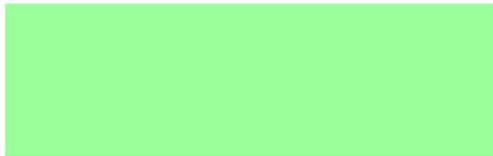


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



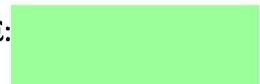
U.S. Citizenship
and Immigration
Services



DATE: FEB 05 2013

OFFICE: NEBRASKA SERVICE CENTER

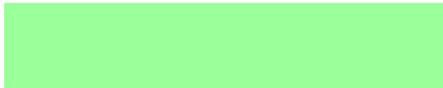
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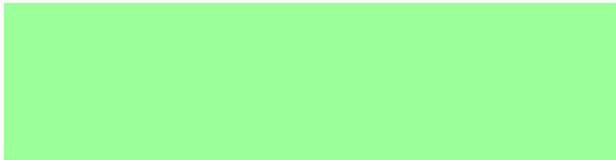
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Rachel Niemi
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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

The record shows that the appeal is properly filed 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.

As set forth in the director's July 22, 2009 denial, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, 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 27, 2001. The proffered wage as stated on the Form ETA 750 is \$15.00 per hour (\$31,200.00 per year based on 40 hours per week). The Form ETA 750 states that the position requires either two years of training in electronics or two years of experience in the job offered of electronic equipment repairer.

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

On appeal, counsel submits a statement dated September 14, 2009 from Wells Fargo attesting to a line of credit held by the sole proprietor; escrow and sales documents from properties purchased by the sole proprietor; sales documents for a car purchased by the sole proprietor; copies of bank statements for 2004; copies of Internal Revenue Service (IRS) Forms W-2 issued by the petitioner to the beneficiary for 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008; copies of Individual Retirement Account (IRA) Statements for 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008; and copies of money market account statements for 2001.

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 1996 and currently to employ four workers. On the Form ETA 750B, signed by the beneficiary on January 10, 2007, the beneficiary claimed to have worked for the petitioner since September 1999.

On appeal, counsel asserts that the petitioner has the ability to pay as evidenced by the fact that the petitioner has paid the beneficiary from the priority date onwards. Counsel also asserts that the sole proprietor has property and personal retirement savings from which he is able to pay the beneficiary the difference between the wages which were already paid and the full proffered wage.

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

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). 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).

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 beneficiary claims to have worked for the petitioner since 1999. The petitioner provided copies of the IRS Forms W-2, which it issued to the beneficiary in each year from 2001 through 2008. However, the W-2 statements contain a social security number (SSN), which is registered to an individual who is not the beneficiary.² The AAO will not consider wages paid using a stolen SSN in determining the petitioner's ability to pay the proffered wage. Therefore, in the instant case, the petitioner has

² Misuse of another individual's SSN is a violation of Federal law and may lead to fines and/or imprisonment and disregarding the work authorization provisions printed on your Social Security card may be a violation of Federal immigration law. Violations of applicable law regarding SSN fraud and misuse are serious crimes and will be subject to prosecution.

The following provisions of law deal directly with Social Security number fraud and misuse:

• **Social Security Act:** In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Act made it a felony to *...willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.*

Violators of this provision, Section 208(a)(6) of the Social Security Act, shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both. See the website at http://www.ssa.gov/OP_Home/ssact/title02/0208.htm (accessed on April 26, 2011).

• **Identity Theft and Assumption Deterrence Act:** In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act (Public Law 105-318) to address the problem of identity theft. Specifically, the Act made it a Federal crime when anyone *...knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.*

Violations of the Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

provided no bona fide evidence of wages paid to the beneficiary from the priority date in 2001 onwards.

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

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 \$20,000.00 where the beneficiary's proposed salary was \$6,000.00 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, from 2001 through 2006, the sole proprietor supported a family of five. From 2007 onwards, the sole proprietor has supported a family of four. The proprietor's tax returns reflect the following information for the following years:

- In 2001, the proprietor's IRS Form 1040, line 33, stated adjusted gross income of \$61,955.00.
- In 2002, the proprietor's IRS Form 1040, line 35, stated adjusted gross income of \$54,552.00.
- In 2003, the proprietor's IRS Form 1040, line 34, stated adjusted gross income of \$71,962.00.

- In 2004, the proprietor's IRS Form 1040, line 36, stated adjusted gross income of \$74,062.00.
- In 2005, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of \$86,160.00.
- In 2006, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of \$78,357.00.
- In 2007, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of \$56,253.00.
- In 2008, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of \$59,681.00.

As a sole proprietor, the petitioner must demonstrate the ability not only to pay the beneficiary out of his adjusted gross income, but also to support his household. To that end, the director requested that the petitioner supply a list of recurring, monthly, household expenses, including, but not limited to, mortgage or rent payments, automobile payments, installment loans, credit card payments, and other household expenses. In response, the petitioner supplied a statement containing amounts for mortgage payments, automobile payments, automobile insurance, credit card payments, household insurance, utility expenses, clothing, and food. The sole proprietor's total for his recurring, monthly, household expenses is \$8,049.00 per month, annualized at \$96,588.00.

In each year from the priority date in 2001 through 2008, the sum of the sole proprietor's recurring, monthly household expenses has exceeded his adjusted gross income. Therefore, the petitioner has not demonstrated sufficient adjusted gross income both to support his household and to pay the beneficiary the proffered wage for any year from 2001 through 2008.

On appeal, counsel asserts that the petitioner has the ability to pay the beneficiary the proffered wage as evidenced, in part, by the fact that he has paid the beneficiary during each year from the priority date through 2008. In support of this assertion, counsel submitted copies of the IRS Forms W-2, which the petitioner issued to the beneficiary in each year from 2001 through 2008, the W-2s from 2001 through 2006 submitted for the first time on appeal. However, as the AAO explained above, the SSN, which appears on all copies of IRS Forms W-2, has been used by multiple individuals, and the AAO will not consider wages paid using a stolen SSN in a determination of the petitioner's ability to pay.

On appeal, counsel asserts that the sole proprietor owns real estate from which he is able to pay the beneficiary. Regarding the sole proprietor's property values, a home is not a readily liquefiable asset. Further, it is unlikely that a sole proprietor would sell such a significant personal asset to pay the beneficiary's wage. USCIS may reject a fact stated in the petition if it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On appeal, counsel asserts that the petitioner has retirement savings, which he may use to pay the beneficiary.

Counsel provided two bank statements for an account held at Bank of America in the name of the sole proprietor and his wife. The two statements reflect the balances in the sole proprietor's personal checking account for February and March 2004.

Where the petitioner has not established its ability to pay the proffered wage in the priority date year or in any subsequent year based on its adjusted gross income, the proprietor's bank statements must show an initial average annual balance, in the year of the priority date, exceeding the full proffered wage. Subsequent statements must show annual average balances, which increase each year after the priority date year by an amount exceeding the full proffered wage. However, in the instant case, the petitioner has only provided two monthly statements and those for just one year: 2004. As such, the petitioner has not demonstrated an average annual balance in the year of the priority date which is sufficient to pay the full proffered wage and has not shown any average annual balances in any subsequent year.

The petitioner provided two quarterly statements for money market accounts held in the name of the sole proprietor through American Express. The statements are for 2001, the earlier of which shows a value of \$2,017.97 and the latter of which shows a value of \$2,034.35. Since the sole proprietor has not provided statements for all four quarters of 2001, he has not established an annual average balance, which would either be sufficient to pay the proffered wage for 2001 or would contribute towards paying the proffered wage for that year.

The petitioner provided a series of retirement account statements held with American Express in the name of the sole proprietor and his wife. The statements are irregular in the periods which they represent, but extend from 2001 through 2008. The statements covering 2001 extend from February 20 until November 18 and are thus incomplete. However, even if the AAO were to consider the funds in these accounts, they would be insufficient to pay the full proffered wage for 2001, because the ending value as of November 18 was \$12,203.15. Therefore, the sole proprietor's ability to pay for the first year of eligibility would not be established. The petitioner provided one statement for 2002, extending from January 1, 2002 until February 17, 2003. The ending value of the accounts as of February 17, 2003 was \$10,688.66, evidencing a decrease in the overall value of the accounts from 2001 to 2002. Thus, the sole proprietor's ability to pay would not be established for 2002. Thus, the funds in the sole proprietor's retirement investment accounts are not sufficient to demonstrate the continuing ability to pay the beneficiary from the year of the priority date through 2008.

On appeal, the petitioner submits a single monthly bank statement for its business from 2001. However, the funds in the Citibank account are located in the sole proprietorship's business checking account. Therefore, these funds are likely shown on Schedule C of the sole proprietor's tax returns as gross receipts and expenses. Although USCIS will not consider gross income without also considering the expenses that were incurred to generate that income, the overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal or

borderline. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). On appeal, counsel also submits a letter from Wells Fargo Bank stating that Video Technics has a line of credit in the amount of \$89,000.00 and that Video Technics has an outstanding balance of \$54,559.00 on that line of credit.

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 (5th 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 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).

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 \$100,000.00. 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 *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*,

USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the sole proprietor did not have sufficient adjusted gross income to pay the beneficiary the proffered wage plus its recurring, monthly, household expenses from 2001 through 2008. The petitioner has not demonstrated the historical growth of his business, the occurrence of any uncharacteristic business expenditures or losses during that time period, its reputation within its industry, or whether the beneficiary is replacing a former employee or an outsourced service. 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.

Beyond the decision of the director,³ the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'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 Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires either two years of training in electronics or two years of experience in the job offered: electronic equipment repairer. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as an electronic equipment repairer, working for the petitioner since September 1999. The beneficiary also claims to have worked as an electronic equipment repairer for [REDACTED] California from September 2000 until January 2001. In addition, the beneficiary claims to have worked as an electronic equipment repairer for [REDACTED] from August 1999 until August 2000. Lastly, the beneficiary claims to have worked as an electronic equipment repairer for [REDACTED] from May 1991 until May 1999.

³ 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 (9th 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).

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A).

With the initial petition submission, the petitioner submitted documents, which were presumably meant to demonstrate the beneficiary's qualifications. However, the documents are written in a foreign language and are not accompanied by English-language translations, as required by 8 C.F.R. § 103.2(b)(3). In his request for evidence (RFE), the director requested evidence demonstrating that the beneficiary obtained the required two years of experience in the job offered as of the April 27, 2001 priority date. The director also indicated that if the petitioner submitted any documents in a foreign language, the documents must be accompanied by an English-language translation.

8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In response, the petitioner submitted a letter dated March 23, 2009 from [redacted] manager of [redacted] with an associated English-language translation. The letter is not on company letterhead.

According to [redacted], the beneficiary worked as an electronics technician in radio and television for [redacted] from March 1996 to February 1999, on a full-time basis. However, the experience claimed in this letter does not appear on Form ETA 750. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

Further, the petitioner provided no independent, objective evidence which corroborates the claimed experience. Moreover, on Form ETA 750B, the beneficiary claimed to have been working for a different employer, [redacted] at the time identified in this employment letter. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

(b)(6)

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The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.