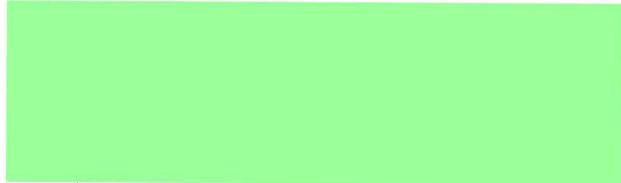


(b)(6)

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



DATE: **FEB 04 2014**

OFFICE: NEBRASKA SERVICE CENTER

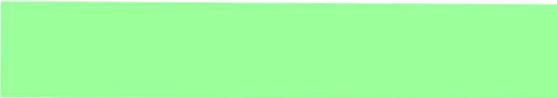
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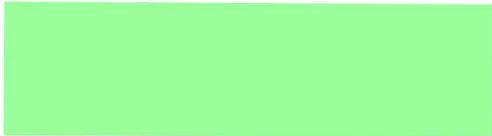
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 Director, Nebraska Service Center (director), denied the immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO), which dismissed the appeal. The AAO granted a motion to reconsider and affirmed the appeal's dismissal. The matter is now before the AAO on a motion to reopen and reconsider by an entity that claims to be the petitioner's "successor-in-interest."¹ The motion will be rejected as improperly filed pursuant to the regulation at 8 C.F.R. 103.3(a)(2)(v)(I), the appeal will remain dismissed, and the petition will remain denied.

The petitioner described itself as a church. It sought to permanently employ the beneficiary in the United States as an administrative assistant. The petition requested 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).²

An ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL), accompanied the petition. The petition's priority date, which is the date the DOL accepted the labor certification for processing, is November 10, 2008. *See* 8 C.F.R. § 204.5(d).

The director found that the petitioner failed to establish the beneficiary's qualifying employment experience for the offered position as specified on the labor certification by the petition's priority date. Accordingly, the director denied the petition on September 2, 2010.

In an appellate decision dated December 27, 2012, the AAO affirmed the director's decision. The AAO also found that the petitioner failed to establish its continuing ability to pay the beneficiary's proffered wage and the beneficiary's educational qualifications for the alternate job requirement specified on the labor certification. In addition, the AAO found that the petitioner failed to demonstrate that another entity, [REDACTED] was its successor-in-interest. On July 22, 2013, the AAO granted a motion to reconsider and affirmed the appeal's dismissal.

¹ On the Form I-290B, Notice of Appeal or Motion, counsel checked Box A, indicating the filing of an "appeal." However, the AAO lacks authority to review its own decisions on appeal. *See* U.S. Dep't of Homeland Security Delegation No. 1050.1 (Mar. 1, 2003) (authorizing the AAO to exercise appellate jurisdiction over only the matters contained in the former regulation at 8 C.F.R. § 103.1(f)(3)(iii) (2002)). The entity's filing states new facts supported by documentary evidence and alleges misapplications of law or policy. *See* 8 C.F.R. §§103.5(a)(5)(2),(3). The AAO will therefore refer to the filing as a motion to reopen and reconsider.

² Section 203(b)(3)(A)(i) of the Act authorizes the granting of 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 allows the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The instant motion includes evidence supporting the filer's claims that it is a successor-in-interest of the petitioner and has the continuing ability to pay the proffered wage. Counsel also argues that the AAO should reverse its previous decisions and grant the petition.

Only an "affected party" may file a motion to reopen or reconsider a prior decision. 8 C.F.R. § 103.5(a)(1). The AAO must reject a request for review by an entity not entitled to file it. 8 C.F.R. 103.3(a)(2)(v)(I). Therefore, unless the filer can establish itself as a successor-in-interest to the petitioner, the AAO must reject the instant motion as improperly filed.

Successor-in-Interest

To continue offering a job opportunity for immigration purposes, an entity other than the employer identified on the labor certification must establish itself as a successor-in-interest. A successor relationship means that the entity acquired all of the essential rights and obligations needed to carry on the labor certification employer's operations. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-3 (Comm'r 1986).

An entity establishes a successor relationship if it satisfies three conditions. First, an entity must fully describe and document the transaction transferring ownership of all, or a relevant part of, the labor certification employer to it. Second, an entity must demonstrate that the job opportunity remains the same as originally offered on the labor certification. Third, an entity must demonstrate that it qualifies for the immigrant visa in all respects, including its ability to pay the beneficiary's proffered wage. It must prove the predecessor's ability to pay the proffered wage from the priority date until the date of ownership transfer. It must also establish its ability to pay the proffered wage from the date of ownership transfer onward. 8 C.F.R. § 204.5(g)(2); *Matter of Dial Auto*, 19 I&N Dec. at 482.

In the instant case, the record shows that the petitioner, [REDACTED] is a separate corporation from its purported successor, [REDACTED]. The petitioner and its claimed successor have different federal employer identification numbers (FEINs), as evidenced by the petitioner's identification of its FEIN on the labor certification, the Form I-140, Petition for Alien Worker, and copies of letters from the U.S. Internal Revenue Service to the purported successor. Also, online records of the California Secretary of State's Office state that the petitioner was established on [REDACTED] 2005 as a non-profit corporation and had its corporate powers suspended on [REDACTED] 2011. *See* Bus. Search, Bus. Programs Div., Cal. Sec'y of State, *available at* <http://kepler.sos.ca.gov/> (accessed Jan. 6, 2014). The same records show that the purported successor was established on [REDACTED] 1999 and remains an active, non-profit corporation. *Id.*

As evidence that it acquired ownership of the petitioner, [REDACTED] submitted an August 28, 2012 affidavit from its senior pastor and copies of the minutes of a July 10, 2012 meeting of its board of directors. The affidavit states that the senior pastor also headed [REDACTED] and that the two entities consolidated financial resources to reduce costs "due to the difficult economy." The affidavit states that [REDACTED] brought [REDACTED] under its "umbrella" as its "missionary arm" and continues to offer the job opportunity on the labor certification to the beneficiary.

The minutes of the July 10, 2012 board meeting state that the senior pastor moved that [REDACTED] acquire [REDACTED] the motion passed, and the meeting was adjourned. [REDACTED] also submits a signed and dated “roster” of its seven directors at the time of the July 2012 board meeting.

Although the senior pastor states that [REDACTED] acquired the petitioner, the minutes of the directors’ meeting indicate only [REDACTED] authorization to acquire [REDACTED]. The record does not contain a copy of an agreement of sale or other documentation showing that an actual transfer of ownership occurred. Also, the minutes of the board meeting do not state that [REDACTED] authorized any money, stock, or other consideration with which to acquire [REDACTED] nor do they state whether [REDACTED] agreed to the acquisition, or when the acquisition would be effective. Because [REDACTED] has not provided documentary evidence to support the senior pastor’s assertion, the claimed successor has not established its acquisition of the petitioner. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193 (Reg’l Comm’r 1972)) (going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings).

Moreover, the online records of the California Secretary of State’s Office show that [REDACTED] was suspended on July 1, 2011, before the purported successor allegedly acquired the petitioner in July 2012 or thereafter. Section 23301 of the California Revenue & Taxation Code states that California may suspend “the corporate powers, rights, and privileges” of a corporation that fails to pay its taxes. “[A] corporation whose charter has been suspended for delinquent license tax payments lacks the capacity to enter into contracts.” *Van Landingham v. United Tuna Packers*, 189 Cal. 353, 208 P. 973, 976 (1922). Thus, the purported successor has not established that it could have legally contracted with the petitioner to acquire its operations after the petitioner became a suspended corporation.

Counsel argues that both the petitioner and its purported successor are non-profit organizations that operate from the same address. Therefore, he asserts that they completed their merger with less “formality” than a merger of for-profit corporations would entail.

But section 9640 of the California Corporations Code addresses the merger of religious corporations, requiring the board of each corporation to approve a merger agreement that, among other things, states the terms and conditions of the merger. In the instant case, the claimed successor has not explained the terms and conditions of its purported merger with the petitioner, nor has it established whether the petitioner approved the merger. The purported successor has also not provided a copy of a merger agreement between the two entities, nor does the record demonstrate that the petitioner, as a suspended corporation, could have legally agreed to merge.

As indicated above, a claimed successor must also demonstrate its continuing ability to pay the beneficiary’s proffered wage. It must prove the predecessor’s ability to pay the proffered wage from the priority date until the date of ownership transfer. It must also establish its ability to pay the proffered wage from the date of ownership transfer onward. 8 C.F.R. § 204.5(g)(2); *Matter of Dial Auto*, 19 I&N Dec. at 482. Evidence of ability to pay “shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.” 8 C.F.R. § 204.5(g)(2).

The labor certification states the proffered wage of the offered position of administrative assistant as \$17.84 per hour, or \$37,107.20 per year for a 40-hour work week. The record contains copies of financial statements for 2008 and 2009 in the name of the petitioner and an "Annual Report for 2011/2012 Forecast" in the name of the purported successor.

The financial statements for 2008 are audited, but they identify the petitioner by a different name than stated on the labor certification and the petition, and in the online records of the California Secretary of State's Office. The discrepancy in the petitioner's name casts doubt on whether the audited financial statements of 2008 correspond to its operations. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve inconsistencies in the record by independent, objective evidence). The AAO notified the petitioner of this discrepancy in its Notice of Intent to Dismiss and Derogatory Information (NOID) of July 30, 2012. Neither the petitioner nor its purported successor, however, have provided documentary evidence that the 2008 financial statements refer to the petitioner or have explained the inconsistency in the petitioner's name on the financial statements.

The financial statements for 2009 state that they are unaudited. The regulation at 8 C.F.R. § 204.5(g)(2) requires financial statements submitted to demonstrate an ability to pay the proffered wage to be audited. Unaudited financial statements contain the representations of management, which, if unsupported by other documentation, are not sufficient and reliable evidence of the petitioner's ability to pay the proffered wage.

The record does not contain any financial documentation in the name of the petitioner for 2010 or thereafter. In its NOID, the AAO requested updated evidence of the petitioner's ability to pay the proffered wage. Neither the petitioner nor the claimed successor, however, have submitted any updated materials required by the regulation at 8 C.F.R. § 204.5(g)(2) for the petitioner.

Like the 2009 financial statements of the petitioner, the "Annual Report for 2011/2012 Forecast" of the purported successor contains unaudited financial statements. Because these financial statements are not audited pursuant to the regulation at 8 C.F.R. § 204.5(g)(2), they do not establish the purported successor's ability to pay the proffered wage. Labeling the financial statements an "annual report" does not meet the requirements of the regulation at 8 C.F.R. § 204.5(g)(2), as the term "annual report" in the regulation presumes the inclusion of audited financial statements.

In its filing, the claimed successor submits copies of bank accountant statements from February 2013 through July 2013, showing ending monthly balances ranging from about \$37,000 to \$50,000. Counsel also asserts that, because the claimed successor owns the building from which it operates and receives income from leasing other parts of the building, it has the continuing ability to pay the beneficiary's proffered wage.

Bank statements are not among the three types of evidence that the regulation at 8 C.F.R. § 204.5(g)(2) requires to illustrate an entity's ability to pay a proffered wage. While the regulation allows additional material "in appropriate cases," the purported successor 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 its operations. Also, bank statements show amounts in accounts on given dates and do not reflect a sustainable ability to pay a proffered wage.

Also, the record does not contain sufficient documentation to support counsel's assertion of the purported successor's rental income. The claimed successor has not submitted audited financial statements or other reliable documentation of its rental income and what expenses, if any, the claimed successor pays from that income. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (the assertions of counsel do not constitute evidence).

For the foregoing reasons, the AAO finds that the purported successor has failed to demonstrate its claimed successor relationship to the petitioner.

Even if [REDACTED] had established a successor-in-interest relationship to the petitioner and the AAO had granted its motion, the AAO would have again dismissed the appeal for failing to demonstrate the beneficiary's qualifying experience and educational credentials for the offered position.

The Beneficiary's Qualifying Experience

A petitioner must demonstrate that the beneficiary possessed all the education, training, and experience specified on the labor certification by the petition's priority date. 8 C.F.R. §§ 103.2(b)(1),(12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must examine the job offer portion of the labor certification to determine the minimum job requirements. USCIS may not ignore a term of the labor certification, nor may the agency impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The labor certification states that the offered position of administrative assistant requires 24 months of experience in the job offered. The labor certification also contains an alternate requirement of 2 years of education or the foreign equivalent in theology or a related field.

The labor certification describes the job duties of the offered position as: overseeing daily affairs of missions; performing general office work; providing support to the pastor, other clergy, and missions; and maintaining records.

The beneficiary states on the labor certification that he worked full-time for [REDACTED] as a "church worker" from December 1997 to December 2, 2004, performing the duties of the offered position.

A petitioner must support the beneficiary's claimed qualifying experience with a letter from an employer providing the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A).

The instant petition did not include a letter from the beneficiary's claimed employer, [REDACTED]. However, USCIS records contain letters from the church's president/senior pastor in support of its 1998 special immigrant petition for the beneficiary as a religious worker. See sections 101(a)(27)(c), 204(b)(4) of the Act, 8 U.S.C. §§ 1101(a)(27)(C), 1153(b)(4). A December 11, 1998 letter states that the beneficiary began serving as a volunteer at the church in 1994 and became an employee in December 1997. The letter states that the beneficiary worked as a youth instructor, preparing bible class, teaching Sunday school, leading a bible training program, caring for children, and performing missionary work.

The church submitted a May 1, 2000 letter from the same official in response to a Request for Evidence. The May 1, 2000 letter describes the beneficiary's position as pastoral assistant with the following duties: preparing and conducting religious teaching, gospel training, and bible study lectures; planning and coordinating activities of religious programs to promote religious education among the congregation; helping teachers to select books and materials to meet the needs of different age groups; assisting the pastor in conducting worship services and coordinating committees that oversee social and recreational programs; and visiting church members in hospitals and nursing homes to offer spiritual guidance. The May 1, 2000 letter also states that beneficiary worked full-time as a Sunday school teacher for the church from September 1995 to December 1996 and as a pastoral assistant since December 1996. The letter states that the beneficiary received \$1,500 a month as a pastor assistant and worked about 35 hours per week.

In addition, a November 13, 2002 letter from the same church official accompanied the beneficiary's application for adjustment of status. The November 13, 2002 letter states that the church had employed the beneficiary full-time as an evangelist since December 1997. The letter states that his duties as an evangelist included: assisting in worship services; delivering sermons and prayers and visiting congregation members; leading bible study groups; providing spiritual and moral counseling; assisting in blessing and welcoming congregation members; participating in meetings with church officials to coordinate activities, finances, and special events.

The three letters from [REDACTED] contain inconsistencies in the titles of the beneficiary's purported position and his dates of purported employment. The December 11, 1998 letter states that the beneficiary was a youth instructor; the May 1, 2000 letter describes him as a pastoral assistant; and the November 13, 2002 letter states he was an evangelist. The May 1, 2000 letter also states that the beneficiary became an employee of the church in December 1996, while the other letters state that his employment began in December 1997. The inconsistencies among the letters cast doubt on the beneficiary's qualifying experience for the offered position. See *Matter of Ho*, 19 I&N Dec. at 591-92 (a petitioner must resolve inconsistencies in the record by independent, objective evidence).

Moreover, the beneficiary's job duties, as described in the three letters from [REDACTED] do not match the job duties of the offered position. The three letters from [REDACTED] describe the beneficiary's duties as involving religious activities, such as: teaching religion; leading bible studies; assisting the pastor in conducting worship services; delivering sermons and prayers; and providing spiritual and moral counseling. However, the job duties of the offered position involve general office work, administrative support, and record maintenance.

In addition, [REDACTED] submitted a May 30, 1997 letter from a moderator of [REDACTED] of [REDACTED] in [REDACTED] in support of its special immigrant petition for the beneficiary. The letter states that the beneficiary served as a biblical counselor for the [REDACTED] [REDACTED] from April 1, 1994 to June 1997. This letter conflicts with the letters from [REDACTED] regarding the identity of the beneficiary's employer and the title of his position from 1994 to 1997. *See Matter of Ho*, 19 I&N Dec. at 591-92 (a petitioner must resolve inconsistencies in the record by independent, objective evidence).

In a July 7, 2010 affidavit submitted in response to the director's Notice of Intent to Deny the petition, the official who signed the [REDACTED] letters states that the church was a member of the organization that wrote the May 30, 1997 letter, and that that organization wrote the letter at the church's request "verifying [the beneficiary's] work as a bible counselor" with the church. The official's affidavit, however, does not explain why the May 30, 1997 letter states that the beneficiary served the [REDACTED], or the different title of the beneficiary's position.

In his July 7, 2010 affidavit, the beneficiary denies that he served as a biblical counselor from April 1994 to June 1997. He states that he did not enter the U.S. until August 1994 and has no "first[-]hand knowledge" of the letter. He states that he believes the letter contains an error, or that USCIS has misread it.

The record also contains a September 20, 2009 "Verification of Employment" from a pastor on the stationery of [REDACTED]. The verification states that the beneficiary worked there as a church administrative assistant from January 1, 1992 to December 31, 1994.

The beneficiary did not state his purported work at [REDACTED] as qualifying experience on the labor certification. The omission of the employment on the labor certification casts doubt on the validity of the employment verification document. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (District Dir. 1976), *disapp'd of on another ground by Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (upholding the denial of an adjustment application where the applicant's claimed employment was unstated on the labor certification).

Moreover, the employment verification document from [REDACTED] does not describe the beneficiary's experience there. The verification document therefore does not meet the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A). The verification document also does not state whether the beneficiary worked on a full-time or part-time basis at [REDACTED]. If the beneficiary worked on a part-time basis there, he might not have obtained 2 years of full-time experience in the job offered as specified on the labor certification.

Also, the employment verification document from [REDACTED] conflicts with the beneficiary's purported date of last entry into the United States. In his July 7, 2010 affidavit, the beneficiary states that he last entered the United States in August 1994, while the verification document states that he

worked in Korea until December 31, 1994. *See Matter of Ho*, 19 I&N Dec. at 591-92 (a petitioner must resolve inconsistencies in the record by independent, objective evidence).

Further, the record contains a copy of the beneficiary's transcript from [REDACTED], stating that the beneficiary studied there in 1992 and 1993. USCIS records also show that, on a prior labor certification filed by another employer for the beneficiary in 2001, the beneficiary stated that he studied theology at the seminary from March 1992 to August 1994. Therefore, the statement in the employment verification document that the beneficiary worked for [REDACTED] from January 1, 1992 to December 31, 1994 appear to conflict with the seminary transcript and the prior labor certification, which state that the beneficiary was studying at the seminary during that period.

In his July 7, 2010 affidavit, the beneficiary states that he studied nights at the Korean seminary while working days at [REDACTED] as an administrative assistant. However, the record does not contain documentary evidence to support the beneficiary's statement that he studied nights at the seminary. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193 (Reg'l Comm'r 1972) (going on record without supporting documentary evidence does not meet the burden of proof in these proceedings).

For the foregoing reasons, the AAO finds that the record does not establish the beneficiary's qualifying experience for the offered position.

The Beneficiary's Qualifying Education

As previously indicated, a petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. §§ 103.2(b)(1),(12); *see also Wing's Tea House*, 16 I&N Dec. at 159; *Katigbak*, 14 I&N Dec. at 49.

In the instant case, the labor certification states an alternate minimum job requirement for the offered position of 2 years of education or the foreign equivalent in theology or a related field. On the labor certification, the beneficiary states that he received a bachelor's degree in biblical counseling from the [REDACTED] in 1999.

The petitioner provided a copy of a June 19, 1997 "Official Licensure Qualification Certification" from the [REDACTED]

The certification states that the beneficiary has been a student in the university's professional counseling review program since January 1997 and has successfully completed counseling courses that qualify him to sit for the California State Board of Pneumiatric Examiners' Licensure Examination.

The June 19, 1997 certification states that the beneficiary completed about 6 months of education. The certification therefore does not establish that the beneficiary completed 2 years of education as specified for the alternate job requirement on the labor certification.

The petition did not include evidence of the beneficiary's claimed bachelor's degree from the [REDACTED]. But a previous petition for the beneficiary by another employer included a copy of a Bachelor of Arts degree in biblical counseling studies, awarded by the school on June 4, 1999 in Hawaii, and an accompanying transcript. The transcript states that the beneficiary attended three semesters at the university: spring 1997; fall 1998-99; and spring 1999.

Two years of U.S. university-level education generally consist of four semesters of study. But the beneficiary's transcript indicates that he completed only three semesters of study. Therefore, the copies of the beneficiary's bachelor's degree and transcript do not establish his completion of 2 years of education in theology or a related field as specified on the labor certification.

The previous petition also includes a copy of a July 17, 2000 biblical counseling technician license from the California State Board of Pneumiatric Examiners. However, the record is unclear whether this license was issued to the beneficiary, as the last name of the license recipient differs from the beneficiary's last name stated in the petition.

Even if the license was issued to the beneficiary, it does not establish that he completed 2 years of education in theology or a related field as specified on the labor certification. The June 19, 1997 certification states that the beneficiary was qualified to take the licensure examination after only about 6 months of study.

As previously indicated, the record also contains a copy of the beneficiary's transcript from [REDACTED] stating that the beneficiary studied there in 1992 and 1993. However, the statement in the September 20, 2009 employment verification document that the beneficiary worked for [REDACTED] in Korea from January 1, 1992 to December 31, 1994 appears to conflict with the seminary transcript, which states that the beneficiary was studying at the seminary during that period.

The beneficiary states in his July 7, 2010 affidavit that he studied nights at the Korean seminary while working days at [REDACTED] as an administrative assistant. However, the record does not contain documentary evidence to support the beneficiary's statement that he studied nights at the seminary. See *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft*, 14 I&N Dec. at 193 (going on record without supporting documentary evidence does not meet the burden of proof in these proceedings)).

For the foregoing reasons, the AAO finds that the record does not establish the beneficiary's educational qualifications for the offered position's alternate minimum job requirement. Therefore, the AAO would have dismissed the appeal even if [REDACTED] had established itself as the petitioner's successor-in-interest.



Conclusion

Because the record does not establish [REDACTED] as a successor-in-interest to the petitioner, [REDACTED] is not an “affected party” that may file a motion to reopen or reconsider. Accordingly, the AAO must reject the instant motion as improperly filed under 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The motion to reopen and reconsider is rejected, the appeal remains dismissed, and the petition remains denied.