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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: MAY 30 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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:

[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 Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO).<sup>1</sup> The appeal will be dismissed.

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook. 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).<sup>2</sup>

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is March 2, 2001. *See* 8 C.F.R. § 204.5(d).

This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution will be permitted.

The director's decision denying the petition concludes that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date.

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

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<sup>1</sup> The appeal was filed by petitioner's counsel, [REDACTED] and was accompanied by a signed Form G-28. The AAO notes that Attorney [REDACTED] is no longer practicing law in the State of California as of February 2012. The appellate brief was submitted by [REDACTED] but did not include a new Form G-28. If the petitioner is represented by new counsel, a properly signed Form G-28 must be submitted with any further filings.

<sup>2</sup> 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.

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>3</sup>

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:

EDUCATION

Grade School: Eight years

High School: None required

College: None required

College Degree Required: None required

Major Field of Study: None required

TRAINING: None Required

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<sup>3</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 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).

EXPERIENCE: Two (2) years in the job offered

OTHER SPECIAL REQUIREMENTS: None

The labor certification states that the beneficiary qualifies for the offered position based on experience as a cook with [REDACTED] in Orlando, Florida from June 1991 until November 1993. The beneficiary also lists experience as a self-employed caterer from March 2005 to December 2007 and experience with the petitioner as a cook from January 2008 to the present. 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 experience letter from [REDACTED] Owner, on [REDACTED] letterhead [REDACTED] letter) stating that the company employed the beneficiary as a cook from March 1973 until October 1975 in Rosario, Argentina. However, the letter does not state if the position was full-time. Additionally, the beneficiary's employment with [REDACTED] is not listed on the ETA 750B submitted in response to the director's Request for Evidence (RFE) on February 19, 2008. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The record also contains an experience letter from [REDACTED], General Manager, on [REDACTED] letterhead [REDACTED] stating that the company employed the beneficiary as a cook from June 1991 to November 1993 in Orlando, Florida.

The [REDACTED] letter and [REDACTED] letter are inconsistent with other information in the record. A Form ETA 750 was filed on behalf of the beneficiary by a different petitioner on March 12, 1998. The ETA 750, signed by the beneficiary under penalty of perjury on February 10, 1999, states that the beneficiary worked as an auto mechanic at [REDACTED] and as a manual worker at [REDACTED] in Rosario, Argentina from 1972 to 1974 and 1975 to 1980, respectively. The labor certification also states that the beneficiary worked at [REDACTED] as a qualified

helper from June 1991 to June 1992 in California and at [REDACTED] from March 1993 to December 1995 in Santa Ana, California.

In response to two Notices of Intent to Deny (NOIDs) issued by the director on March 7, 2008 and on December 8, 2009, requesting clarification of the discrepancies in the beneficiary's work experience, the petitioner submitted the following evidence: a declaration signed by the beneficiary dated March 1, 2008; a letter of employment from [REDACTED] letterhead dated January 12, 2005; a declaration from [REDACTED] dated December 29, 2009; and a declaration from the beneficiary dated December 31, 2009.

In the beneficiary's two declarations dated March 1, 2008 and December 31, 2009, the beneficiary states that he previously worked at [REDACTED] from June 1991 until November 1993, and that he did not work in California from 1991 to 1993. He also states that he did not work for [REDACTED] in California from June 1991 to June 1992 or at any other time and that he listed prior work experience on his labor certification from 1972 to 1990. However, as stated above, the employment experience listed on the labor certification signed by the beneficiary under penalty of perjury on February 10, 1999 shows that the beneficiary worked at [REDACTED] as an auto mechanic from 1972 to 1974 and as a manual worker at [REDACTED] from 1975 to 1980, and not as cook at [REDACTED] from March 1973 to October 1975 as stated in the experience letter. Additionally, the beneficiary states on the labor certification that he was an apprentice with [REDACTED] while going to school to be trained as a mechanic. Therefore, it is not plausible that the beneficiary was also working forty-hours per week as a cook at [REDACTED] during that period. Additionally, the beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his prior work experience. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record also contains a letter dated January 12, 2005 from [REDACTED] in Santa Ana, California confirming that the beneficiary was a manager at the shop from March 1993 to December 1995. The record also contains a similar, undated letter from [REDACTED] submitted with a petition filed on behalf of the beneficiary by a previous petitioner. In this case, the petitioner submitted an additional declaration from [REDACTED] dated December 29, 2009, which states that the beneficiary was a partner and co-owner of [REDACTED]. He states that the beneficiary's duties were limited from March 1993 until December 1993 and included "approving the Company [*sic*] policies or to management and supervising structures and other policies Involving [*sic*] daily participation of company operating methods." The declaration states that the beneficiary "began an active and daily participation of company operating duties on December 1993." These letters indicate that the beneficiary was working in California at [REDACTED] of which it appears he may have been a co-owner, beginning in March 1993. There is no independent, objective evidence submitted to clarify the inconsistencies. *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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Counsel, in the cover letter to the response to the director's NOID dated December 8, 2009, states that the beneficiary was performing his duties with [REDACTED] from Florida from March 1993 to December 1993. Counsel states that the beneficiary was "reviewing and implementing company policies," and therefore, his physical presence was not required. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, there is no independent, objective evidence verifying this assertion. *See Matter of Ho, supra*.

Counsel states in his brief on appeal that the petition filed by his prior attorney "was just wrong." Counsel further asserts that the beneficiary submitted a declaration in which he states under penalty of perjury that he does not read or write English and that he did not understand the contents of the previous labor certification as a result. Counsel contends that the director ignored the beneficiary's declaration and "imposes an inappropriate burden" on the petitioner and the beneficiary.

The record contains two declarations from the beneficiary, as discussed above, which are dated March 1, 2008 and December 31, 2009. The beneficiary does not state in either of those declarations that he does not read and/or write English and that he did not understand the contents of the labor certification when he signed it. The AAO notes that both declarations, signed by the beneficiary under penalty of perjury, are written in English. The beneficiary's failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11<sup>th</sup> Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a matter where he provided all the supporting documents and signed a document would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

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 professional or skilled

worker under section 203(b)(3)(A) of the Act.

Beyond the decision of the director,<sup>4</sup> the petitioner has also not established that the beneficiary has the required education to qualify for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See 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 requires eight years of grade school. On the labor certification, the only education that the beneficiary lists is at [REDACTED] in general studies from March 1972 to December 1972. The labor certification indicates that no degrees or certificates were received. The record does not contain any evidence that the beneficiary completed eight years of grade school as required by the labor certification.

The evidence in the record does not establish that the beneficiary possessed the required education set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

Also, beyond the decision of the director, the record of proceeding contains signature discrepancies. The beneficiary's signature is visibly different on the ETA 750B filed in response to the director's January 7, 2008 RFE, the declaration dated March 1, 2008, and the declaration dated December 31, 2009. Additionally, the petitioner's owner's signatures on the ETA 750 and on the declaration dated July 10, 2007, are different from the petitioner's owner's signature on the Form G-28 dated March 10, 2010 and on the petition. The undated experience letter from [REDACTED] also contains a visibly different signature from the signatures on the statement dated December 29, 2009 and on the letter dated January 12, 2005. It is unclear which of the signatures referenced above, if any, are valid. If one or all of the signatures are not authentic, it is also unclear who actually signed. There is no provision that would allow the petitioner or the beneficiary to delegate his or her signature authority. Additionally, the experience letters from [REDACTED] will not be considered as evidence of the beneficiary's experience since it is unclear if the letters contain valid signatures.

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<sup>4</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The inconsistencies in the signatures must be addressed with any further filings.

Also, beyond the decision of the director, the petitioner has failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.<sup>5</sup> If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In the instant case, the petitioner did not employ the beneficiary. The record contains the petitioner's Forms 1120 US U.S. Corporate Tax Returns for the years 2001 through 2003, and the petitioner's Forms 1120S U.S. Income Tax Return for an S Corporation for the years 2004 through 2006. The proffered wage as stated on the Form ETA 750 is \$11.55 per hour (\$24,024 per year based on a forty-hour work week).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on February 19, 2008 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2006 is the most recent return available. The petitioner's tax returns demonstrate its net income for 2001 through 2006, as shown in the table below.

- In 2001, the Form 1120 stated net income of \$37,153
- In 2002, the Form 1120 stated net income of \$22,646

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<sup>5</sup> *See River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1<sup>st</sup> Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. 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); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011).

- In 2003, the Form 1120 stated net income of \$27,788
- In 2004, the Form 1120 stated net income of -\$128,521
- In 2005, the Form 1120S stated net income<sup>6</sup> of \$71,133
- In 2006, the Form 1120S stated net income of \$30,561

Therefore, for the years 2002 and 2004, the petitioner did not have sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>7</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 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 2002 and 2004, as shown in the table below.

- In 2002, the Form 1120 stated net current assets of -\$20,667
- In 2004, the Form 1120 stated net current assets of -\$800

Therefore, for the years 2002 and 2004, the petitioner did not have sufficient net current assets to pay the proffered wage.

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<sup>6</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 17e (2004-2005) and line 18 (2006-2011) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed May 9, 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 income, deductions, and other adjustments shown on its Schedule K for 2005 and 2006, the petitioner's net income is found on Schedule K of its tax returns for 2005 and 2006.

<sup>7</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.

Therefore, from the date the Form ETA 750 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.

Further, the petitioner failed to establish that factors similar to *Sonegawa* existed in the instant case, which would permit a conclusion that the petitioner had the ability to pay the proffered wage despite its shortfalls in wages paid to the beneficiary, net income and net current assets.

Accordingly, after considering the totality of the circumstances, the petitioner has also failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

The AAO further finds that the petitioner and the beneficiary willfully misrepresented a material fact by intentionally misrepresenting the beneficiary's work experience.

A material issue in this case is whether the beneficiary is qualified to perform the duties of the proffered position through meeting the experience requirements of the position offered. The job offered requires two years of prior experience as a cook. The beneficiary, in listing on Form ETA 750B that he gained this experience with [REDACTED] and signing that form under penalty of perjury, constitutes an act of willful misrepresentation if the beneficiary was not employed in that position. Additionally, the petitioner's submission of an experience letter from [REDACTED] stating that the beneficiary was employed as a cook in the restaurant is likewise an act of willful misrepresentation if the beneficiary was also not employed in that position. The listing of such experience misrepresented the beneficiary's actual qualifications in a willful effort to procure a benefit ultimately leading to permanent residence under the Act. *See Kungys v. U.S.*, 485 U.S. 759 (1988), ("materiality is a legal question of whether "misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect the official decision.") Here, the listing of false experience is a willful misrepresentation of the beneficiary's qualifications that adversely impacted USCIS's immigrant petition analysis.

Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States. *See* section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182, regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

Further, doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

To qualify as a third preference employment-based immigrant professional, the beneficiary was required to establish that he met the petitioner's minimum education and experience requirements. *Compare* 8 C.F.R. § 204.5(g) *with* § 204.5(1)(1)(3)(ii)(C). The beneficiary has intentionally attempted to mislead the Service by misrepresenting his experience, which is consistently inaccurate in the documentation on the record.

By misrepresenting the beneficiary's experience, the beneficiary and the petitioner sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Any finding of fraud as a result shall be considered in any future proceeding where admissibility is an issue. *See also Matter of Ho*, 19 I&N Dec. at 591-592.

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 with a finding that the petitioner and beneficiary willfully misrepresented a material fact.