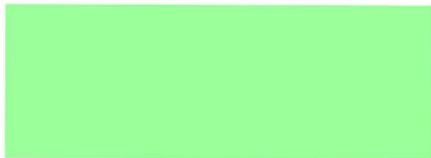




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 18 2014**

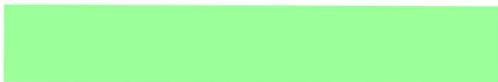
OFFICE: TEXAS SERVICE CENTER

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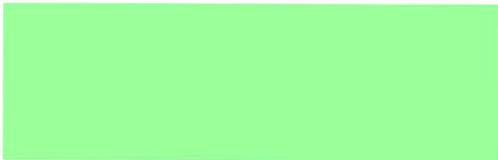
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) 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 (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 preference visa petition was denied by the Director, Texas Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on June 26, 2013. On motion by the petitioner, we reopened and reconsidered the matter on three occasions (January 22, 2014; May 22, 2014; and August 12, 2014), and in each case we affirmed our initial decision dismissing the appeal. The matter is again before us as a motion to reconsider. The motion will be granted. The previous decisions dismissing the appeal will be affirmed and the petition will remain denied.

The petitioner describes itself as an ethnic restaurant and food store. It seeks to employ the beneficiary permanently in the United States as a specialty chef 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)(i).¹ As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established: (1) that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition; and (2) that the beneficiary had the experience required for the position offered.

In our decisions reopening and reconsidering this matter, we affirmed the director's decision that the petitioner had not established that it had the ability to pay the beneficiary's proffered wage and that it had not established that the beneficiary had the experience requirements stated on the labor certification. We also held that the petitioner had not established its ability to pay the other workers it had previously sponsored and that it had not resolved the discrepancies regarding its Federal Employer Identification Number (FEIN).

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy. 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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal or motion.

The issues in this case are: (1) whether the FEIN stated on the Form I-140 was merely a typographical as counsel has asserted previously; (2) whether the petitioner has the ability to pay the proffered wage of the instant beneficiary and its other sponsored workers from the instant priority

¹ Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 203(b)(3)(A)(i) of 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.

date onward; and (3) whether the beneficiary has the experience for the job offered as required by the labor certification.

Federal Employer Identification Number

The instant Form I-140 states the petitioner's name as [REDACTED] FEIN [REDACTED]. The ETA Form 9089 states the petitioner's name as [REDACTED] FEIN [REDACTED]. As we noted in our May 22, 2014 decision, USCIS records indicate that four other immigrant petitions were filed by [REDACTED] FEIN [REDACTED]. Counsel has submitted news reports regarding the immigration fraud convictions of the petitioner's former attorney, [REDACTED]. Counsel has asserted that the FEIN included on the Form I-140 is either a "typographical error" or an effort by the petitioner's former counsel to "defraud the Petitioner and the USCIS." However, as we noted in our May 22, 2014 decision, the instant Form I-140 was filed by [REDACTED] and counsel has not provided evidence on appeal or motion supporting the assertion that Mr. [REDACTED] made a typographical error. Therefore, the discrepancy has not been resolved regarding the FEIN as stated on the Form I-140 and the FEIN that actually belongs to the petitioner.²

The Petitioner's Ability to Pay the Proffered Wage

The regulation at 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 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the ETA Form 9089 was accepted on June 22, 2006. The proffered wage as stated on the ETA Form 9089 is \$11.60 per hour (\$24,128.00 per year, based on 40-hours per week).

If we accept the tax returns in the record of proceeding listing FEIN [REDACTED] as those of the petitioner on the Form I-140 petition, it appears that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1996 and to currently employ 40 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year.

² Although we noted in our previous decision, dated January 22, 2014, that the petitioner has resolved this discrepancy, after further review of the matter, we withdraw that finding.

In determining the petitioner's ability to pay the proffered wage, U.S. Citizenship and Immigration Services (USCIS) first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. The petitioner must also establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). If the petitioner has not paid the beneficiary and its other sponsored workers the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.³ If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In our previous decision, dated August 12, 2014, we noted that the record contains evidence that the beneficiary will replace another employee once the immigrant petition is approved. The record contains evidence of the wages paid to this other employee for 2011, 2012, and 2013, as well as a statement from this employee attesting to her intention to be replaced by the instant beneficiary.

In our previous decisions, we also noted that the petitioner has filed a Form I-140 for two other sponsored workers and that it must also establish that it had the ability to pay the proffered wages of these other workers from the priority date of the instant petition. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). USCIS records indicate that these petitions have receipt numbers [REDACTED] with priority dates of October 27, 2004 and June 20, 2005, respectively. Both petitions were approved and the first beneficiary adjusted to lawful permanent residence on February 9, 2009. Therefore, the petitioner must establish that it had the ability to pay the proffered wages of the beneficiary and these two other workers from the priority date of the instant petition, June 22, 2006, through 2009. The petitioner must then establish its ability to pay the proffered wages of the beneficiary and the second sponsored worker from 2010 onward.

On motion, counsel states that the petitioner does not recall petitioning for anyone after 2006 other than the instant beneficiary. Counsel asserts that because the beneficiary will replace an existing employee, the wages paid to this employee will be available to pay the beneficiary's proffered wage. Counsel further states that, even assuming the petitioner sponsored two other workers in the past, it should not be required to establish its ability to pay their proffered wages. As stated above, the petitioner has not resolved the issue regarding the FEIN stated on the Form I-140 for [REDACTED] and the FEIN stated on the ETA Form 9089 for [REDACTED]. The Forms W-2 for the worker who will be replaced state an FEIN of [REDACTED] which does not coincide with the FEIN on the Form I-140. While we acknowledge that the petitioner has provided documentation from the IRS regarding the FEIN of the labor certification employer, the inconsistencies in the

³ See *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011).

record regarding the previous filings of the Form I-140 with another FEIN, [REDACTED] (the same FEIN listed on the Form I-140), casts doubt on this matter. It cannot be concluded that the wages paid to the employee to be replaced were actually paid by the instant petitioner. Therefore, the wages which were paid to the employee that the petitioner intends to replace with the instant beneficiary do not establish its ability to pay the proffered wage. In addition, the evidence in the record does not document the proffered wage or wages paid to each of the other sponsored workers, whether the second sponsored worker's petition has been withdrawn or revoked, or whether this worker has obtained lawful permanent residence. Therefore, we cannot conclude that the evidence in the record of proceeding sufficiently establishes the amounts of wages paid to the beneficiaries at issue.

The tax returns in the record state net income for 2006 through 2012, as shown in the table below.

- In 2006, the Form 1120S stated net income⁴ of \$2,286.00.
- In 2007, the Form 1120S stated net income of \$4,490.00.
- In 2008, the Form 1120S stated net income of \$4,421.00.
- In 2009, the Form 1120S stated net income of -\$34,542.00.
- In 2010, the Form 1120S stated net income of -\$55,162.00.
- In 2011, the Form 1120S stated net income of -\$49,379.00.
- In 2012, the Form 1120S stated net income of -\$34,111.00.

As stated above, USCIS records indicate that the petitioner sponsored two other workers with priority dates of October 27, 2004 and June 20, 2005. One of these workers adjusted to lawful permanent resident status in February 2009. The petitioner has not provided any evidence establishing that the second sponsored worker's petition has been withdrawn or that this beneficiary has adjusted to lawful permanent resident status. Therefore, for the years 2006 through 2009, the tax returns do not reflect sufficient net income to pay the proffered wages of the beneficiary and the two other sponsored workers. For 2010 through 2012, the tax returns do not reflect sufficient net income to pay the proffered wages of the beneficiary and the second sponsored worker.

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.⁵ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. 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 tax returns demonstrate end-of-year net current assets for 2006 through 2012, as shown in the table below.

- In 2006, the Form 1120S stated net current assets of \$414,249.00.
- In 2007, the Form 1120S stated net current assets of \$341,938.00.

⁴ 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.

⁵ According to *Barron's Dictionary of Accounting*.

- In 2008, the Form 1120S stated net current assets of \$235,042.00.
- In 2009, the Form 1120S stated net current assets of \$139,912.00.
- In 2010, the Form 1120S stated net current assets of \$79,849.00.
- In 2011, the Form 1120S stated net current assets of \$42,772.00.
- In 2012, the Form 1120S stated net current assets of -\$10,704.00.

If the petitioner resolves the FEIN issue, the tax returns reflect sufficient net current assets to pay the proffered wages of the beneficiary and the two other sponsored workers from 2006 through 2009. As noted above, the petitioner must demonstrate its ability to pay the proffered wages of the beneficiary and its second sponsored worker from 2010 through 2012. Thus, for the years 2011 and 2012, the tax returns do not reflect sufficient net current assets to pay the proffered wage to the beneficiary and the second sponsored worker.

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.

Further, the petitioner failed to establish that factors similar to *Sonegawa* existed in the instant case, which would permit a conclusion that the petitioner had the ability to pay the proffered wage despite its shortfalls in wages paid to the beneficiary, net income and net current assets. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The tax returns in the record reflect declining gross receipts and wages paid to its employees. The petitioner has not provided any evidence of its reputation in the industry or of any unexpected business losses. The petitioner has not provided any evidence to demonstrate that its tax returns paint an inaccurate financial picture. Accordingly, after considering the totality of the circumstances, the petitioner has failed to establish its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to its other sponsored workers.

The Experience Requirements of the Labor Certification

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise clearly 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 will not look beyond the plain language of the labor certification to determine the employer's claimed intent.

On motion, counsel correctly states that DOL and not USCIS has jurisdiction of the adjudication of the ETA Form 9089. However, counsel continues to state that because the DOL certified the ETA Form 9089 with a requirement that the beneficiary have 36 months of experience, the fact that the ETA Form 9089 states that the beneficiary had 34 months of experience, demonstrates that the DOL found the beneficiary qualified for the position offered. This assertion is incorrect. Regarding the DOL's role in the labor certification process, section 212(a)(5)(A)(i) of the Act provides:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the alien is qualified for a specific immigrant classification. Federal circuit courts have described the authority of USCIS and the DOL as follows:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977).

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did

not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14).⁶

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). Accordingly, the DOL has the authority to test the labor market and determine whether employing the beneficiary will negatively affect U.S. workers. It is the responsibility of the USCIS to determine whether the beneficiary meets the terms of the labor certification and qualifies for the employment-based classification requested.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: None required.
- H.5. Training: None required.
- H.6. Experience in the job offered: 36 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: Knowledge of ethnic cuisine.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as an [REDACTED] in Washington, DC, from August 22, 2001, until July 31, 2004, which is a period of 34 months. No other experience is listed. The beneficiary signed the labor certification on July 27, 2007, under a declaration that the contents are true and correct under penalty of perjury. On the ETA Form 9089, the beneficiary did not claim to have worked for the petitioner.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains the following letters regarding the beneficiary's employment experience:

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

- A letter from [redacted] Ambassador Extraordinary and [redacted] [redacted] to the United States of America, dated April 7, 2001, stating that the embassy employed the beneficiary as a chef from November 1996 until September 1999;
- A letter from [redacted] of the [redacted] from 2000 to 2004, dated June 23, 2004, stating that the beneficiary was employed as a the head chef in the embassy in Washington D.C. from August 2000 until the date of the letter;
- An undated letter from [redacted] Ambassador Extraordinary and [redacted] to the United States, stating he has known the beneficiary from August 2001 until October 2003 and that the beneficiary was hired during that time. The record contains a second letter from Mr. [redacted] dated December 10, 2006, stating that the beneficiary was employed as the Ambassador's Chef, but this does not indicate the dates of the beneficiary's employment;
- A letter from [redacted] Ambassador of the [redacted] dated June 15, 2004, stating that the beneficiary was employed as a cook from October 2001 until June 2004 at the [redacted] in Washington, D.C.

The record also contains a letter, dated December 27, 2012, on letterhead from the [redacted] [redacted] to the United States of America from [redacted] Accountant, stating that the beneficiary was employed at the embassy from November 20, 1996 until September 2, 1999 and August 23, 2001 until July 1, 2004. This letter does not state the beneficiary's job title or duties performed.

The record contains the following discrepancies regarding the experience letters the petitioner submitted:

Evidence in the Record	Employment experience or period of residence	Dates	Discrepancies (if any)
Experience letter from [redacted]	[redacted]	November 1996 until September 1999	
Experience letter from [redacted]	[redacted]	August 2000 until at least June 23, 2004 (the date of the letter)	This period of time conflicts with the letters from Mr. [redacted] and Mr. [redacted]
Experience letters from [redacted]	[redacted]	August 2001 until October 2003	This ending date conflicts with the letters from Mr. [redacted] and Mr. [redacted]

Experience letter from [REDACTED]	[REDACTED]	October 2001 until June 2004	This period of time conflicts with the letter from Mr. [REDACTED]
Form G-325A, dated October 12, 2004	[REDACTED]	1996 to August 2001	These dates conflict with the experience letters from Mr. [REDACTED] Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]
Form G-325A, dated October 12, 2004	[REDACTED]	August 1999 to August 2001	The letter from Mr. [REDACTED] states that the beneficiary worked in the embassy in the U.S. until September 1999. This period also conflicts with the dates of travel in the beneficiary's passport, discussed below.
Form G-325A, dated June 9, 2006	[REDACTED]	July 1986 to August 2001	This period of time conflicts with the letter from Mr. [REDACTED]

Counsel states that the conflicting information regarding the dates of the beneficiary's employment should not overcome the independent evidence in the record concerning the beneficiary's employment experience. As shown above, there are several discrepancies with the dates cited of the beneficiary's employment and residence. The petitioner has not provided any evidence from the [REDACTED] attesting to the beneficiary's experience there or the alleged agreement between this restaurant and the beneficiary that he would be viewed as a chef there during the time he was employed as an embassy chef in the United States. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). On motion, counsel states that the discrepancies between the experience letters and the information contained on the Forms G-325A "may raise question on the credibility of the Beneficiary only." However, the experience letter from [REDACTED] states that the beneficiary was employed with the [REDACTED] in Washington, D.C. from August 2000 until at least June 23, 2004 (the date of the letter), which conflicts with the other experience letters. Further, the letter from [REDACTED] states that the beneficiary was employed at the [REDACTED] in Washington, D.C from October 2001 until June 2004, which conflicts with the experience letter from Mr. [REDACTED]

On motion, counsel for the petitioner states that we failed to take notice of the beneficiary's statement, dated February 19, 2014. In the beneficiary's statement, he states that after finishing his term as a chef in the Embassy in Washington, D.C. in September 1999, he returned to [REDACTED] and worked full-time for the [REDACTED]. He further states that in August 2001, he was given a second opportunity to work as the chef of the [REDACTED] in Washington, D.C., and that he resigned from the restaurant in [REDACTED] in August 2001. The beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his prior work experience. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (stating 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)). In addition, the beneficiary's statement conflicts with the "Archival Reference" in the record from [REDACTED] which states that the beneficiary was employed with the [REDACTED] as a 4th class cook from August 17, 1994 until November 8, 1996. This "Archival Reference" record, dated "3.12.2012," states that the beneficiary quit his job voluntarily and does not state that he worked at this restaurant at any point after 1996. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The record contains the beneficiary's passport and an explanation of the exit and entry stamps to and from [REDACTED] and the United States, which are also in conflict with the beneficiary's statements. The pertinent passport pages state details of his travels between the United States and [REDACTED] as follows:

Dates	Length of time	Country of Stay
8/26/1997 to 7/8/1999	22 months, 12 days	[REDACTED]
7/8/1999 to 8/13/1999	36 days	[REDACTED]
8/13/1999 to 3/11/2000	6 months, 27 days	[REDACTED]
3/11/2000 to 4/14/2000	34 days	[REDACTED]
4/14/2000 to 6/23/2001	14 months, 9 days	[REDACTED]
6/23/2001 to 8/21/2001	1 month, 29 days	[REDACTED]
Reentered the U.S. on 8/21/2001 to duration of A-2 status ending in July 2004	34 months	[REDACTED]

The beneficiary's passport reflects that after September 1999 the beneficiary did not return to [REDACTED] until March 11, 2000, and that he only remained there for 34 days. In the beneficiary's statement, dated February 19, 2014, he states that after he finished his term as a chef in the Embassy in Washington, D.C. in September 1999, he returned to [REDACTED] and worked full-time for the [REDACTED], which conflicts with the dates of travel noted above. Further, as stated above, the beneficiary's Form G-325A, dated October 12, 2004, states that he resided in [REDACTED] from

August 1999 until August 2001, which also conflicts with the dates of travel stamped in his passport. The beneficiary's passport reflects that he then returned to the U.S. for 14 months, which is inconsistent with the beneficiary's assertion that he had full-time employment at the [REDACTED]. The beneficiary's passport reflects that after this 14 month stay in the U.S. from April 14, 2000 until June 23, 2001, he returned to [REDACTED] for nearly two months. Although counsel asserts that the beneficiary worked for the [REDACTED] from 1996 to 2001 during his stay in [REDACTED], nothing in the record demonstrates that the beneficiary worked for the [REDACTED] for any period of time. As noted above, the "Archival Reference" from Uzbekistan does not state the beneficiary worked at the [REDACTED] after 1996. The beneficiary states that in August 2001, he was given a second opportunity to work as the chef of the [REDACTED] in Washington, D.C., and that he resigned from the restaurant in August 2001. It is unclear whether the beneficiary was employed full-time with the [REDACTED] at any point after quitting in November 1996. These discrepancies, together with the discrepancies noted above, cast doubt upon the beneficiary's employment experience. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592.

Counsel also asserts that the beneficiary's credibility should not reflect upon the other evidence in the record. However, as noted above the experience letters in the record lead to more inconsistencies which have not been resolved. Counsel cites *Camara v. Ashcroft*, 378 F.3d 361, 372 (4th Cir. 2004), for the proposition that an agency cannot deny an application solely upon an applicant's adverse credibility when independent evidence otherwise establishes the fact in question. As stated above, the petitioner has not provided independent, objective evidence that is consistent with the evidence in the record, and that resolves the discrepancies noted herein, regarding the beneficiary's employment experience. As stated above, the experience letters are inconsistent with each other and the Forms G-325A; the dates of travel indicated in the beneficiary's passport are inconsistent with the experience letters and the Forms G-325A; and the beneficiary's statement is inconsistent with the employment experience stated in the "Archival Reference" in the record from [REDACTED]. Even if we were to accept the passport as "competent" evidence to resolve the dates, the passport does not provide any information regarding the beneficiary's work experience.

Therefore, the petitioner has not established that the beneficiary met the experience requirements of the labor certification.

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.

ORDER: The motion to reconsider is granted. The matter is dismissed and the petition remains denied.