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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 0 5 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) 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a bakery. It seeks to permanently employ the beneficiary in the United States as a baker. The petitioner requests classification of the beneficiary as a 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 petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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.

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

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

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

The 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.[1]

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[1] 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). *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(b)(6)

Ability to Pay

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, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on April 30, 2001, which establishes the priority date. The proffered wage as stated on the Form ETA 750 is $10.62 per hour, which amounts to $22,089.60 per year. The Form ETA 750 states that the position requires 6 years of grade school, 3 years of training as a baker's apprentice and "5+" years of experience in the job offered as a baker or in a related occupation defined as an assistant baker.[2]

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.

The evidence in the record of proceeding shows that the petitioner is structured as a sole proprietorship. On the petition, the petitioner claimed to have been established in 1975 and to currently employ five workers. On the Form ETA 750B, signed by the beneficiary on April 26, 2001, the beneficiary claimed to work for the petitioner from February 1997 to the present (date of signing).

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

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[2] Item 15 of the Form ETA 750 also requires that the "employee should have full knowledge of a baking oven, & mixing machines, cutters & various types of baking equipment. Knowledge of proper baking hygiene. Must have worked in a bakery that has the style of baking we [the petitioner] are used to working with. Be trained in the 'old' method of baking."

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

In the instant case, the petitioner submitted copies of individual federal income tax returns identifying the beneficiary as the filer. Copies of his 2003 (prepared October 15, 2009), 2004 (prepared October 15, 2009), 2005 (prepared October 15, 2011), 2006 (no preparer and no date prepared stated), 2007 (prepared October 15, 2009), 2008 (prepared March 11, 2009), and 2009 (prepared February 13, 2010) tax returns have been provided. All returns reflect that the beneficiary claims to be a sole proprietor operating as a "baker/service." None of the returns indicate the name of his business or its location. The respective Schedule C-EZ direct the filer that no business address is required if it is the same as the address on page 1 of the return. All of the beneficiary's tax returns show the same home address as the petitioner's owner.[3] The petitioner has a different location. Although the petitioner was instructed to submit copies of Wage and Tax Statements (W-2s), Miscellaneous Income statements (Forms 1099), or pay vouchers representing wages paid to the beneficiary during the 2001 through 2010 period, the petitioner failed to submit any of the requested documentation. Copies of the beneficiary's tax returns do not demonstrate the origin of his income or establish that the petitioning business paid him wages during the relevant period. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The petitioner has not established that it employed and paid the beneficiary wages from the priority date of April 30, 2001, onward.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other

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[3] The same home addresses claimed on the beneficiary's and the petitioner's owner's tax returns raises a question as to the nature of their relationship and the *bona fides* of the job offer. Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000).

Where the petitioner is owned by the person applying for the position, it is not a *bona fide* offer. *See Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992) (denied labor certification application for president, sole shareholder and chief cheese maker even where no person qualified for position applied). In any further filings, the petitioner must clarify any relationship between the beneficiary and any owner, manager, director or officer of the petitioner.

expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner is a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioner could support himself, his spouse and five dependents on a gross income of slightly more than $20,000 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor submitted a summary of her household expenses stated to be $1,180.16 per month, which amount to $14,161.92 per year. Her individual tax returns for 2001 through 2011 were also submitted. She filed as head of household or single with one dependent in 2003, 2004, 2005, 2006 and 2007. She filed as single with no dependents in 2008, 2009, 2010 and 2011. The sole proprietor's tax returns reflect the following information for the following years:

	2003 line 34	2004 line 36	2005 line 37	2006 line 37
Sole proprietor's adjusted gross income (Form 1040)	$14,868	$22,605	$15,278	$12,771

	2007 line 37	2008 line 37	2009 line 37	2010 line 37	2011[4] line 37
Proprietor's adjusted gross income (Form 1040)	$12,856	$9,793	$26,135	$29,095	$24,922

As is shown above, the sole proprietor would be unable to pay both the proffered wage and the sole proprietor's expenses in any year. The sole proprietor's adjusted gross income in 2003, 2005, 2006, 2007 and 2008 fails to cover the proffered wage of $22,089.60 even before considering any household expenses of $14,161.92. It is highly improbable that the sole proprietor could support herself on a deficit, which is what remains after reducing the adjusted gross income by the amount required to pay the proffered wage. Additionally, it is noted that the proffered wage of $22,089.60 represented 98% of the sole proprietor's adjusted gross income in 2004; 85% of the adjusted gross income in 2009; 76% in 2010; and 89% of the adjusted gross income in 2011. The sole proprietor could not cover the self-estimated $14,161.92 of household expenses with the remaining sums of $515.40 in 2004; $4,045.40 in 2009; $7,005.40 in 2010; and $2,832.40 in 2011. The petitioner has not established its ability to pay the proffered wage in the years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011.

It is noted that the sole proprietor identified in the tax returns for 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 is not the same individual that is specified on the 2001 and 2002 individual federal income tax returns submitted by the petitioner in support of its ability to pay the proffered wage from the priority date onwards. are identified as the owners of the petitioning business on the 2002 tax return. The petitioner is identified as the business specified on Schedule C of the 2002 tax return. On the copy of the 2001 tax return, are stated as the filers, but no Schedule C, Profit or Loss from Business is included with this tax return. The petitioner has not addressed these discrepancies in the underlying record or on appeal, nor has provided evidence that confirms that the petitioning business was operational in 2001 and that the current owner claiming to be a sole proprietor is a successor-in-interest to the sole proprietors stated on the 2001 and 2002 individual federal income tax returns.[5] The petitioner has not established the ability to pay the proffered wage from the priority date onward.

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[4] The petitioner also submitted an unaudited financial statement consisting of an income statement for the first ten months of 2011. The AAO considers the sole proprietor's federal income tax return to better represent the data for 2011. Moreover, 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. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

[5] Eligibility for the immigration benefit may be shown if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the

On appeal, counsel asserts that the beneficiary's income stated on his tax returns reflects wages paid by the petitioner and should be accepted as such. A letter from the petitioner's owner makes the same claim. The AAO does not find this assertion persuasive, particularly in view of the fact that the petitioner submitted no contemporaneous record of payment of any specific wages to the beneficiary. Further, it is noted that Schedule C of the petitioner's 2003 and 2006 tax returns show no wages to have been paid at all to any employees. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on 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 Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Counsel also asserts that the petitioner's Schedule C figures better represent its ability to pay the proffered wage. The AAO cannot concur in this case because, as stated above, the business is structured as a sole proprietorship and is indivisible from the individual sole proprietor's financial and legal position. For that reason, the AAO looks at the sole proprietor's adjusted gross income as it includes the business income as well as other income and expenses claimed by the sole proprietor.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and

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petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1981) ("*Matter of Dial Auto*"). Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also the essential rights and obligations of the predecessor necessary to carry on the business. To ensure that the job opportunity remains the same as originally certified, the successor must continue to operate the same type of business as the predecessor, in the same metropolitan statistical area and the essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto*, 19 I&N Dec. at 482. Therefore, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the beneficiary's predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest relationship unless the transfer results from the *bona fide* acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. *See* 19 Am. Jur. 2d *Corporations* § 2170; *see also* 20 C.F.R. § 656.12(a).

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, or the petitioner's reputation within its industry.

In the instant case, as noted above, the petitioner has not established the ability to pay the proffered wage in any of the relevant years from the priority date onward from the tax returns and other evidence submitted to the record. Although the record suggests that the bakery may be a long-standing entity, it is unclear if it has been a long-standing business owned by the same individuals. Additionally, it is noted in the last three years, its gross receipts have declined approximately 8%. Finally, the petitioner has not presented any similar unique or analogous factors as was indicated in *Sonegawa*. Thus, assessing the overall 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.

Experience

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

As noted above, the requirements for work experience[6] as set forth on Item 14 of the Form ETA 750 is 3 years of training as a baker's apprentice and "5+" years in the job offered as a baker or in a related occupation defined as an assistant baker. These are separate and distinct requirements.

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[6] The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

On the Form ETA 750, signed by the beneficiary on April 26, 2001, the instructions direct that all jobs held by the alien in the past three years are to be listed, as well as any other jobs which qualify the alien for the opportunity for which certification is sought. The beneficiary lists two jobs. The first is for the petitioner, for whom he states he has been working since February 1997 to the present (date of signing). The second job states ' ' as the employer and ' ' as "Owner." He states that he worked for this firm from January 1975 to August 1998 and was a "head baker" for "13 years."

The petitioner submits a letter, dated December 31, 2009, from The letter states that the beneficiary is a baker and appears to say that he worked from 1980 to 1984 and used various pieces of equipment, but the letter does not identify the bakery or identify the position of the author,

Another letter, dated December 31, 2009, is submitted by the petitioner and signed by The letter states that the beneficiary worked in his bakery from 1970 to 1974,[7] but did not identify the business, his position, or whether the beneficiary worked full-time or part-time.

The petitioner submitted a third letter, dated December 31, 2009, signed by [8] who states that the beneficiary worked at Mr. bakery, ' from 1975 to 1980[9] as a baker. This letter does not indicate whether the work was full-time or part-time.

Finally, a fourth letter, also dated December 31, 2009, and also signed by was submitted by the petitioner. It is unclear why two different letters dated the same date from this individual were provided. In this letter, however, it is stated that the beneficiary worked from 1975 to 1980 in Mr. bakery serving three years as an apprentice baker and then moving to principal baker. This letter does not name the business and does not state whether the work was part-time or full-time.

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

[7]Based on the beneficiary's date of birth listed on the Form I-140, the beneficiary would have been 8 years old when he began this position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).
[8] It is not clear whether the beneficiary and are related.
[9]The beneficiary would have been 13 years old at the time this position started. Therefore, it is unclear that this position was full-time.

It is noted that none of the letters were submitted from the as claimed by the beneficiary as his only other qualifying job on the Form ETA 750. *Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.) Further, even that job which is stated to have ended in 1998 was inconsistent with the dates that the beneficiary claimed to have worked for the petitioner in which he claims to have worked since February 1997. Additionally, the job with which is claimed to have begun in January 1975 is inconsistent with the beneficiary's position at the which is also claimed to have commenced in 1975 and overlapped his employment at the The petitioner has not offered any explanations for these discrepancies. As such, it may not be concluded that the petitioner has established that the beneficiary has the qualifying three years of training and five plus years of work experience as set forth on the Form ETA 750. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on 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 Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The AAO also notes that the petitioner submitted no documentation establishing that the beneficiary has six years of elementary school education as required by the Form ETA 750.

The petitioner has therefore additionally failed to establish that the beneficiary has all the education, training and experience required to meet the terms of the certified 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*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(AAO reviews decisions on a *de novo* basis). The appeal will be dismissed and the petition denied based on the foregoing, with each issue considered as a separate and independent basis for denial.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.