



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 24 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 designer and manufacturer of orthopedic shoes. It seeks to employ the beneficiary permanently in the United States as an orthopedic shoe machine operator. 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, and that the petitioner had not established that the beneficiary possessed the required experience for the offered position prior to the priority date. 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.¹ 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 24, 2012 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 at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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

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

¹ The petitioner checked box "B" on the Form I-290B, Notice of Appeal or Motion, indicating that it was filing an appeal, and that its "brief and/or additional evidence will be submitted to the AAO within 30 days." The AAO, however, has still not received a brief or additional evidence almost ten months later, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. § 103.2 (a)(2)(vii) and (viii).

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 February 22, 2011. The proffered wage as stated on the ETA Form 9089 is \$27,061 per year. The ETA Form 9089 states that the position requires an associate's degree in design orthopedic shoes or equivalent, and five years of experience in the job offered or in custom orthopedic shoe maker machine operation.

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.²

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 2003 and to currently employ 25 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the ETA Form 9089, signed by the beneficiary on an unknown date,³ 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

² 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).

³ The AAO notes that the beneficiary failed to include the date in Part L, although required to do so.

that it paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date of February 22, 2011 or subsequently.

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 receipts and wage expense is misplaced. Showing that the petitioner's gross receipts 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 USCIS 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).

The record before the director closed on June 18, 2012, with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence (RFE). As of that date, the petitioner’s 2012 federal income tax return was not yet due. The record contains a copy of the petitioner’s Form 7004 Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns for 2011.⁴ To date, the AAO has not received a copy of the petitioner’s 2011 Form 1120S tax return. Therefore, the petitioner has not established its ability to pay the proffered wage based on net income⁵ or net current assets⁶ as demonstrated through submission of its 2011 tax returns.

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.

The record contains the following additional documents in support of the petitioner’s ability to pay the proffered wage: a copy of the petitioner’s 2010 Form 1120S; a copy of an unaudited financial

⁴ The due date for extensions for filing the 2011 Form 1120S was September 17, 2012. See http://www.irs.gov/pub/irs-utl/f7004_py2011_updated_duedates.pdf (accessed June 4, 2013).

⁵ Where an S corporation’s income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner’s IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 18 (2006-2011) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed June 4, 2013) (indicating that Schedule K is a summary schedule of all shareholders’ shares of the corporation’s income, deductions, credits, etc.).

⁶ As an alternate means of determining the petitioner’s ability to pay the proffered wage, USCIS may review the petitioner’s net current assets. Net current assets are the difference between the petitioner’s current assets and current liabilities. According 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. A corporation’s year-end current assets are shown on Schedule L, lines 1 through 6. 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.

statement for the period ending September 30, 2011; copies of the petitioner's bank statements from BankAtlantic for the period February 2011 through June 2011; a copy of a compiled balance sheet as of December 31, 2010⁷; a copy of the petitioner's Form 941, Florida Department of Revenue, Employer's Quarterly Report, for the second quarter of 2011; and a copy of the petitioner's Form 941, Employer's Quarterly Federal Tax Return for the second quarter of 2011.

Counsel asserts on appeal that the Service erred in determining that the petitioner had not established its ability to pay the proffered wage because the petitioner filed an extension of its 2011 tax return, a copy of which was submitted in support of the instant petition, as well as a copy of its 2011 annual report.

The petitioner is not limited to the submission of tax returns to establish its ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) provides that the evidence in support of the petitioner's ability to pay the proffered wage "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." Thus, if the petitioner's federal tax returns are unavailable, the petitioner may submit either annual reports or audited financial statements. In this case, neither an annual report nor an audited statement for 2011 was submitted. The AAO also notes that the petitioner's 2011 tax return was due on September 17, 2012. The Form I-290B Notice of Appeal or Motion was received by the AAO on August 23, 2012. The petitioner indicated on the Form I-290B that it would file a brief and/or additional evidence within 30 days, which would be after the due date for the petitioner's federal tax returns.

The AAO received the petitioner's brief and new evidence on June 7, 2013. The petitioner's new evidence does not include the petitioner's 2011 or 2012 tax returns. Rather the "new evidence" submitted is the same evidence submitted in response to the director's RFE.

Counsel's reliance on the petitioner's unaudited financial statement for 2011 is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The record also contains a copy of the petitioner's bank account statements for its account with BankAtlantic for the period February 2011 through June 2011. Bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner.

⁷ The AAO notes that the Accountant's letter dated March 2, 2011 states that the compiled accompanying statement is for the nine months ending September 30, 2010. However, the accompanying financial statement is as of December 31, 2010.

Additionally, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. It is noted that only the bank account statements for a five-month period were submitted.

The petitioner failed to provide complete annual reports, federal tax returns, or audited financial statements for any relevant period from the priority date. Therefore, the petitioner has not established its ability to pay the proffered wage beginning on the priority date.

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.

In the instant case, the petitioner has not demonstrated sufficient net income or net assets to pay the proffered wage. The petitioner also failed to include any evidence of historical growth of the petitioner's business, the petitioner's reputation within the industry, or the occurrence of any uncharacteristic business expenditures or losses. 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.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

As set forth in the director's July 24, 2012 denial, another issue in this case is whether or not the beneficiary possessed the minimum experience required to perform the offered position by the priority date.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Associate's degree in design orthopedic shoes or equivalent five years experience
- H.5. Training: None required
- H.6. Experience in the job offered: 60 months
- H.7. Alternate field of study: None accepted
- H.8. Alternate combination of education and experience: None accepted
- H.9. Foreign educational equivalent: None accepted
- H.10. Experience in an alternate occupation: 60 months (5 years) of experience in custom
- H.14. Specific skills or other requirements: Associate's degree in design orthopedic shoes or equivalent 5 years of foreign experience in custom orthopedic shoe maker machine operator with many abilities and dynamic, arm, hand steadiness. Drug test background check.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as an "operator machine" with [REDACTED] Costa Rica from June 1, 1998 until June 1, 2000, and with [REDACTED] Nicaragua from March 1, 1992 until January 5, 1997. No other experience is listed. The labor certification also states that the beneficiary qualifies for the offered position based on completion of an associate degree in

design from [REDACTED] Nicaragua in 1998. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

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

The record contains an undated experience letter from [REDACTED] Owner/Manager, on [REDACTED] letterhead stating that the company employed the beneficiary “where he was in charge of design and elaboration of both Orthopedic and Casual shoes, operating the many types of the various machines utilized for the elaboration of said type of shoes,” from 1988 until 1990.

The record also contains an undated experience letter from [REDACTED] Owner/Manager, on [REDACTED] letterhead stating that the company employed the beneficiary “where he was in charge of design and elaboration of both Orthopedic and Casual shoes, operating the various types of machines in the design and elaboration of both Orthopedic and Casual shoes,” from 1994 until 1998.

The beneficiary’s dates of employment as listed on the experience letter from Alex Shoes are inconsistent with the dates of employment that the beneficiary listed on the labor certification. The beneficiary claimed to have worked for *Coopertiva de Calzado Inovacion R.L.* full-time from March 1, 1992 until January 5, 1997. However, the experience letter from [REDACTED] states that the beneficiary was employed by Alex Shoes from 1994 until 1998. There is no independent, objective evidence in the record to resolve these inconsistencies. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 592.

Neither the experience letter from *Calzado Golmar Shoes* nor the experience letter from Alex Shoes complies with the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). The experience letters do not provide the beneficiary’s title, the exact dates of employment, or a detailed description of the beneficiary’s duties. The letters also do not discuss any of the special skills or other requirements indicated in Part H.14.⁸ Furthermore, the experience letters do not state whether the positions were full-time.

⁸ Part H.14 on the labor certification requires specific skills or other requirements. Part H.14 states, “Associate Degree in Design Orthopedic Shoes or equivalent 5 years of Foreign experience in

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). The record contains letters in English which are unsigned. Nothing in the record indicates who translated the letters or that he or she is fluent in Spanish and English.

In the instant case, the translations of the experience letters do not comply with the regulation at 8 C.F.R. § 103.2(b)(3):

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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The experience letters also do not match the beneficiary's experience as listed on the labor certification. 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. The record also does not contain any independent, objective evidence to establish the beneficiary's claimed experience. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 592.

The record also contains a copy of the beneficiary's certificate from [REDACTED] which does not comply with the regulation at 8 C.F.R. § 103.2(b)(3):

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.

custom orthopedic shoe maker machine operator with many abilities and dynamic, arm, hand steadiness. –Drug Test Background Check.”

Because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The AAO notes that the labor certification in Part H.9 states that no foreign equivalent degree is acceptable. Therefore, the beneficiary's claimed associate's degree from Nicaragua would not qualify him for the offered position. The petitioner also admits that the beneficiary did not possess greater than a sixth grade education. Therefore, it is unlikely that the beneficiary's certificate from [REDACTED] would be the equivalent of a U.S. associate's degree. Additionally, the petitioner has not submitted an evaluation of the beneficiary's academic credentials.

On June 7, 2013, the AAO received additional evidence from the petitioner through counsel.⁹ The additional evidence submitted includes a copy of a transcript from [REDACTED] and a high school diploma from [REDACTED].¹⁰ The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In the instant matter, the high school diploma was issued on June 15, 2012. Therefore, the beneficiary did not possess the required education in the form of an associate's degree as of the priority date.

On appeal, the petitioner states that the director erred in finding that the beneficiary did not possess the education and experience required for the offered position because the beneficiary possesses "way beyond the requested period of at least sixty (60) months of the specified work experience." However, as stated above, the record does not contain independent, objective evidence of the beneficiary's education and experience. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 592.

⁹ The AAO notes that counsel also resubmitted the petitioner's response to the director's RFE with attached evidence.

¹⁰ The AAO notes that the record contains inconsistencies with the name of the school which issued the high school diploma. The transcript states the name of the school as "Revelation School of Florida" and the diploma and the letter from the president state the name of the school as "Rebelation School of Florida." 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 592.

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The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act.

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.