



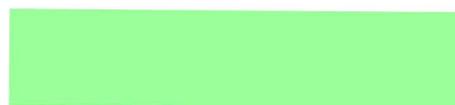
U.S. Citizenship
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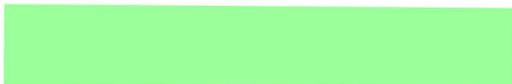
OFFICE: TEXAS SERVICE CENTER



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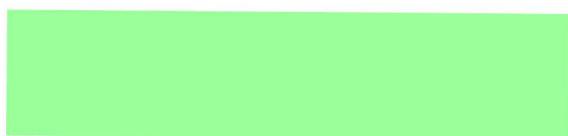
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is an ethnic restaurant and food store. It seeks to permanently employ the beneficiary in the United States as a specialty chef. 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 petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director's decision denying the petition concludes that the petitioner did not submit required initial evidence including evidence of its ability to pay the proffered wage from the priority date onwards and evidence that the beneficiary had the experience required by the terms of the labor certification.

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.

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

As a threshold issue, counsel on appeal states that the director's decision should not have been issued without first issuing a Request for Evidence or Notice of Intent to Deny. Counsel cites the Memorandum from William R. Yates, Associate Director For Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID) HQOPRD 70/2* (February 16, 2005), in support of the position. This Memorandum states that a decision should not be denied without first issuing an RFE or NOID except in cases of "clear ineligibility." In this case, it is not clear what remedy would be available outside of the appeal process itself. The petitioner submitted additional evidence before the AAO which will be considered herein.

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), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 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).

Counsel additionally asserts that the petitioner's due process rights were adversely affected by the director denying the petition for the failure to submit all initial evidence. Generally, there are no due process rights implicated in the adjudication of a benefits application. See *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008); see also *Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."). Again, it is unclear what remedy is available outside of the appeal process itself. The additional evidence submitted will be considered herein.

Concerning the beneficiary's qualifications for the position as expressed on the labor certification, 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, 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*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *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 required 36 months of experience as a specialty chef. The labor certification stated that experience in any other profession would not be sufficient to qualify for the position.

The labor certification states that the beneficiary qualifies for the offered position based on experience as an embassy chef at the Embassy of Uzbekistan (the Embassy) from August 22, 2001 to July 31, 2004. No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury on July 27, 2007.

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.

Pertinent to the beneficiary's qualifying two years of experience in the job offered as a chef, the evidence submitted before the director includes a letter dated June 15, 2004 from [REDACTED] on the Embassy letterhead stating that the beneficiary worked as the cook at the Embassy from October 2001 until June 2004.

On appeal, the petitioner submitted a February 18, 2009 letter from [REDACTED] stating that he attested only to the time during which he worked at the Embassy, so he listed the end date of the beneficiary's employment as October 2003, which is the date that he ceased being Ambassador. The petitioner also submitted employment contracts between the beneficiary and the Embassy dated August 23, 2001 and December 1, 2003, which stated that the employment could be terminated by either party with two weeks notice. 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).

The AAO's NOID/RFE/NODI noted that this experience amounts to 33-34 months instead of the full 36 months required by the terms of the labor certification. In response, the petitioner submitted a December 27, 2012 letter from [REDACTED], on the Embassy letterhead stating that the beneficiary was employed from November [REDACTED] to September 1999 and August 23, 2001 to July 1, 2004. This letter does not contain a description of job duties as required by 8 C.F.R. § 204.5(l)(3). In addition, the dates of employment conflict with the other letters submitted. See *Matter of Ho*, 19 I&N Dec. at 591-92.

With a previously filed petition, additional experience letters were submitted. The record includes an undated letter from [REDACTED] on the Embassy letterhead stating that the beneficiary worked as a chef at the Embassy from August 2001 to October 2003 and an April 7, 2001 letter from [REDACTED], on Embassy letterhead stating that the beneficiary worked as a chef at the Embassy from November 1996 to September 1999. Again, these dates conflict with other letters submitted to verify the beneficiary's previous employment and the discrepancy must be resolved with independent, objective evidence. See *id.*

The only experience listed on the Form ETA 9089 is as a chef with the Embassy from August 2001 to July 2004. This experience is less than the 36 months required by the terms of the labor certification. Concerning the additional time claimed at the Embassy from 1996 to 1999, 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 labor certification, lessens the credibility of the evidence and facts asserted.

In response to the AAO's NOID/RFE/NODI, the petitioner submitted Archival Reference documents stating that the beneficiary worked at [REDACTED] restaurant from March 16, 1982 to October 3, 1991 and August 17, 1994 to November 8, 1996 as a cook; Archival Reference stating that the beneficiary worked at [REDACTED] restaurant from October 10, 1991 to January 12, 1992; a March 12, 2012 letter from [REDACTED] concerning the organization of the establishment; and a December 27, 2012 letter from [REDACTED] in Uzbekistan, stating that the beneficiary worked as a cook from January 12, 1992 to October 2, 1993. As stated above, in *Matter of Leung*, 16 I&N Dec. 2530, the Board's *dicta* notes that the beneficiary's experience, without such fact certified by DOL on the labor certification, lessens the credibility of the evidence and facts asserted.

The ETA Form 9089 states that three years of experience in the proffered position as specialty chef are the minimum requirements for the position and that experience in an alternate profession would not be accepted. The letters submitted by the petitioner do not demonstrate that the beneficiary worked as a chef for three years.

Concerning the petitioner's ability to pay the proffered wage, 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 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 June 22, 2006. The proffered wage as stated on the ETA Form 9089 is \$11.60 to \$15.00 per hour (\$24,128 to \$31,200 per year). The ETA Form 9089 states that the position requires three years of experience as a specialty chef.

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 1996 and to currently employ 40

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 July 27, 2007, 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 Sonegawa*, 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 submitted the following evidence of wages paid:

- The 2006 Internal Revenue Service (IRS) Form W-2 states that the petitioner paid the beneficiary \$23,137.88.
- The 2007 IRS Form W-2 states that the petitioner paid the beneficiary \$25,829.00.
- The 2008 IRS Form W-2 states that the petitioner paid the beneficiary \$29,198.00.
- Paystubs indicating that the petitioner paid the beneficiary \$1,001.40 from January 1 through January 25, 2009.

The evidence submitted establishes that the petitioner paid above the proffered wage for 2007 and 2008. The petitioner has thus established its ability to pay for those years. The amount paid by the petitioner to the beneficiary in 2006 and 2009 is less than the proffered wage, so the petitioner must demonstrate its ability to pay the difference between the actual wage paid and the proffered wage, which was \$990.12 in 2006 and \$23,126.60 in 2009.

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, 558 F.3d 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*, 719 F.Supp. at 537 (emphasis added).

The record closed on January 10, 2013 with the receipt of the petitioner's submissions in response to the AAO's November 26, 2012 Notice of Intent to Deny, Request for Evidence, and Notice of Derogatory Information (NOID/RFE/NODI). As of that date, the petitioner's 2012 federal income tax return was not yet due. Therefore, the petitioner's tax return for 2011 is the most recent return

available. The petitioner's tax returns demonstrate its net income for 2006 and 2009 through 2011, as shown in the table below.

- In 2006, the Form 1120S stated net income³ of \$2,286.
- In 2009, the Form 1120S stated net income of -\$34,542.
- In 2010, the Form 1120S stated net income of -\$55,162.
- In 2011, the Form 1120S stated net income of -\$49,379.

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.⁴ 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. The petitioner's tax returns demonstrate its end-of-year net current assets for 2006 and 2009 through 2011, as shown in the table below.

- In 2006, the Form 1120S stated net current assets of \$414,249.
- In 2009, the Form 1120S stated net current assets of \$139,912.
- In 2010, the Form 1120S stated net current assets of \$69,699.
- In 2011, the Form 1120S stated net current assets of \$42,772.

Although the evidence submitted overcomes the basis of the director's denial on the petitioner's ability to pay the proffered wage, USCIS records indicate that the petitioner has filed two other Form I-140 petitions since the priority date in this case. The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The petitioner has submitted no

³ 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 of Schedule K. *See* Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed June 10, 2013) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had no additional adjustments shown on its Schedule K, the petitioner's net income is found on line 21 of its tax returns in each year.

⁴ 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.

evidence concerning the proffered wage of each beneficiary, any wages paid, the employment status of the employee, and whether any of the sponsored workers have obtained permanent residence. Without such evidence, we are unable to conclude that the petitioner had the ability to pay the proffered wage to all sponsored workers.

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.

Although not raised by the director in his decision, no evidence was submitted concerning the other two sponsored workers. In the instant case, the petitioner had negative net income from 2009 through 2011, and has net current assets that have diminished since the priority date in 2006. The petitioner submitted no evidence of its reputation and standing within the community or whether it had an anomalous year, so that we are unable to determine whether it experience a situation similar to the one presented in *Sonogawa*. 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.

In addition to the issues concerning the beneficiary's experience as outlined above, beyond the decision of the director, evidence exists that the position offered may not be a full-time position⁵ or

⁵ The job offer must be for a permanent and full-time position. See 20 C.F.R. §§ 656.3; 656.10(c)(10). DOL precedent establishes that full-time means at least 35 hours or more per week. See Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994).

may otherwise not be *bona fide*.⁶ Publicly available information indicates that the beneficiary currently runs his own restaurant called [REDACTED] located in Arlington, Virginia. See <http://www.rus-uzcuisine.com> (accessed June 18, 2013). The website indicates that the restaurant is open from 11 am to 10 pm every day (which does not account for pre-opening preparatory work), so it is unclear how the beneficiary would be able to run his own restaurant and work full-time in the proffered position for the petitioner. With any further submissions, the petitioner should submit evidence of its business need for a full-time chef and evidence that the offer was *bona fide* when the petition was filed and remains *bona fide* in that the beneficiary intended to be employed by the petitioner.

The AAO affirms the director's decision that the petitioner failed to establish that it had the ability to pay the proffered wage from the priority date onwards and the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date.

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.

⁶ An advisory opinion from the Chief of DOL's Division of Foreign Labor Certification states:

The regulations require a 'job opportunity' to be 'clearly open.' Requiring the job opportunity to be *bona fide* adds no substance to the regulations, but simply clarifies that the job must truly exist and not merely exist on paper. The administrative interpretation thus advances the purpose of regulation 656.20(c)(8). Likewise requiring the job opportunity to be *bona fide* clarifies that a true opening must exist, and not merely the functional equivalent of self-employment. Thus, the administrative construction advances the purpose of regulations 656.20.

As quoted in *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 405 (Comm'r 1986).