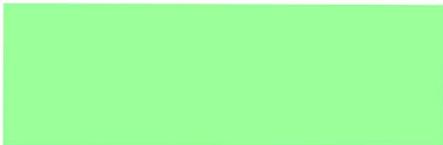
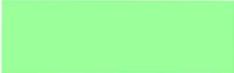




U.S. Citizenship  
and Immigration  
Services

(b)(6)

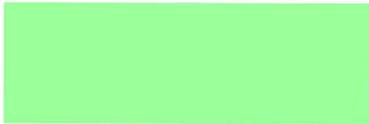


DATE: **MAY 30 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

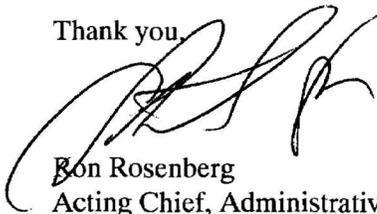


INSTRUCTIONS:

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an adult residential facility. It seeks to employ the beneficiary permanently in the United States as a utilization review coordinator. 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 determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and the beneficiary<sup>1</sup> did not possess the minimum experience required to perform the offered position by the priority date. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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.

As set forth in the director's denial, the issues in this case are whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence and whether or not the beneficiary has the minimum experience required to perform the offered position by the priority date.

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>2</sup>

The AAO will first address whether [REDACTED] is a successor-in-interest to [REDACTED] the petitioner. Form ETA 750 and Form I-140 list the petitioner as: [REDACTED] Anaheim, California. Form I-140 lists the petitioning entity's federal tax identification number (FEIN) as: [REDACTED]. [REDACTED] was a sole proprietorship established in January 1999 and it filed a labor certification on behalf of the beneficiary on March 7, 2005. The sole proprietor incorporated [REDACTED] (FEIN: [REDACTED]) in March 8, 2007, and became its director and the sole officer of the corporation. According to the director and sole officer of [REDACTED], he acquired all rights, titles, interests and obligations of [REDACTED].<sup>3</sup>

<sup>1</sup> The beneficiary listed a middle initial of "F" on the labor certification, however, no middle initial is listed on Form I-140. Form W-2s and tax records in the record of proceedings indicate the beneficiary's middle initial is "R." Further, they indicate the beneficiary's name changed as early as 2006. In any further filings, the petitioner should fully document the beneficiary's legal name.

<sup>2</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).

<sup>3</sup> The AAO notes that the petitioner was purportedly sold to the claimed successor, [REDACTED]

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.<sup>4</sup> *Id.* at 1569 (defining “successor”). When considering other business organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application.<sup>5</sup>

The merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets, even one that takes up a predecessor’s business activities, does not necessarily create a successor-in-interest. *See Holland v. Williams Mountain Coal Co.*, 496 F.3d 670, 672 (D.C. Cir. 2007). An asset transaction occurs when one business organization sells property – such as real estate, machinery, or intellectual property - to another business organization. The purchase of assets from a predecessor will only result in a successor-in-interest relationship if the parties agree to the transfer and assumption of the essential rights and obligations of the

---

prior to the date that it filed the Form I-140.

<sup>4</sup> Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes “consolidations” that occur when two or more corporations are united to create one new corporation. The second group includes “mergers,” consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes “reorganizations” that occur when the new corporation is the reincarnation or reorganization of one previously existing. The fourth group includes transactions in which a corporation, although continuing to exist as a “shell” legal entity, is in fact merged into another through the acquisition of its assets and business operations. 19 Am. Jur. 2d *Corporations* § 2165 (2010).

<sup>5</sup> For example, unlike a corporation with its own distinct legal identity, if a general partnership adds a partner after the filing of a labor certification application, a Form I-140 filed by what is essentially a new partnership must contain evidence that this partnership is a successor-in-interest to the filer of the labor certification application. *See Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). Similarly, if the employer identified in a labor certification application is a sole proprietorship, and the petitioner identified in the Form I-140 is a business organization, such as a corporation which happens to be solely owned by the individual who filed the labor certification application, the petitioner must nevertheless establish that it is a bona fide successor-in-interest.

predecessor necessary to carry on the business.<sup>6</sup> *See generally* 19 Am. Jur. 2d *Corporations* § 2170 (2010).

Considering *Matter of Dial Auto* and the generally accepted definition of successor-in-interest, a petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the beneficiary's predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also the essential rights and obligations of the predecessor necessary to carry on the business. To ensure that the job opportunity remains the same as originally certified, the successor must continue to operate the same type of business as the predecessor, in the same metropolitan statistical area and the essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto*, 19 I&N Dec. at 482.

In order to establish eligibility for the immigrant visa in all respects, the petitioner must support its claim with all necessary evidence, including evidence of ability to pay. The petitioning successor must prove the predecessor's ability to pay the proffered wage as of the priority date and until the date of transfer of ownership to the successor. In addition, the petitioner must establish the successor's ability to pay the proffered wage in accordance from the date of transfer of ownership forward. 8 C.F.R. § 204.5(g)(2); *see also Matter of Dial Auto*, 19 I&N Dec. at 482.

The record includes a purchase and sale agreement dated March 30, 2007 between [REDACTED] (buyer) and [REDACTED], owner of [REDACTED] (seller). [REDACTED] signed the document as both the seller and the president of the buyer. In the signed agreement, the seller agrees to transfer, convey and deliver to the buyer inventory, furniture, goodwill, accounts receivable, contracts, employees, the leasehold interest in the subject premises, accounts payable and other items that the parties may agree to. The AAO notes that the submitted documents were originals. The purchase and sale agreement states that inventory is defined in Section 12.01, but it is not defined in that section. The purchase and sale agreement states that the agreement took place on March 30, 2007, however the October 23, 2009 CPA letter states that the transfer took place in 2008. In addition, the October 29, 2009 letter from counsel states that the assets and liabilities of [REDACTED] were transferred to [REDACTED] and [REDACTED] was then transferred to [REDACTED]. This suggests that [REDACTED] may be an interceding entity or another

---

<sup>6</sup> The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest relationship unless the transfer results from the bona fide acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. *See* 19 Am. Jur. 2d *Corporations* § 2170; *see also* 20 C.F.R. § 656.12(a).

successor-in-interest, or that the sole proprietor was split into multiple businesses. The purported successor's Form 1120S for 2008 states, "[REDACTED] is a party to a corporate reorganization. As of 01-01-08, all the assets of [REDACTED] EIN [REDACTED] were absorbed by [REDACTED] in a tax-free reorganization." The record reflects multiple FEIN numbers, however, the tax identification number of the stated petitioner is not referenced in this transaction. The petitioner must establish and document the entire chain of successorship from the labor certification entity to [REDACTED] to [REDACTED] if applicable. These conflicting documents, tax identification numbers, and accounts cast doubt on the purported successorship. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), states, "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." Due to these issues, the AAO cannot find that the purported successor has fully described and documented the transaction transferring ownership of all, or a relevant part of, the predecessor.

The record does not include evidence that the job opportunity is the same as originally offered on the labor certification. The record includes an undated letter from [REDACTED]. The letter states only that the beneficiary has been working for the petitioner's owner, identified personally and not by title or by indications with which business he is affiliated, as a "Utilization Review Coordinator" and that he has been employed "since 2004." The letter is written on counsel's letterhead. The letter does not demonstrate that the job opportunity is with [REDACTED] and that the job duties, wage, job requirements, job location and hours are the same as with [REDACTED].<sup>7</sup> Therefore, the petitioner has not established a valid successor relationship for immigration purposes.

The AAO will next address whether the petitioner and claimed successor are eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods.

Sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii), provide 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 and qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

---

<sup>7</sup> The AAO notes that the beneficiary's self-prepared tax returns reflect that she is a caregiver. The labor certification lists her position with the petitioner as an "utilization review coordinator" which is an administrative position. However, her resume states that she was a caregiver from November 1, 2002 until at least September 14, 2006. This suggests that the job may not be as offered in the labor certification. A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(C)(2).

*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 Form ETA 750, Application for Alien 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 Form ETA 750, Application for Alien 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 Form ETA 750 was accepted on March 7, 2005. The proffered wage as stated on the Form ETA 750 is \$33.79 per hour (\$70,283.20 per year). The Form ETA 750 states that the position requires a B.A. degree in Nursing and two years of experience in the job offered.

The evidence in the record shows that the initial petitioner was a sole proprietor and the claimed successor is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1999 and to currently employ 2 workers. On the Form ETA 750B, signed by the beneficiary on February 8, 2005, the beneficiary claimed to work for the petitioner since May 2004.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an 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 financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

The petitioner must establish its ability to pay the proffered wage from the priority date until the date of sale to the claimed successor and the claimed successor must establish its ability to pay the proffered wage from the date of sale onwards.

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner and claimed successor employed and paid the beneficiary during that period. If the petitioner and claimed successor establish by documentary evidence that they

employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of ability to pay the proffered wage. The AAO will first address the petitioner. The record does not include evidence that the petitioner paid the beneficiary the full proffered wage from the priority date on March 7, 2005 until the date of sale. The beneficiary's 2005 Form W-2 from [REDACTED] FEIN [REDACTED], reflects an income of \$29,466.61. This is a different tax identification number than listed on Form I-140. Therefore, without resolution of the tax identification number, this W-2 cannot be accepted in support of the petitioner's ability to pay the beneficiary's proffered wage. In regard to the claimed successor, the record includes a 2007 Form W-2 for the beneficiary reflecting an income of \$16,000<sup>8</sup> and a 2008 Form W-2 reflecting an income of \$24,905.04, both of which are less than the \$70,283 proffered wage.

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 (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).

From 2005 until March 30, 2007, the petitioner was a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7<sup>th</sup> Cir. 1983).

---

<sup>8</sup> There are no Form W-2s for 2006 or 2007 from the labor certification employer despite the claimed successor-in-interest transaction not occurring until March 30, 2007. There are 2006 and 2007 W-2s from [REDACTED] in the record of proceeding but they are not attributable to the labor certification employer, petitioner or claimed successor-in-interest. The 2007 W-2 from the claimed successor-in-interest lists a different last name for the beneficiary, which appears to be her married name.

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioner could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor was supporting a family of five (5). The proprietor's tax returns reflect the following information for the following years:

<u>Year</u>	<u>Proprietor's adjusted gross income (Form 1040)</u>	<u>Beneficiary's Form W-2</u>
2005	\$84,473	\$29,466.61 <sup>9</sup>
2006	Not submitted	Not submitted
2007	\$(19,055)	Not submitted

In 2005, the sole proprietor had an adjusted gross income of \$84,473. However, without documented evidence of his monthly expenses, the AAO cannot find that he had the ability to pay the proffered wage in 2005. The record does not include the sole proprietor's adjusted gross income and documented evidence of his expenses, or the beneficiary's Form W-2 for the petitioning entity, in order to determine whether the sole proprietor had the ability to pay the proffered wage in 2006. Therefore, the petitioner did not demonstrate its ability to pay the proffered wage in 2006.

Counsel asserts that that a \$19,055 loss in 2007 includes a net operating loss carryover of \$67,007 from prior years and removing this results in an adjusted gross income of \$47,952. If an individual taxpayer's deductions for the year are more than its income for the year, the taxpayer may have a net operating loss (NOL). When carried back, the NOL reduces the taxable income of the relevant earlier year, resulting in a recomputation of the tax liability and a refund or credit of the excess amount paid. Carryovers produce a similar reduction in the taxable income of later years, and this reduces the tax payable when the return is filed. If a taxpayer is carrying forward an NOL, it shows the carryforward amount as a negative figure on the "Other Income" line of IRS Form 1040. However, because a petitioner's NOL is related to another year's outcome, it is omitted from the analysis of the petitioner's "bottom line" ability to pay the proffered wage in a certain year. Therefore, the petitioner's adjusted gross income for 2007 is found at line 37 in the amount of (\$19,055). In 2006 and 2007, the sole proprietor's adjusted gross income fails to cover the proffered wage. It is improbable that the sole proprietor could support himself and his family on a deficit, which is what remains after reducing adjusted gross income by the amount required to pay the proffered wage.

---

<sup>9</sup> The sole proprietor's Schedules C submitted for 2005 and 2007 reflect the tax identification number listed on Form I-140, but reflect a different tax identification number than the W-2 Forms submitted for these years. 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). Without resolution, the beneficiary's W-2 Form for 2005 cannot be accepted.

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.<sup>10</sup> The AAO notes that Schedule C for a sole proprietor does not reflect assets and liabilities like a Schedule L for a corporation and net current assets would be found on an audited balance sheet, which is not in the record. Therefore, for 2005, 2006 and 2007 the record does not reflect that the petitioner had sufficient net current assets to pay the proffered wage, or the difference between wages paid to the beneficiary and the proffered wage, if those wages could be accepted to show the petitioner's ability to pay the proffered wage.

The petitioner did not establish its ability to pay the difference between the wages paid, if any can be accepted, and the proffered wage in 2005, 2006 and 2007.

In regard to the claimed successor, the record includes a 2007 Form W-2 for the beneficiary reflecting an income of \$16,000 and a 2008 Form W-2 reflecting an income of \$24,905.04. Its tax returns demonstrate its net income for 2007 and 2008. In 2007, the Form 1120S stated net income of \$74,981 and in 2008, the Form 1120S stated net income of \$133,439.<sup>11</sup> As such, the claimed successor would be able to establish its ability to pay the proffered wage from the date it acquired the petitioner in 2007 until the end of 2007, and in 2008, if it can be established that it is the successor to the entity on the labor certification, which, as addressed above, has not been established.

The AAO notes that on the Form I-290B, counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. However, the AAO did not receive a brief and/or additional evidence.

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

---

<sup>10</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.

<sup>11</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 April 5, 2013) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). In 2007 and 2008 the claimed successor's Schedule K included deductions therefore the net income for each year is found on line 18 of Schedule K.

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 *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, 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.

The AAO notes that the record does not include sufficient evidence to establish that the claimed successor meets the requirements of a successor-in-interest. Additionally, there are multiple other entities for whom financial information has been submitted. The relationship to either the petitioner or the asserted successor has not been established. The petitioner must address and establish the entire chain of succession. The record lacks evidence of the initial labor certification applicant's ability to pay in 2006 as the petitioner did not submit a tax return for that entity. There is no evidence of the petitioner's reputation or a history of growth. Based on these factors and the prior discussion on the lack of ability to pay the proffered wage, the AAO concludes that the petitioner has not established that it and its claimed successor had the continuing ability to pay the proffered wage.

The AAO will now address whether or not the beneficiary has the minimum experience required to perform the offered position by the priority date. 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). 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 (9th 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).

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: 8 years

High School: 4 years

College: 4 years

College Degree Required: B.A.

Major Field of Study: Nursing

TRAINING: N/A

EXPERIENCE: Two (2) years in the job offered

OTHER SPECIAL REQUIREMENTS: None

The record includes a credentials evaluation from [REDACTED] reflecting that the beneficiary has the foreign equivalent to a Bachelor’s in Nursing. The labor certification also states that the beneficiary qualifies for the offered position based on experience as a utilization review coordinator with [REDACTED] in Carson, California from January 2002 until April 2004.

Counsel asserts that [REDACTED] is no longer in existence and experience letters cannot be obtained at this time. Counsel asserts that the experience is listed on the Form ETA 750B and the beneficiary can attest to her employment there. The record does not include an affidavit from the beneficiary. Regardless, an affidavit from the beneficiary is self-serving and does not provide independent, objective evidence of her 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)). No other experience is listed other than the beneficiary’s experience with [REDACTED] in the same position being offered. The AAO notes that this experience cannot be used to establish eligibility for the position being offered. 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.

As the record does not contain regulatory required evidence of the beneficiary's claimed experience, the petitioner has not demonstrated that the beneficiary possessed the minimum requirements for the position offered as of the priority date. The record also reflects that there are discrepancies related to the beneficiary's work experience. As mentioned, the beneficiary's self-prepared tax returns reflect that she is a caregiver. The labor certification lists her position as a "utilization review coordinator" which is an administrative position. However, her resume states that she was a caregiver from November 1, 2002 until at least September 14, 2006. Her Form G-325, Biographic Information, filed with her I-485 Application to Register Permanent Residence or Adjust Status, states that she was a caregiver since February 2002. The AAO also notes that she was issued H-1B status for employment with the petitioner from November 1, 2007 until July 9, 2009. This casts doubt on whether a *bona fide* job with the petitioner or its claimed successor-in-interest exists. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states, "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."

Based on the aforementioned reasons, the evidence of prior experience submitted is insufficient to establish that the beneficiary possessed the minimum experience required to perform the offered position by the priority date.

The AAO affirms the director's decision that the petitioner failed to establish that it and the claimed successor had the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and 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. In addition, the petition must also be denied because the claimed successor has failed to establish that it is a successor-in-interest to the employer that filed the labor certification and Form I-140. Therefore, the beneficiary does not qualify for classification as a skilled worker under section 203(b)(3)(A) of the Act.

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.