

(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

[Redacted]

DATE: **FEB 14 2013** OFFICE: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

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

The petitioner is a dental laboratory. It seeks to employ the beneficiary permanently in the United States as a dental technician. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent 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, 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 7, 2011 denial, the 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 ETA Form 9089, Application for Permanent 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 ETA Form 9089, Application for Permanent 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 ETA Form 9089 was accepted on December 17, 2007. The proffered wage as stated on the ETA Form 9089 is \$43,680 per year. The ETA Form 9089 states that the position requires an Associate's degree in Dental Technology plus two years of experience in the proffered position.

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

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 2003 and to currently employ nine workers. According to the tax returns in the record, the petitioner's fiscal year runs from October 1st to November 30th. On the ETA Form 9089, signed by the beneficiary (undated), the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, 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).

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 has not established that it employed and paid the beneficiary the full proffered wage from the priority date, or any wages, or at any other time for that matter.

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,

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).

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). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the net income figures in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on June 20, 2011 with the receipt by the director of the petitioner's submissions in response to the director's request

for evidence. As of that date, the petitioner's 2010 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2009 was the most recent return available. The petitioner's tax returns demonstrate its net income for 2004,² 2007, 2008 and 2009 as shown in the table below.

- In 2009, the Form 1120 (line 28) stated net income of \$6,273.
- In 2008, the Form 1120 (line 28) stated net income of \$11,135.
- In 2007, the Form 1120 (line 28) stated net income of \$23,347.
- In 2004, the Form 1120 (line 28) stated net income of \$5,611.

Therefore, for the years 2007 through 2009, the petitioner's tax returns do not state sufficient net income to pay the proffered wage. Although the 2004 tax return, as previously stated, is for a year preceding the priority date, it does not state sufficient net income to pay the proffered wage either.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.³ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2004 (which precedes the priority date), 2007, 2008 and 2009 as shown in the table below.

- In 2009, the Form 1120 stated net current assets of (\$18,452).
- In 2008, the Form 1120 stated net current assets of (\$10,384).
- In 2007, the Form 1120 stated net current assets of (\$17,687).
- In 2004, the Form 1120 stated net current assets of (\$9,278).

Therefore, for the years 2007 through 2009, the petitioner's tax returns do not state sufficient net current assets to pay the proffered wage. Although the 2004 tax return, as previously stated, is for a year preceding the priority date, it does not state sufficient net current assets to pay the proffered wage either.

² The petitioner's 2004 tax return predates the December 17, 2007 priority date and will be considered only generally in analyzing the petitioner's ability to pay the proffered wage based upon a totality of the circumstances in this instance.

³According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Therefore, from the date the ETA Form 9089 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel asserts in his appeal brief that the petitioner has established its ability to pay the proffered wage from the priority date onward. Specifically, counsel states that the personal assets of the petitioner's stockholder should be considered in an ability to pay analysis and that wages paid to another employee in 2008 and 2009 are now available to pay the wages of the beneficiary.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the ETA Form 9089 was accepted for processing by the DOL.

The AAO does not agree with counsel's assertions that the personal assets of the petitioner's shareholder[s] should be considered in determining the petitioner's ability to pay the proffered wage. Because a corporation is a separate and distinct legal entity from its owners and shareholders; the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

The petitioner discusses officer compensation as being an additional source of income with which to pay the proffered wage. In certain circumstances officer compensation, as a discretionary corporate fund disbursement, could be shifted to pay the proffered wage. The record in this instance, however, does not establish the availability of any officer compensation which could be used to pay the proffered wage. The record does not contain a sworn statement or affidavit from the officer of the company stating that he is willing and able to forego necessary officer compensation to pay the difference between corporate net income, net current assets and/or wages paid to the beneficiary and the full proffered wage from the priority date until the beneficiary obtains lawful permanent residence. Nor does the record contain evidence (such as a summary of the shareholder's personal living expenses and those of any dependents) to show that the sole shareholder is able to forego such compensation. As such, officer compensation may not be considered in this instance. Additionally, as the petitioner has not paid the beneficiary any wages, and the petitioner's net income is fairly low, the petitioner would seek to establish its ability to pay the proffered wage almost entirely based on officer compensation alone. From the record, the AAO cannot conclude that this is realistic. 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).

Counsel also states that the petitioner paid wages to another worker (shareholder) in 2008 (\$45,000) and 2009 (\$49,000), and that those wages should be considered as funds available to pay the beneficiary's wages since the employee/shareholder receiving those wages was no longer associated with or employed by the petitioner. Thus, it appears that counsel is asserting that the beneficiary would be replacing that worker.⁴ The AAO does not agree. The record does not verify the stated worker's full-time employment or establish that the duties performed by that worker are the same duties the beneficiary would perform under the terms of the ETA Form 9089. If that employee performed other kinds of work, then the beneficiary could not have replaced him or her.⁵ As counsel states on appeal that the shareholder performed management functions, the beneficiary, based on the labor certification description, would not be taking on these functions, and would not appear to be replacing the shareholder.

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 *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.

⁴ It is noted that the priority date is December 17, 2007. Thus, the petitioner was seeking to employ the beneficiary in a full-time capacity prior to 2008. It is, therefore, unclear how the beneficiary could have replaced the referenced worker in 2008 or 2009.

⁵ The purpose of the instant visa category is to provide employers with foreign workers to fill positions for which U.S. workers are unavailable. If the petitioner is, as a matter of choice, replacing U.S. workers with foreign workers, such an action would be contrary to the purpose of the visa category and could invalidate the labor certification. However, this consideration does not form the basis of the decision on the instant appeal.

In the instant case, the petitioner's tax returns show insufficient net income or net current assets to pay the proffered wage in any relevant year. The petitioner's tax returns show negative net current assets in 2007, 2008 and 2009, and steadily decreasing net income from 2007 through 2009 (2007 - \$23,347; 2008 - \$11,135; and 2009 - \$6,273). The record does not establish a long term history of growth and increasing profitability for the petitioner. It is further noted that the record does not establish that the petitioner's reputation in the industry is such that it is more likely than not that it has maintained the continuing ability to pay the proffered wage from the priority date onward. 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, the petitioner has also not established that the beneficiary is qualified for the offered position. 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 petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See 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).

In the instant case, the labor certification states that the offered position requires an Associate's degree in Dental Technology. The ETA Form 9089 does not allow for any alternate combination of education and experience in H.8. on the labor certification.⁶ The beneficiary claims to qualify for the offered position based on a Certificate of Vocation as a dental technologist from the [REDACTED] (completed in 1989). The record contains a copy of the beneficiary's certificate. The petitioner also submitted a copy of a certificate from the [REDACTED] which awarded the beneficiary a Master of Dental Technology certification on August 27, 2005.

In support of the petitioner's claim that the beneficiary was qualified to perform the duties of the position and met all requirements of the labor certification, the petitioner submitted a credentials evaluation from the [REDACTED] which stated that the education received by the beneficiary from the [REDACTED] was "equivalent to two

⁶ H.14 does state "Associate Degree, or equivalent."

years of academic studies toward a bachelor's-level degree, and satisfies the academic requirements for an associates-level degree, in the field of Dental Technology.” According to the evaluator, the nature of the courses and credit hours involved indicate that [the beneficiary] attained the equivalent of an Associate of Science degree in Dental Technology from an accredited U.S. college.

The AAO does not agree with the [redacted] assessment of the beneficiary's foreign education. We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁷ According to its website, www.aacrao.org, AACRAO is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in 28 countries.” <http://www.aacrao.org/about/> (accessed October 4, 2012). Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* According to the registration page for EDGE, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://aacraoedge.aacrao.org/register/> (accessed October 4, 2012). Authors for EDGE work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.⁸ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

According to EDGE, a “Szakközépiskolia Érettségi Képesítő Bizonyítvány” is a vocational certificate in Hungary and “represents attainment of a level of education comparable to completion of a vocational or other specialized high school curriculum in the United States.”

The petitioner submitted the beneficiary's “Szakmunkas Bizonyítvány,” translated as “Certificate of Vocation.” Based on EDGE, certificates appear to represent vocational or technical training, as compared to formal university education resulting in diplomas, “Oklevél.”

The education received does not, therefore, appear to be the foreign equivalent to an Associate's degree in Dental Technology from an accredited institution of higher learning in the United States and the AAO rejects the [redacted] assessment in that regard. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

⁷ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign “baccalaureate” and foreign “Master's” degree were only comparable to a U.S. bachelor's degree.

⁸See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

The [redacted] credentials evaluation also notes that the beneficiary completed studies and training which led to certification as a Master of Dental Technology by the [redacted]. The record contains no evidence stating that the training received from this organization is equivalent to college-level coursework in the United States. The record does not contain any transcript to evidence courses that the beneficiary took at [redacted]. According to the web site of [redacted] (accessed October 4, 2012), [redacted] "is a professional society formed to evaluate the educational standards of dental technologists." It is not an organization that provides college level instruction for degree attainment purposes. For example, the New York City College of Technology's Dental Technology Program (part of the City University of New York (CUNY) system), offers programs for those interested in a career repairing and making dental prosthetics and appliances as technologists in dental laboratories. New York University's dental technology program, in association with its College of Dentistry, offers a course for professional dental technologists held in conjunction with [redacted] which is a continuing-education course that meets once a month for 22 months. A two-year associate degree in dental technology is available at the New York City College of technology which is separate and apart from the training and instruction available to the general public who wish to avail themselves of [redacted] offerings. See ([http://education-portal.com/dental technology degree programs-in new york city.html](http://education-portal.com/dental%20technology%20degree%20programs-in%20new%20york%20city.html)) (accessed February 5, 2013).

The certification received by the beneficiary from [redacted] taken in conjunction with what appears to be the beneficiary's vocational training in Hungary, is not deemed the foreign equivalent to an Associate's degree in Dental Technology from an accredited institution of higher learning in the United States as required by the labor certification. Additionally, the record lacks adequate evidence to establish that the education is the equivalent to a U.S. Associate's degree, or that an equivalency was adequately expressed to potential qualified U.S. workers to include a combination of vocational education and professional society training. Therefore, the beneficiary has not met the qualifications of the position offered and is not deemed qualified for the position under the terms of the labor certification.

Accordingly, 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.