 2013 again affirming the director's findings that the petitioner failed to establish that the beneficiary meets the requirements of the labor certification as of the priority date and failed to establish the ability to pay the proffered wage from the priority date onwards. The AAO decision also noted that the proffered position seemed to be different than the position in which the beneficiary would be employed, providing another basis for denial.

The petitioner has submitted a second motion to reopen and reconsider. We will accept the motion to reopen the matter based on the new information submitted and the motion to reconsider based on arguments made by counsel. Thus, the instant motions are granted. 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 record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. 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 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

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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).

which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is December 1, 2003, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d).<sup>2</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on February 27, 2007.

As noted previously, the minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification and reflects that the proffered position requires four years of college culminating in a bachelor's degree in accounting plus two years of experience in the job offered of financial manager. As stated in the August 27, 2012 and May 30, 2013 decisions, the beneficiary's diplomas and transcripts from [REDACTED] in [REDACTED] as well as the credential evaluation from [REDACTED] failed to establish that the beneficiary held a foreign equivalent degree to a Bachelor of Science degree with a specialization in accounting as of the priority date. With its first motion to reopen, the petitioner submitted a credentials evaluation dated September 18, 2012 from [REDACTED] of the [REDACTED], which was considered in the May 30, 2013 AAO decision. Specifically, the AAO stated that Mr. [REDACTED] examined the beneficiary's Bachelor of Laws (Special) from [REDACTED] and concluded that the beneficiary holds the equivalent of a U.S. Bachelor degree in Legal Studies. Mr. [REDACTED] relied upon the number of years required to achieve a Bachelor of Laws in reaching his conclusion. Mr. [REDACTED] then cites the EB-2 immigrant classification that a U.S. bachelor's degree plus five years of experience is equivalent to a U.S. Master's degree, considered the beneficiary's years of experience with Modern Automobiles, and concluded with no specific explanation that the beneficiary holds the equivalent of a Bachelor of Science with a major in Accounting.

In the previous decision, the AAO consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) in stating that the beneficiary's Bachelor of Laws degree is equivalent to a U.S. bachelor's degree.<sup>3</sup> The previous AAO decision then stated that the evaluation did not analyze the beneficiary's experience as related to courses required for a bachelor's degree in accounting or otherwise

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<sup>2</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

<sup>3</sup> It is noted that EDGE states that the beneficiary's Bachelor of Science degree in Chemistry is not equivalent to a U.S. bachelor's degree. The petitioner submitted no evidence to establish that this degree would otherwise bear upon the required specialty of Accounting.

demonstrate how the beneficiary's particular experience would be the equivalent of a degree in a field other than Law. It also noted that the petitioner's recruitment materials had previously been evaluated and that those materials did not suggest that the petitioner intended any equivalency to a baccalaureate degree to be acceptable for the position.

With the instant motion, the petitioner submitted two additional credentials evaluations. The first evaluation is from [REDACTED] Director of Graduate Studies and Senior Lecturer, School of Business, [REDACTED] who states that the beneficiary has the equivalent of a bachelor's degree in Accounting based on a combination of his education and experience. Specifically, Dr. [REDACTED] found that the beneficiary's Bachelor of Laws (Special) degree is equivalent to a bachelor's degree in the United States. Dr. [REDACTED] then further found that the beneficiary's 27 years of "specialized training and work experience in Accounting and related areas" is equivalent to an accounting specialization at a bachelor's degree level. Dr. [REDACTED] lists "professional responsibilities" undertaken by the beneficiary when he worked from 1984 to the September 12, 2012 date of the evaluation. The evaluation does not state which specific skills or responsibilities correlate to which employer or year of employment. Dr. [REDACTED] concludes that the responsibilities listed "are indicative of university level course work in Accounting and related subjects . . . directly corresponds to the knowledge obtained by a student completing a Bachelor's Degree program in Accounting." Dr. [REDACTED] also uses the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5).

The second credential evaluation submitted on motion is from [REDACTED]. Dr. [REDACTED] concludes that the combination of the beneficiary's education and "relevant experience" is equivalent to a U.S. Bachelor of Science degree in Accounting. Dr. [REDACTED] does not include any specifics to explain her conclusion.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

Dr. [REDACTED] evaluation appears to rely on the USCIS formula for arriving at a Master's degree in the employment based second preference context, that being a bachelor's degree plus five years of experience. That formula, however, is prescribed by regulation as an equivalency to a Master's degree in that context. No such regulation exists in the third preference category. Instead, the

requirements of the labor certification control as well as the intent expressed in recruitment documents. The evaluation from Dr. [REDACTED] uses an H1-B non-immigrant visa equivalency in determining that the beneficiary has the equivalent of a bachelor's degree in accounting, which is inapplicable to the instant immigrant visa petition. In addition, although the evaluation lists courses required for a bachelor's degree in accounting and certain skills that Dr. [REDACTED] states that the beneficiary learned in his time in the work force, the labor certification does not allow for an equivalency obtained through work experience. The recruitment materials submitted gave no notice that anything other than a bachelor's degree would be acceptable.

As stated in the AAO decision dated August 27, 2012, 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 (1st Cir. 1981). The August 27, 2012 AAO decision examined evidence submitted by the petitioner that it intended the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.<sup>4</sup>

As noted in the previous AAO decision, the newspaper advertisements submitted by the petitioner include no education requirements, and thus are insufficient to apprise U.S. workers of the true minimum requirements for the position, which is a bachelor's degree in accounting. See 20 C.F.R. § 656.12(g). The Job Notice submitted by the petitioner lists the education requirement for the job as a bachelor's degree in accounting and does not indicate that anything other than a bachelor's degree would be accepted.

The credential evaluations in the record do not rely on a single-source degree to meet the terms of the labor certification. The labor certification did not state that three years of experience would be deemed equivalent to one year of academic study, but instead required a bachelor's degree in accounting with no stated alternative. As a result, the evaluations submitted with the petitioner's

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<sup>4</sup> In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would undermine Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. See *Id.* at 14.

second motion to reopen and reconsider are insufficient to establish that the beneficiary meets the requirements of the labor certification as of the priority date. As a result, the petition will remain denied on this basis.

With regards to the petitioner's ability to pay the proffered wage, 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.

As noted in the AAO's prior decisions, 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). Here, the Form ETA 750 was accepted on December 1, 2003. The proffered wage as stated on the Form ETA 750 is \$45,000 per year.

In the AAO's August 27, 2012 decision, we specifically reviewed evidence of the petitioner's ability to pay the proffered wage in the form of Internal Revenue Service (IRS) Form W-2s from 2008 through 2011 and the petitioner's IRS Forms 1120S for 2003 through 2011. The AAO's decision stated that the petitioner demonstrated its ability to pay the proffered wage in 2004, 2005, 2006, 2007, 2008, and 2011. In addition to Forms W-2 stating wages paid by the petitioner to the beneficiary of \$42,000 in 2009 and 2010, the petitioner's 2003 Form 1120S stated net income of \$40,523 and net current assets of -\$49,380; its 2009 Form 1120S stated net income of -\$33,556 and net current assets of -\$61,842; and its 2010 Form 1120S stated net income of -\$13,198 and net current assets of -\$77,077. Accordingly, the AAO decision concluded that the petitioner did not establish its ability to pay the proffered wage in 2003, 2009, or 2010.

With the instant motion, the petitioner submitted a 2012 Form 1120S that states net income of -\$116,272 and net current assets of \$15,712. These amounts are insufficient to demonstrate the petitioner's ability to pay the proffered wage in that year. The petitioner also submitted the 2012 accountant's compilation report. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. The accountant's report that accompanied those financial statements makes clear that they were produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are

the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

In the AAO's May 30, 2013 decision, we specifically reviewed evidence of the petitioner's ability to pay the proffered wage in the form of a 2003 IRS Form W-2. We also considered counsel's assertion that the wage for 2003 should be prorated so that the amount shown on that Form W-2 would be sufficient to demonstrate the ability to pay in that year. This previous decision declined to undertake such a proration since 12 months of income cannot be considered towards a wage obligation period of shorter duration.

With the instant motion, counsel reiterates the request to prorate the wage for 2003 based on its previous ability to show its ability to pay the proffered wage for 2004, asserting that as the priority date is in December, only a small portion of the year actually precedes the priority date. If the petitioner provided evidence of actual wages paid from the priority date of December 1, 2003 through the end of the year, such as through pay stubs or other independent, objective evidence paid only during the month of December, that evidence could be used to establish the petitioner's ability to pay the proffered wage. Where, as here, however, the petitioner submits evidence covering wages paid for the entire year with no indication of how it was distributed or when the beneficiary received certain amounts, the evidence submitted cannot demonstrate the petitioner's ability to pay the proffered wage for a period less than a year. As a result, we cannot prorate the wage for 2003 or otherwise determine that the petitioner paid the proffered wage in 2003 based on the evidence submitted.

The petitioner also submitted an IRS Form W-3 demonstrating wages paid to all employees in 2003 as evidence of its ability to meet its wage obligations in that year. Wages paid to other employees are not available to pay the proffered wage to the sponsored worker and can be considered only generally under the totality of the circumstances analysis undertaken below. Even if the 2003 deficiency could be deemed *de minimus* and USCIS could conclude that the petitioner had the ability to pay the proffered wage in 2003, the same cannot be said for deficiencies in 2009, 2010, and 2012.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her 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.

As stated in the previous AAO decision and again with the instant motion, counsel admits that the tax returns in the record do not establish the petitioner's ability to pay the proffered wage in 2009 and 2010, but states that the petitioner's overall financial position, especially in light of the recession beginning in 2008, should be considered. The petitioner did not submit evidence to demonstrate that the economic downturn could be considered an extraordinary event similar to *Sonegawa* or, based on the financial evidence for 2012 submitted, that the effects felt by the petitioner have abated. Counsel states that the petitioner's owner was out of the country in 2009 and 2010, which resulted in lower than usual income for the petitioner. The petitioner submitted no evidence that its owner was out of the country as claimed or how the owner's absence would affect the profitability of a hotel. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

As stated in the previous decision, counsel notes that the petitioner has been in business for 19 years and has agreements with various travel websites to boost its sales and future prospects and that it demonstrated its ability to pay the proffered wage in the other years at issue. The petitioner failed to demonstrate its ability to pay the proffered wage in 2003, 2009, 2010, and 2012, so a prospective promise of increased revenue would not affect the petitioner's ability to pay the proffered wage in past years. Counsel also states that real property owned by the petitioner demonstrates assets available to pay the proffered wage. The petitioner submitted no evidence that any equity in the property could be used to pay the proffered wage. It is noted that the real property claimed is the actual location of the lodging facility, so that it could not be sold to meet its salary obligations. Nor was evidence submitted to demonstrate that a line of credit or equity line mortgage could be obtained on the property.<sup>5</sup>

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<sup>5</sup> In calculating the ability to pay the proffered salary, USCIS will not augment the petitioner's net income or net current assets by adding in the petitioner's credit limits, bank lines, or lines of credit. A "bank line" or "line of credit" is a bank's unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. See John Downes and Jordan Elliot Goodman, *Barron's Dictionary of Finance and Investment Terms* 45 (5<sup>th</sup> ed. 1998).

Since the line of credit is a "commitment to loan" and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the

With the instant petition, the petitioner submitted news articles and information about drilling activity in the Cline Shale basin and the uptick in the economy in that area. The petitioner submitted no evidence to demonstrate that any increased housing demands have modified the petitioner's financial position or that any increased housing demands coupled with an economic downturn constituted a situation akin to the one presented in *Sonegawa*. The petitioner submitted a revenue statement to demonstrate that its revenue was larger per month in 2013 than it had been in 2012, however, this statement constitutes the representations of management. 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)). In addition, though an increase in revenue bears upon net income for the year, some of the articles submitted were dated in early 2012, a year in which the petitioner did not demonstrate its ability to pay the proffered wage, so it is unclear that any uptick in revenue will change the petitioner's ability to pay the proffered wage.

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.

Also as stated in the previous AAO decision, 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 Form ETA 750 states the proffered position is as a financial manager. However, with the first motion, the petitioner submitted a Registration Form & Hotel Agreement with Booking.com that lists the beneficiary as the reservation contact person. A reservations agent is a position different from a financial manager, encompassing different duties and responsibilities. The petitioner is not in compliance with the terms of the labor certification and has not established that the proposed

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petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Moreover, the petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the petitioner's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the petitioner's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).

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employment will be in accordance with its terms. *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966). The petitioner submitted no evidence to address this concern with the instant motion. As a result, the petition may be denied on this basis as well.

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 motions to reopen and reconsider are granted and the decisions of the AAO dated August 27, 2012 and May 30, 2013 are affirmed. The petition remains denied.