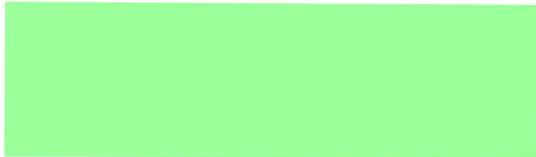




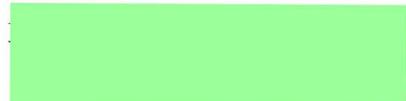
U.S. Citizenship  
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DATE: JUN 27 2013

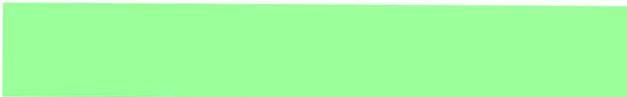
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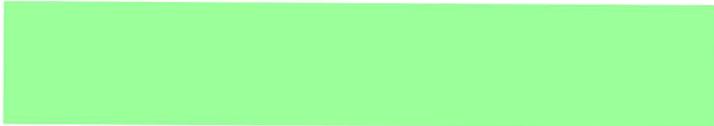
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen the director's decision. After the director granted the motion and again denied the petition, the petitioner filed a motion to reopen the director's second decision. The director dismissed the petitioner's second motion for failure to meet applicable requirements. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a farming company. It seeks to employ the beneficiary permanently in the United States as a farmer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the United States Department of Labor (DOL).

The director's two decisions denying the petition determined that the petitioner failed to establish its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward. The director denied the petition accordingly on September 24, 2009 and on February 24, 2010, after granting the petitioner's first motion to reopen.

The petitioner's second motion appears to be an identical copy of its first motion. The director dismissed it on May 25, 2010 for failing to provide new evidence.

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.

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

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 an office within the DOL's employment services system accepted the

labor certification for processing. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, as of the petition's priority date, the beneficiary possessed the qualifications stated on the Form ETA 750, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on April 30, 2003. The proffered wage, as stated on the Form ETA 750, is \$11.29 per hour, or \$23,483.20 per year for a 40-hour work week. The Form ETA 750 states that the position requires two years of experience in the offered position of farmer.

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.<sup>1</sup>

The evidence in the record of proceeding shows that the petitioner is a California corporation. A copy of the petitioner's 2008 federal income tax return shows that it chose to be treated as an S corporation for tax purposes as of January 1, 2008. On the petition, the petitioner claimed to have been established in 1982 and to employ 30 workers. According to the tax returns in the record, the petitioner's fiscal year started on August 1 and ended on July 31 from 2003 through 2007. The petitioner's 2008 tax return indicates that its fiscal year followed a calendar year beginning in 2008.

On the Form ETA 750B, which the beneficiary signed on March 24, 2003, the beneficiary did not claim to have worked for the petitioner. Evidence submitted with the petition and in response to the director's later Request for Evidence, however, shows that the petitioner had worked for the petitioner since at least 2003.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a Form 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 enough financial resources to pay the beneficiary's proffered wage. USCIS will also consider the totality of the circumstances affecting the magnitude of the petitioner's business. *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 first examines 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

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<sup>1</sup> 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).

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 copies of Internal Revenue Service (IRS) Forms W-2 Tax and Wage Statements, showing that it paid the beneficiary: \$3,579.10 in 2003; \$14,276.20 in 2004; \$15,985.64 in 2005; \$16,996.14 in 2006; \$17,958.42 in 2007; and \$17,633.55 in 2008.<sup>2</sup> Because none of these annual wage amounts equal or exceed the annual proffered wage of \$23,483.20, the petitioner has not established that it paid the beneficiary the full proffered wage from the priority date of April 30, 2003 onward.

The difference between the annual proffered wage and the amount the petitioner paid the beneficiary was: \$19,904.10 in 2003; \$9,207.00 in 2004; \$7,497.56 in 2005; \$6,487.06 in 2006; \$5,524.78 in 2007; and \$5,849.65 in 2008.

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 next examines 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 (1<sup>st</sup> 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.*, the court held that the Immigration and Naturalization Service, now USCIS, properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid, rather than net income. *Id.*; *see also Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because that figure ignores other necessary expenses).

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<sup>2</sup> Social Security Administration records show that at least two other people have used the Social Security Number ascribed to the beneficiary on his W-2 forms. This casts doubt on the validity of the petitioner's evidence of its payments to the beneficiary. In any further filings, the petitioner must resolve these inconsistencies in the record by independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the petition).

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).

For a corporation, USCIS considers net income to be the figure shown on line 28 of the IRS Form 1120, U.S. Corporation Income Tax Return. For an S corporation, a petitioner indicates its net income on IRS Form 1120S, U.S. Income Tax Return for an S Corporation.<sup>3</sup> The record before the director closed on March 25, 2010, with the director’s receipt of the petitioner’s second motion to reopen. As of that date, the petitioner’s 2009 federal income tax return was not yet due. Therefore, the petitioner’s income tax return for 2008 is the most recent return available.

Unlike its W-2 forms, which show the amounts the petitioner paid the beneficiary during calendar years 2003 through 2008, the petitioner’s tax returns for 2003 through 2006 reflect fiscal years (FY)

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<sup>3</sup> 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 26, 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 additional adjustments shown on its Schedule K for 2008, the petitioner’s net income is found on Schedule K of its 2008 tax return.

that start on August 1 and end on July 31. The petitioner's FY 2007 return includes financial figures from August 1, 2007 through December 31, 2007, while its 2008 return reflects its financial condition for the calendar year of 2008. Thus, the AAO cannot determine the petitioner's ability to pay in 2003 through 2007 by simply combining the annual net income amounts from the petitioner's tax returns in those years with the W-2 forms of the same years. The petitioner's tax returns from 2003 through 2007 do not state how much, if any, net income it earned in a given calendar year.

The AAO also notes, that the record does not include evidence of the petitioner's financial condition before August 1, 2003, the start of its FY 2003. The petitioner must demonstrate its ability to pay the proffered wage from the petition's priority date of April 30, 2003. *See* 8 C.F.R. § 204.5(g)(2). Because the petitioner has not provided any evidence of its financial condition before August 1, 2003, which would be its FY 2002, the petitioner has failed to establish its ability to pay the beneficiary's proffered wage from the priority date in 2003.

The petitioner's tax returns show annual net income amounts for the following fiscal years: \$(387,223)<sup>4</sup> in 2003; \$16,788 in 2004; \$70,940 in 2005; \$(122,420) in 2006; and \$462,957 in 2007. The petitioner's 2008 tax return also shows an annual net income of \$(197,503) for calendar year 2008. Thus, the annual net income amounts on the petitioner's fiscal year tax returns demonstrate its ability to pay the annual proffered wage in FY 2005 and FY 2007. As its unclear what, if any, income in FY 2004 is attributable to calendar year 2004, it is unclear if the petitioner could establish its ability to pay the proffered wage in that year by combining its annual net income with the amount it paid the beneficiary. But the petitioner has not established its ability to pay the proffered wage in FY 2002, FY 2003, FY 2006 or in calendar year 2008.

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 reviews the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>5</sup> 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 Schedule L, lines 16 through 18. If the total of a corporation's year-end net current assets and the wages paid to the beneficiary 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 fiscal year tax returns demonstrate its year-end net current assets for the following fiscal years: \$(643,110) for 2003; and \$(488,239) for 2006. The petitioner's 2008 tax return also shows a net current asset amount of \$(195,943) for the 2008 calendar year. Therefore, the

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<sup>4</sup> Numbers in parentheses reflect negative amounts.

<sup>5</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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.

petitioner's fiscal year tax returns did not indicate enough net current assets to pay the proffered wage in the remaining years of FY 2002, FY 2003, FY2006 and calendar year 2008.

Therefore, from the date an office in the DOL employment services system accepted the Form ETA 750 for processing, the petitioner has not established its continuing ability to pay the beneficiary's proffered wage based on examinations of the wages it paid the beneficiary, its net income, and its net current assets.

On appeal, counsel asserts that USCIS erred in disregarding the pledge of the petitioner's officer to pay the beneficiary's proffered wage from personal income sources in the required years in light of California law, which counsel claims renders a corporation's shareholders personally liable for the wages of its employees. In briefs in support of the petitioner's motions to reopen, counsel argued that California Labor Code §§ 1197.1(a), 1199 and 1199.5 legally require a corporation's agent to pay the wages of its employee. Counsel also argued that a corporation and its officers are jointly liable for the wages of an employee, citing *Ontiveros v. Zamora*, No. S-08-567 (E.D.Cal. Feb. 20, 2009). Counsel asserts that cases stating that the personal assets of officers, shareholders and other entities cannot be considered in determining a corporation's ability to pay a proffered wage do not apply in California. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980) (because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other entities cannot be considered in determining its ability to pay the proffered wage); *see also Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) ("[N]othing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage.")

The California Labor Code sections that counsel cites subject corporate officers and agents to penalties and, in some cases, restitution of wages for various state wage and hour violations, such as requiring an employee to work longer, or paying an employee less, than required by California labor authorities. Thus, the provisions render a corporation's shareholder or officer liable for an employee's wages only if the corporation commits certain state wage and hour violations. Counsel has not established that the petitioner's violation of California state wage and hour laws, or a relationship between the applicable state wage and hour violations and immigration laws, would require the petitioner's shareholders to pay the beneficiary's proffered wage. The petitioner must demonstrate to USCIS its ability to pay the proffered wage from the petition's priority date to establish its eligibility for the beneficiary sought. *See* 8 C.F.R. § 204.5(g)(2). But federal immigration law does not require the petitioner to actually pay the beneficiary the proffered wage until he obtains lawful permanent resident status in the U.S. Thus, it is unclear how the petitioner would have violated California state wage and hour laws and rendered its officer liable for the beneficiary's wages before approval of its Form I-140 petition.

Counsel's citation to *Ontiveros* also does not establish that the petitioner and its officer are jointly liable for the beneficiary's wages. The federal district court judge's decision in *Ontiveros* does not bind California state courts. The California Supreme Court has held that individuals cannot be held personally liable for their corporate employers' violations of state wage and hour laws. *See Reynolds v. Bement*, 36 Cal.4<sup>th</sup> 1075 (2005).

Thus, as the director found, USCIS (legacy INS) has long held that it may not “pierce the corporate veil” and look to the assets of a corporation’s owner to satisfy the corporation’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958); *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. at 530; *Matter of Tessel*, 17 I&N Dec. 631 (Acting Assoc. Comm’r 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation’s ability to pay the proffered wage.

Counsel’s assertions on appeal do not outweigh the financial documentary evidence in the record, demonstrating that the petitioner could not continuously pay the proffered wage from the petition’s priority date onward.

As indicated previously, 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 record shows that the petitioner was incorporated in 1982 and therefore has conducted business for a longer period of time than the petitioner in *Sonogawa* had. But, although the petitioner claimed in the petition to employ 30 people and submitted copies of the beneficiary’s W-2 forms for calendar years 2003 through 2008, its tax returns for fiscal years 2003, 2004 and 2008 state that it paid no salaries, wages or labor costs.<sup>6</sup> Unlike the petitioner in *Sonogawa*, the petitioner

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<sup>6</sup> The petitioner reports “contract labor” expenses of at least \$294,353 per year on the Farm Activities Schedules in its tax returns for fiscal years 2003 through 2008. It is unclear, however,

also has not submitted any evidence that it incurred uncharacteristic business losses or expenses, or that it has earned an outstanding reputation in its industry. Thus, assessing the totality of the circumstances in this individual case in accordance with *Sonegawa*, the petitioner has not established its continuing ability to pay the proffered wage.

Counsel also argues that the director “misconstrued” the petitioner’s March 26, 2010 filing as a motion to reopen, when the submission indicated it was an appeal.

Even if the director erred in considering the filing as a motion to reopen, which the record does not corroborate, it is unclear what remedy would be appropriate beyond the appeal itself, as the AAO has considered on appeal the arguments and evidence contained in that filing.

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 also Matter of Wing’s Tea House*, 16 I&N Dec. at 159; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary’s qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See 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 (1<sup>st</sup> Cir. 1981).

In the instant case, the labor certification states that the offered position of farmer requires two years of experience in the job offered. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a farmer with [REDACTED], California from January 1995 to February 1997.

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 an undated, signed letter on [REDACTED] stationery, stating that the beneficiary worked for the employer from January 1995 to February 1997.

Contrary to the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), the experience letter does not contain the employer’s title. Although the letter includes a brief description of the beneficiary’s experience, it does not identify the beneficiary’s job title with the employer and the job duties it describes do not match most of the job duties of the offered position. The labor certification states that the offered position involves planting, cultivating, harvesting, performing post-harvest activities, marketing crops and livestock, applying pesticides, herbicides and fertilizers to crops and livestock, determining the kind and amount of crops and livestock to grow, maintaining and operating machinery, performing physical work, driving and controlling farm equipment to till soil and plant, irrigating many of the crops, fixing cement pipelines and repairing many other types of equipment. The former employer’s letter states only

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whether the petitioner includes the beneficiary’s pay in its contract labor expenses on its tax returns.

that the beneficiary fertilized, irrigated water-sensitive crops, and maintained all land preparation tools, tractors and planting machines.

Moreover, the letter's stationery states that the employer is located in [REDACTED] California, whereas the labor certification states that employer is located in [REDACTED] California. Above the employer's name, the letter also states "Experience sample letter," suggesting that the employer did not prepare the contents of the letter based on the employer's personal knowledge of the beneficiary's experience.

The letter's omission of the employer's title and the beneficiary's job title, the failure of its description of the alien's experience to match most of the job duties of the offered position, its incorrect address, and its indication that the employer did not draft the letter casts doubt on the validity of the letter and the beneficiary's qualifying experience for the offered position. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the petition. *See Matter of Ho*, 19 I&N Dec. at 591. The petitioner has therefore not established that the beneficiary possessed the required employment experience for the offered position as required by the labor certification as of the petition's priority date.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

In summary, the evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage from the priority date onward. The AAO also finds that the petitioner has not established that the beneficiary possessed the required employment experience set forth on the labor certification by the priority date. The petitioner therefore has also failed to establish that the beneficiary is qualified for the offered position.

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.