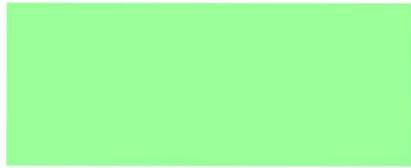


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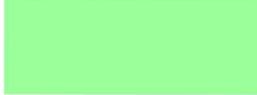
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



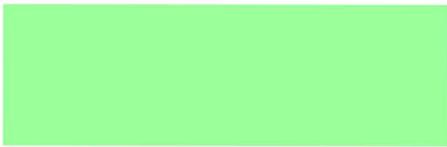
DATE: **JAN 31 2013** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: 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,

A handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, 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 an auto repair and service company. It seeks to employ the beneficiary permanently in the United States as an auto mechanic. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The record contains an official copy of a certified ETA Form 750, Application for Alien Employment Certification (labor certification), issued by the U.S. Department of Labor (DOL). The labor certification was filed by [REDACTED] a sole proprietorship, on behalf of the beneficiary. The priority date of the petition is April 30, 2001.²

The director's decision denying the petition concluded that the petitioner did not establish the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing until the beneficiary obtains lawful permanent residence.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The 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.³

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

³ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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).

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 proffered wage stated on the Form ETA 750 is \$19.00 per hour (\$39,520 per year). On the petition, the petitioner claimed to have been established in 1982, to have a gross annual income of \$439,926, and to employ eleven workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year.

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).

The petitioner is a different entity than employer that filed the labor certification upon which the petition is based. Specifically, the labor certification employer, [REDACTED] is a sole proprietorship, with [REDACTED] as the proprietors.⁴ The petitioner, [REDACTED] is a C corporation. [REDACTED] owns 70% of the corporation's shares. According to a statement by the petitioner's accountant, [REDACTED] managed the administrative responsibilities of the business while [REDACTED] was responsible for auto repair services. [REDACTED] passed away in March 2003. [REDACTED] formed [REDACTED] in June 2004.

A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).⁵ As a claimed successor-in-interest, the petitioning

⁴ The tax returns for the sole proprietorship are reported on Schedule C of the jointly-filed Forms 1040 of [REDACTED]. The Schedules C alternately name the sole proprietor of [REDACTED] as [REDACTED] and [REDACTED] and [REDACTED].

⁵ This includes when a business transitions from a sole proprietorship into a different entity. The fact that there is some commonality of ownership is not sufficient. *See e.g., Matter of Unified Investment Group*, 19 I. & N. Dec. 248, 1 Immigr. Rep. B2-40 (INS Comm'r 1984). Specifically, the fact that [REDACTED] was a sole proprietor of [REDACTED] and a 70% owner of [REDACTED] is not sufficient to

successor must establish the predecessor's ability to pay the proffered wage as of the priority date and until the date of transfer of ownership to the successor. In addition, the petitioner must establish the successor's ability to pay the proffered wage in accordance from the date of transfer of ownership forward. 8 C.F.R. § 204.5(g)(2); *see Matter of Dial Auto*, 19 I&N Dec. at 482.

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 established that it and [REDACTED] employed and paid the beneficiary the wages as shown on the table below.

Wages Paid by [REDACTED]

- In 2001, the W-2 Form stated Wages, tips other compensation of \$29,418.00
- In 2002, the W-2 Form stated Wages, tips other compensation of \$31,370.00
- In 2003, the W-2 Form stated Wages, tips other compensation of \$34,688.00
- In 2004, the W-2 Form stated Wages, tips other compensation of \$25,810.00.

Wages Paid by [REDACTED]

- In 2004, the W-2 Form stated Wages, tips other compensation of \$11,494.10.
- In 2005, the W-2 Form stated Wages, tips other compensation of \$35,897.60.
- In 2006, the W-2 Form stated Wages, tips other compensation of \$35,974.62.
- In 2007, the W-2 Form stated Wages, tips other compensation of \$37,240.50.
- In 2008, the W-2 Form stated Wages, tips other compensation of \$37,166.50.
- In 2009, the W-2 Form stated Wages, tips other compensation of \$32,711.62.
- In 2010, the W-2 Form stated Wages, tips other compensation of \$28,182.30.
- In 2011, the W-2 Form stated Wages, tips other compensation of \$28,220.83.

Therefore, for the years 2001 through 2011, the neither the petitioner nor the predecessor paid the beneficiary a salary equal to or greater than the proffered wage.

2001 to 2004: [REDACTED] Ability to Pay the Proffered Wage

A sole proprietorship is 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

establish that the petitioner is a successor-in-interest to the entity that filed the labor certification. A petitioner may establish a valid successor relationship if it, *inter alia*, fully describes and documents the transaction transferring ownership of all, or a relevant part of, the predecessor to the successor. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). The record does not contain documentary evidence establishing that the petitioner is a successor-in-interest to [REDACTED]. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

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).

Therefore, when determining a sole proprietor's ability to pay the proffered wage, USCIS considers the sole proprietor's adjusted gross income and liquid assets balanced against personal expenses (such as household expenses and debt payments).

Adjusted Gross Income of Auto Analysts

- In 2001, the Form 1040 stated adjusted gross income of \$81,037.
- In 2002, the Form 1040 stated adjusted gross income of \$258,053.
- In 2003, the Form 1040 stated adjusted gross income of -\$61,922.
- In 2004, the Form 1040 stated adjusted gross income of -\$92,747.

The sole proprietor reported monthly expenses of \$6,100 in 2001, \$6,251 in 2002, and \$4,833 in 2003.

For 2001 the petitioner submitted evidence that the sole proprietor sold [REDACTED] securities resulting in additional liquid funds sufficient to pay the proffered wage for that year.

For 2003, counsel claims that the sole proprietor's \$2,949.85 of interest income on the tax return indicates that the sole proprietor owned a \$295,000 one-year certificate of deposit. However, counsel states on appeal that the "statement for this account [is] not available" and there is no documentary evidence of this claimed liquid asset. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, counsel failed to establish that the sole proprietor possessed \$250,000 in liquid assets in 2003.

Therefore, based on an analysis of the sole proprietor's adjusted gross income, liquid assets and household expenses, the sole proprietor did not possess the ability to pay the difference between the wage paid to the beneficiary and the proffered wage for 2003 and 2004.

2004 to 2011: Ability to Pay the Proffered Wage

For a C corporation, 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). 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 closed on August 6, 2012 with the receipt by the AAO of the petitioner’s submissions in response to the AAO’s request for evidence. The petitioner’s income tax return for 2011 is the most recent return available. The petitioner’s tax returns demonstrate its net income for 2001 through 2011, as shown in the table below.

- In 2004, the Form 1120 stated net income of -\$189,966.
- In 2005, the Form 1120 stated net income of -\$287,002.
- In 2006, the Form 1120 stated net income of -\$237,553.
- In 2007, the Form 1120 stated net income of -\$146,756.
- In 2008, the Form 1120 stated net income of -\$241,762.
- In 2009, the Form 1120 stated net income of -\$27,015.
- In 2010, the Form 1120 stated net income of \$78,570.
- In 2011, the Form 1120 stated net income of \$61,804.

Therefore, for the years 2004 through 2009, the petitioner did not have sufficient net income to pay the proffered wage.

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.⁶ 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 originally submitted with the petition state the following net current assets:

- In 2004, the Form 1120 stated net current assets of -\$22,048.
- In 2005, the Form 1120 stated net current assets of -\$19,265.

⁶According 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.

- In 2006, the Form 1120 stated net current assets of -\$18,494.
- In 2007, the Form 1120 stated net current assets of -\$89,941.

Therefore, the petitioner failed to establish that it possessed sufficient net current assets for 2004 through 2007.

However, on appeal, the accountant for the petitioner stated that he failed to include on the tax returns the value of classic automobiles owned by [REDACTED] including a 1967 Aston Martin DB6 Vantage, which he claims is worth approximately \$160,000. The accountant claimed that the purchase and re-sale of classic cars was part of the company's business, and that:

[O]n at least two occasions when their tax returns were audited and we had properly included the proceeds of the sale of classic vehicles as part of the inventory or property held for sale. To the best of my recollection one of these occasions occurred in approximately 1998.

The petitioner's amended tax returns state end-of-year net current assets as shown in the table below.

- In 2004, the Form 1120 stated net current assets of \$192,102.
- In 2005, the Form 1120 stated net current assets of \$194,885.
- In 2006, the Form 1120 stated net current assets of \$195,656.
- In 2007, the Form 1120 stated net current assets of \$144,209.
- In 2008, the Form 1120 stated net current assets of \$94,453.
- In 2009, the Form 1120 stated net current assets of \$2,776.

In short, following the denial of the instant petition on ability to pay grounds, the petitioner amended its 2004, 2005, 2006, and 2007 tax returns to include the value of classic cars purchased by [REDACTED] in its inventory in order to attempt to satisfy the USCIS ability to pay determination on appeal. In addition, the amended returns increase the value of the petitioner's inventory, which increases net current assets but has no effect on taxable income. Under these facts, a petitioner's claim of new inventory will be subject to additional scrutiny. There is an inconsistency in the inventory amounts claimed on the originally submitted tax returns and the amended tax returns. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* at 591. The petitioner failed to submit reliable documentary evidence resolving this inconsistency.⁷

⁷ Even if the AAO accepted the amended returns, the petitioner did not have sufficient net current assets to pay the proffered wage in 2009. With regard to 2009, counsel asserts that the petitioner had sufficient cash available, and therefore, made discretionary repayments of \$157,929 on loans made

Here, other than the accountant's explanation, the record does not contain any independent, objective evidence establishing that the cars were in fact part of the petitioner's business or establishing the claimed value of the cars. Further, there is no evidence that the amended returns were filed with the IRS. Therefore, the AAO does not accept the claimed increased inventory amounts stated on the submitted amended returns.

Therefore, from the date the priority date until the present, [REDACTED] failed to establish ability to pay for 2001 and 2003, and [REDACTED] failed to establish ability to pay in any year from 2004 except 2010 and 2011.

Totality of the Circumstances

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.

to two shareholders. These two shareholders submitted a declaration stating that even though the money was repaid to them, it remained available for the petitioner's business needs. However, no evidence was submitted to establish these payments were discretionary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted a statement by its accountant, stating the petitioner made some business changes by closing the less profitable auto body portion of its business. The petitioner also submitted copies of its internet site, and several recent customer reviews from a website.

The petitioner's tax returns show that its annual sales have fallen approximately 50% from 2008 to 2011. For the past three years, the petitioner has paid no officer compensation. The total wages paid to all employees fell from \$125,728 in 2008 to \$7,701 in 2011. Although the petitioner has claimed the occurrence of uncharacteristic business expenditures or losses, it has not established that it has recovered from these events.

Thus, assessing the totality of the evidence submitted and under the circumstances as described above, the AAO finds that the petitioner has not demonstrated by a preponderance of the evidence that it has the continuing ability to pay the proffered wage beginning on the priority date.

Beneficiary Qualifications

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)(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 Form ETA 750 states that the position requires four years of high school and either two years of experience in the offered position or three years of experience as an apprentice auto mechanic. The record does not contain any evidence of the beneficiary's secondary education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence in the record does not establish that the beneficiary possessed the required education 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.⁸

⁸ In addition, the letter submitted to establish the beneficiary's qualifying employment experience contains a different end date of employment than the end date stated on the labor certification. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* at 591.