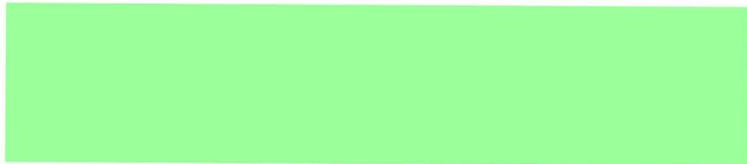


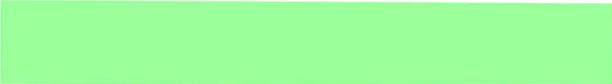
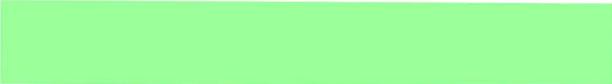


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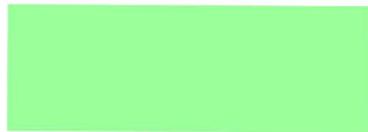


Date: **MAY 16 2013** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On May 12, 2010 the Administrative Appeals Office (AAO) dismissed the appeal and affirmed the decision of the Director, Nebraska Service Center (the director). The petitioner has now filed a motion to reopen the AAO's decision. The motion will be granted, and the appeal is reopened. Upon review, the appeal will be dismissed.

The petitioner is a Buddhist temple. It seeks to employ the beneficiary permanently in the United States as a priest assistant, pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The AAO dismissed the appeal, finding that the beneficiary did not have the requisite work experience in the job offered before the priority date and that the petitioner failed to demonstrate the continuing ability to pay the proffered wage from the priority date.

On motion to reopen, counsel for the petitioner maintains that the beneficiary was both a part-time doctor (physical therapist) at [REDACTED] and full-time priest assistant at [REDACTED] between March 1994 and August 1998. Counsel further states that [REDACTED] is owned by the [REDACTED]

To demonstrate that the petitioner has the ability to pay and to show that the beneficiary worked as a priest assistant in South Korea for at least two years, on motion the petitioner submits the following additional evidence:

- Copies of the petitioner's audited financial statements for the years 2001 through 2009;
- A certificate of experience dated March 20, 2013 from Chief Priest [REDACTED] stating that the beneficiary worked 40 hours/week an assistant to a Buddhist monk at [REDACTED] from February 27, 1994 to March 28, 1998; and
- A petition signed by the chief monk, director, and members of [REDACTED], attesting to the beneficiary's employment as a full-time assistant to a Buddhist monk from February 27, 1994 to March 28, 1998.

The record shows that the motion is properly filed, timely and makes a specific allegation of error in law or fact. 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 filing of the motion.²

¹ 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.

² The submission of additional evidence on motion 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).

Upon review, we find that the petitioner has demonstrated by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives her lawful permanent residence,³ but failed to show that the beneficiary possessed the requisite work experience as of the priority date.

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by DOL and submitted with the petition as of the priority date. Here, the priority date is April 24, 2001, which was the date when the Form ETA 750 was filed and accepted for processing by DOL.

The name of the job title or the position for which the petitioner seeks to hire is "Priest Assistant." The job description listed on the Form ETA 750 part A item 13 states, "Assist ordained clergy in conducting religious services; providing spiritual guidance to temple members; assist clergy member in coordinating committees that oversee social and temple event." Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered.

The beneficiary listed the following relevant work experience under item 15 of the Form ETA 750, part B:

Name and address of employer:	[REDACTED] [REDACTED] Seoul, Korea.
Name of Job:	Priest Assistant.
Date started:	February 1994.
Date left:	August 1998.

None of the evidence submitted to show that the beneficiary had the requisite work experience in the job offered has a sufficient description or training of the beneficiary as required by the regulations at 8 C.F.R. §§ 204.5(g)(1) and 204.5(l)(3)(ii)(A). Simply stating that the beneficiary worked as a priest assistant or assistant to a Buddhist monk is not a sufficient description of the beneficiary's training or experience.

The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal/motion. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ We consider and accept audited financial statements as evidence of the petitioner's ability to pay per 8 C.F.R. § 204.5(g)(2). We note that the petitioner had net revenue (net income) in excess of the proffered wage of \$18,200 per year from 2001 to 2009.

In addition, we find inconsistencies in the record pertaining to the beneficiary's qualifications that have not been resolved. First, we note that the beneficiary claimed in her Biographical Information (Form G-325A), which she filed in connection with her Application to Register Permanent Residence or Adjust Status (Form I-485) in 2005, that she worked as a doctor in Korea from 1990 until 1998. This is during the same time period (from 1994 to 1998) that the beneficiary claims she was employed as a full-time "priest assistant."

On appeal, counsel argued that the beneficiary was employed full-time as a priest from 1994 to 1998 and only part-time as a physical therapist. However, the petitioner could not offer any credible independent and objective evidence to demonstrate that she was employed full-time as a priest assistant at [REDACTED] from 1994 to 1998.

Without independent and objective evidence, the inconsistencies in the record could not be resolved. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (stating that 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). The record does not include any independent and objective evidence to demonstrate that the beneficiary worked as a full-time priest assistant from March 1994 to August 1998.

On motion, counsel for the petitioner asserts that the beneficiary could have worked as a full-time priest assistant and a part-time physical therapist at both the children hospital and the Buddhist temple between 1994 and 1998, as the hospital is owned by the Buddhist temple, and they are both located at the same complex or address. We note that the assertions of counsel that the beneficiary worked as a part-time doctor and a full-time priest between 1994 and 1998 do not constitute evidence and do not establish the veracity of the assertions. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For these reasons, the petitioner has not established that the beneficiary is qualified for the proffered petition, and the appeal will be dismissed.

In summary, we find that the petitioner has the continuing ability to pay, but considering the inconsistencies in the record relating to the beneficiary's qualifications in the job offered, we cannot sustain the appeal and approve the petition. The appeal will be dismissed for this reason. 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 motion to reopen is granted; upon review, the appeal is dismissed. The AAO's prior decision remains undisturbed.