



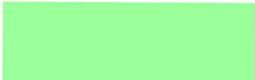
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **SEP 27 2013**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

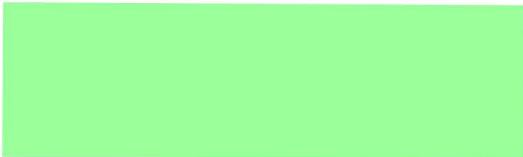
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO) and the AAO dismissed the appeal. The petitioner filed a motion to reopen and reconsider the AAO's decision. The motion will be granted, the previous decision by the AAO dated December 26, 2012, will be affirmed, and the petition will remain denied.

The petitioner describes itself as an IT Consulting/Software Development company. It seeks to employ the beneficiary permanently in the United States as a network engineer. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent 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. The director denied the petition accordingly. On appeal the AAO affirmed the director's finding and also concluded that the petitioner failed to establish that the beneficiary is qualified for the position offered. Accordingly, the AAO dismissed the appeal on those grounds.

The record shows that the motion 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.

As set forth in the director's November 17, 2011 denial, one of the issues in this case is 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.

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.

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

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary

had the qualifications stated on its ETA Form 9089, Application for Permanent Employment Certification (labor certification), as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the ETA Form 9089 was accepted on July 16, 2009. The proffered wage as stated on the ETA Form 9089 is \$34.00 per hour (\$70,720 per year). The ETA Form 9089 states that the position requires three years of experience in the position offered, or three years of experience in the alternate professions of Computer Professional, SR/Network Administrator.

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 motion.<sup>1</sup>

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1997, to have a gross annual income of \$750,000 and to currently employ 20 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the ETA Form 9089, signed by the beneficiary on April 15, 2010, the beneficiary claimed to have worked for the petitioner from June 1, 2006 through the period of the labor certification's filing on July 16, 2009.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); see also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of 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 will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it paid the beneficiary the full proffered wage from the priority date. The petitioner submitted

---

<sup>1</sup> The submission of additional evidence on appeal and 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). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on motion. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Form W-2 wage and earnings summaries for the beneficiary indicating the following wages were paid:

- In 2009, Form W-2 showed wages of \$48,000.
- In 2010, Form W-2 showed wages of \$52,664.
- In 2011, Form W-2 showed wages of \$66,092.
- In 2012, Form W-2 showed wages of \$74,331.

The petitioner therefore established the ability to pay the proffered wage of \$70,720, to the beneficiary in the year of 2012 based on wages paid, through the evidence in the record. The petitioner did not demonstrate the ability to pay the proffered in the years 2009, 2010 and 2011 based on its payment of wages to the beneficiary, since it paid less than the proffered wage in those years according to the evidence it presented.

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

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent 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* 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* at 537 (emphasis added).

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 AAO closed on January 25, 2013, with the receipt of the petitioner's motion to reopen. As of that date, the petitioner's 2012 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2011 was the most recent return available. The petitioner's tax returns demonstrate its net income for 2009, 2010 and 2011 as shown in the table below.

- In 2009, the Form 1120 stated net income of \$(47,372).
- In 2010, the Form 1120 stated net income of \$27,204.
- In 2011, the Form 1120 stated net income of \$(26,788).

The AAO found in its decision dated December 26, 2012, that the petitioner did not have sufficient net income in the years 2009 and 2010 to pay balance to meet the total of the proffered wage when considering a totality of the circumstances. The petitioner's net income was either minimal or at a loss based on the income tax returns in all of the years submitted. On motion, it appears that the petitioner has potentially demonstrated the sufficient net income for the year 2010 to pay the proffered wage in the instant petition.

However, according to USCIS records, the petitioner has also filed multiple I-140 petitions for other beneficiaries during the relevant period of the instant petition. The petitioner must have the ability to pay the proffered wage to all its beneficiaries, including the instant beneficiary, with active petitions from the priority date indicated on the labor certification. The petitioner would therefore also be required to demonstrate sufficient net income to pay the proffered wages for all its I-140 beneficiaries from the priority date of the instant petition onward.<sup>2</sup>

---

<sup>2</sup> In order to demonstrate the ability to pay the proffered wage to all its I-140 beneficiaries during

Therefore, although the petitioner may appear to show the ability to pay the proffered wage for the instant petition, the petitioner must also demonstrate that it had the ability to pay the proffered wages for all of its filed I-140 petitions during the relevant time period. The petitioner has not provided such information upon its instant motion. The petitioner has therefore not demonstrated its ability to pay the proffered wage to the beneficiary through its net income. The petitioner has also not demonstrated its ability to pay multiple beneficiaries, including the instant beneficiary, the proffered wage through its net income from the priority date onward.

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>3</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 2009, 2010 and 2011, as shown in the table below.

- In 2009, the Form 1120 stated net current assets of \$(21,803).
- In 2010, the Form 1120 stated net current assets of \$(91,708).
- In 2011, the Form 1120 stated net current assets of \$(91,358).

The AAO previously found that the petitioner did not demonstrate that it had sufficient net current assets to pay the balance to equal the total proffered wage in the years 2009 and 2010. The petitioner's net current assets were in the negative figures in all of the relevant tax years submitted, and the AAO therefore, previously found this evidence to be insufficient to show an ability to pay the proffered wage in 2009 and 2010. The petitioner has not submitted any documentation upon motion to overcome this finding, or to demonstrate that its income tax returns in those years were inaccurate. Therefore, for the years 2009 and 2010 the petitioner did not have sufficient net current assets to pay the proffered wage. The petitioner has also not submitted any evidence to support that its net current assets in the year of 2011 were sufficient to pay the proffered wage to the beneficiary.

---

the relevant period, the petitioner would need to provide the alien number for each beneficiary, along with documentation of the proffered wage for each petition, proof of payment of the proffered wages from the priority date of the instant petition onward, and evidence of any petitions which have been withdrawn, or resulted in lawful permanent residence status for the beneficiaries during the relevant period.

<sup>3</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, the petitioner has also not demonstrated that it had the ability to pay the proffered wage to the beneficiary for the year 2011 based on its net current assets.

Further, the petitioner must also show its net current assets are sufficient to pay the proffered wage to all the beneficiaries, for which it has filed an I-140 petition, including the beneficiary in the instant case from its priority date of July 16, 2009, onward.

Therefore, from the date the ETA Form 9089 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 for the years 2009, 2010 and 2011.

Counsel asserts in his brief accompanying the motion that the petitioner has demonstrated its ability to pay the proffered wage because it paid the beneficiary a salary of \$74,331 in 2012, which is greater than the proffered wage of \$70,720. However, as previously indicated, the petitioner must demonstrate its ability to pay the proffered wage from the priority date, which in this case is July 16, 2009, onward. *See* 8 C.F.R. § 204.5(d). The petitioner has not established that it paid the beneficiary the proffered wage in any of the other relevant years in its evidence submitted upon motion, or with any other evidence presented in the record. The petitioner cannot demonstrate its past ability to pay the proffered wage through later payment of wages. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

In addition, the petitioner also submits a November 30, 2012, profit and loss statement prepared by an unnamed source for the entity, to indicate its ability to pay the proffered wage. However, this evidence is insufficient to demonstrate the petitioner's income is sufficient to pay the proffered wage for the instant petition, because there is no indication that it is an audited financial statement, and therefore, it does not comply with the requirements for such evidence under the regulations.

Counsel's reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Moreover, the petitioner again submits its bank statements in its motion to reopen. As previously stated in its December 26, 2012 decision, the AAO will not accept such evidence to demonstrate the ability to pay in this case. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show

the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted in its appeal or in the instant motion to reopen to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return(s), such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that were previously considered above in determining the petitioner's net current assets.

Therefore, the petitioner has not sufficiently demonstrated that it had the ability to pay the proffered wage to the instant beneficiary, and all of its beneficiaries, based on wages paid to the beneficiary, net income, or net current assets, in all of the relevant years.

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.

The AAO again reviews all of the petitioner's evidence and circumstances upon motion in the instant case. The petitioner re-submits bank statements, as well as an unaudited profit and loss balance sheet, and a letter from an accountant [REDACTED] dated May 19, 2011 indicating that the petitioner's corporate income for 2010 was \$27,204. However, as stated in the AAO's previous decision, counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was

submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return(s), such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that will be considered below in determining the petitioner's net current assets.

In addition, although the accountant's letter indicates that the petitioner's 2010 "corporate income was \$27, 204," this net income amount as previously indicated, is insufficient to demonstrate that the petitioner had the ability to pay the balance of the total proffered wage in that year when considering the totality of the petitioner's circumstances, all of the petitioner's expenses, including the petitioner's wage obligations for its multiple I-140 beneficiaries, and other business obligations. The AAO previously found that the petitioner does not have substantial gross revenues, and for the majority of the relevant years its net income and net current assets were at a deficit according to the evidence in the record. As discussed above, the petitioner has sponsored multiple beneficiaries during the relevant time period, and it appears the petitioner's financial circumstances would not support its ability to pay their combined proffered wages. The petitioner has submitted no new evidence to dispute or overcome these findings. The AAO also previously found that the petitioner's total wage obligation remained unclear since it indicated in its petition that it employed 20 employees, although USCIS records indicated that it filed several hundred petitions. The petitioner has not responded to this finding in its motion.

In addition, the record still contains no newspaper or magazine articles, awards or certifications indicating the company's milestones, and again unlike *Sonegawa*, the petitioner in this case has not shown any evidence reflecting the company's reputation or historical growth since its inception. Nor has the petitioner presented evidence of any uncharacteristic business expenses or losses contributing to its inability to pay the proffered wage in the instant motion.

The evidence in the record also does not document the priority date, proffered wage or wages paid to each beneficiary for whom it has filed an I-140 petition, or whether or not any of the other petitions have been withdrawn, revoked, or denied. The record also does not indicate whether or not any of the other beneficiaries of immigrant petitions have obtained lawful permanent residence during the relevant time period. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions.

The evidence submitted on motion does not overcome the AAO's previous findings, and therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

The AAO also found that the petitioner had 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 *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 36 months of experience in the job offered of Network Engineer, or 36 months of experience in the alternate occupations of Computer Professional, Sr./Network Administrator. On the labor certification, the beneficiary claims to qualify for the offered position based on experience with the petitioner as a network consultant from June 1, 2006 until July 16, 2009. The AAO previously found in its December 26, 2012 decision, that in accordance with DOL regulations, the petitioner could not rely on this experience in demonstrating the beneficiary possessed the qualifications for the proffered position because the job duties performed were substantially comparable to those within the position offered. *See* 20 C.F.R. § 656.17. The petitioner did not address this issue upon motion, and has consequently not overcome the AAO's finding.<sup>4</sup>

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). As the AAO stated in its previous decision, these letters do not state whether the position was full-time, or in the case of the letter from [REDACTED] did not state the specific duties of the beneficiary's position, preventing the AAO from determining the length and extent of the beneficiary's experience. The AAO again in reviewing this evidence finds that the letters submitted only provide a vague description of the beneficiary's purported employment, and do not provide any details or specifics that would lend credibility to the experience

---

<sup>4</sup> The petitioner submitted copies of the following experience letters which were previously in the record and analyzed by the AAO:

- The president of [REDACTED] dated, April 29, 2009, indicating that the beneficiary was employed from January 2006 through May 2006.
- The president of [REDACTED] dated, January 25, 2006, indicating that the beneficiary was with that company from March 2004 until December 2005 as a Sr. Network Administrator.
- The president of [REDACTED] dated, March 9, 2004, which indicates that the beneficiary was employed with that company from June 2002 until February 2004 as a Sr. Network Administrator.

claimed. The petitioner did not submit any further information to address these issues upon motion.<sup>5</sup> It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence in the record does not establish that the beneficiary possessed the required experience 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.

The petitioner remains denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden on motion.

**ORDER:** The motion to reopen and reconsider is granted. The prior decision by the AAO is affirmed, and the petition remains denied.

---

<sup>5</sup> The petitioner included three affidavits from the beneficiary in its motion, which were all dated July 2, 2009, attesting to his employment with: [REDACTED] from January 23, 2006 until May 30, 2006, as a SR. Network Administrator; for [REDACTED] from March 18, 2004 until December 31, 2005, as a SR. Network Administrator; and [REDACTED], from June 25, 2002 until February 27, 2004, as a Sr. Network Administrator. However, the beneficiary's affidavits are found to be self-serving, and do 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)).