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



U.S. Citizenship
and Immigration
Services

DATE: **JAN 27 2015**

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled or Professional Worker 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:
[REDACTED]

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 Nebraska Service Center Director (the director), approved the immigrant visa petition on March 13, 2002. After dismissing the subsequent appeal and two motions, in our November 27, 2013 decision we withdrew the director's February 7, 2006 revocation of the Form I-140 immigrant petition based on section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c) and remanded the matter for further consideration. The director again revoked the approval of the petition on August 5, 2014 and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner¹ described itself as a hospitality business and sought to permanently employ the beneficiary in the United States as facilities planner. The petitioner requested classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).² The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 18, 2001. *See* 8 C.F.R. § 204.5(d).

The director's decision revoking the approval of the petition states that the petitioner failed to establish that it has the continuing ability to pay the proffered wage as of the priority date or that there is a valid successor-in-interest. The director found that the evidence submitted by the petitioner in response to a Notice of Intent to Revoke (NOIR) failed to overcome these findings. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

The record shows that the appeal 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.

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.³

Revocation

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Notice must be provided to the petitioner

¹ [REDACTED] filed the instant labor certification and Form I-140 immigrant petition.

² Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

³ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

before a previously approved petition can be revoked. *See* 8 C.F.R. § 205.2; 8 C.F.R. § 103.2(b)(16); *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

The director's decision states that the petitioner failed to establish that the it had the ability to pay the proffered wage from the priority date onwards or that a valid successor-in-interest exists since the original petitioner is no longer in business. The director found that the evidence submitted by the petitioner in response to a Notice of Intent to Revoke (NOIR) failed to overcome these findings. The director's NOIR sufficiently detailed the evidence of the record, pointing out a specific lack of evidence of the petitioner's ability to pay the proffered wage and existence of a valid successor-in-interest that would warrant a denial if unexplained and un rebutted, and thus was properly issued for good and sufficient cause. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

Successor-in-interest

On appeal, counsel claims that [REDACTED] is the successor-in-interest to [REDACTED]. In previous filings counsel claimed that [REDACTED] is the successor-in-interest to the petitioner. 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). 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)).⁴ In support of these statements the record contains the following documentation:

- 2000 Internal Revenue Service (IRS) Form 1065 for the petitioner, [REDACTED] reflecting Federal Employer Identification Number (FEIN) [REDACTED] and organization date of May 9, 2000.
- 2005, 2006, 2007, 2008 and 2009 IRS Forms 1065 for [REDACTED] reflecting FEIN [REDACTED] and organization date of March 21, 2004.⁵
- State of South Dakota Secretary of State Certificate of Organization reflecting organization of [REDACTED] on May [REDACTED]
- State of South Dakota Secretary of State Certificate of Administrative Dissolution reflecting the dissolution of [REDACTED] on June [REDACTED]
- State of South Dakota Secretary of State Certificate of Organization reflecting organization of [REDACTED] on December [REDACTED]
- State of South Dakota Secretary of State Certificate of Administrative Dissolution reflecting the dissolution of [REDACTED] on June [REDACTED]

⁴ Counsel also asserts on appeal that he submits 2011, 2012 and 2013 tax returns for the [REDACTED] however, the record does not contain said tax returns.

⁵ We note that the tax returns reflect that [REDACTED] ceased activities in 2009, even though a Certificate of Administrative Dissolution indicates that [REDACTED] was dissolved in [REDACTED]. 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). In any future filings this inconsistency should be addressed.

- State of South Dakota Secretary of State Certificate of Organization reflecting organization of [REDACTED] on February [REDACTED]
- State of South Dakota Secretary of State Certificate of Administrative Dissolution reflecting the dissolving of [REDACTED] on September [REDACTED]
- State of South Dakota Secretary of State Certificate of Organization reflecting organization of [REDACTED] on November [REDACTED]
- State of South Dakota Secretary of State Certificate of Incorporation reflecting incorporation of [REDACTED] on October [REDACTED]
- An August 13, 2009 affidavit from [REDACTED] stating that [REDACTED] was succeeded by [REDACTED] which was then succeeded by [REDACTED].
- A May 24, 2010 affidavit from [REDACTED] stating that [REDACTED] purchased [REDACTED] in December [REDACTED] purchased [REDACTED] in [REDACTED] and [REDACTED] purchased [REDACTED] in November [REDACTED]
- An August 20, 2014 letter from [REDACTED] indicating that [REDACTED] acquired the [REDACTED] location from [REDACTED] on September [REDACTED]. The letter states that [REDACTED] wishes to employ the beneficiary as a facilities planner.

U.S. Citizenship and Immigration Services (USCIS) has not issued regulations governing immigrant visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986) ("*Matter of Dial Auto*") a binding, legacy Immigration and Naturalization Service (INS) decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

Matter of Dial Auto does not stand for the proposition that a valid successor relationship may only be established through the assumption of "all" or a totality of a predecessor entity's rights, duties, and obligations. Instead, the generally accepted definition of a successor-in-interest is broader: "One who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." *Black's Law Dictionary* 1570 (9th ed. 2009) (defining "successor in interest").

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.⁹ *Id.* at 1569 (defining "successor"). When considering other business

⁶ [REDACTED] has been a member of each of the entities claimed to be a successor-in-interest to the petitioner.

⁷ It is unclear how [REDACTED] purchased [REDACTED] in November [REDACTED] when [REDACTED] was dissolved in September [REDACTED]. There is nothing in the record to explain how [REDACTED] could have acquired or purchased anything from [REDACTED] two months after its dissolution.

⁸ [REDACTED] is a shareholder and treasurer of [REDACTED].

⁹ Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes "consolidations" that occur when two or more corporations are united to create one new corporation. The second group includes "mergers," consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes "reorganizations" that occur when the new corporation is the reincarnation or reorganization of one

organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application.¹⁰

The merger or consolidation of a business organization into another will give rise to a successor-in-interest relationship because the assets and obligations are transferred by operation of law. However, a mere transfer of assets, even one that takes up a predecessor's business activities, does not necessarily create a successor-in-interest. See *Holland v. Williams Mountain Coal Co.*, 496 F.3d 670, 672 (D.C. Cir. 2007). An asset transaction occurs when one business organization sells property – such as real estate, machinery, or intellectual property – to another business organization. The purchase of assets from a predecessor will only result in a successor-in-interest relationship if the parties agree to the transfer and assumption of the essential rights and obligations of the predecessor necessary to carry on the business.¹¹ See generally 19 Am. Jur. 2d *Corporations* § 2170 (2010).

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

Evidence of transfer of ownership must show that the successor not only purchased assets from the predecessor, but also the essential rights and obligations of the predecessor necessary to carry on the business. To ensure that the job opportunity remains the same as originally certified, the successor must continue to operate the same “business unit” as the predecessor, in the same metropolitan statistical area and the essential business functions must remain substantially the same as before the ownership transfer. See Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, *Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions*, HQ70/6.2 ADO9-37 (August 6, 2009); and *Matter of Dial Auto*, 19 I&N Dec. at 482.

In order to establish eligibility for the immigrant visa in all respects, the petitioner must support its

previously existing. The fourth group includes transactions in which a corporation, although continuing to exist as a “shell” legal entity, is in fact merged into another through the acquisition of its assets and business operations. 19 Am. Jur. 2d *Corporations* § 2165 (2010).

¹⁰ For example, unlike a corporation with its own distinct legal identity, if a general partnership adds a partner after the filing of a labor certification application, a Form I-140 filed by what is essentially a new partnership must contain evidence that this partnership is a successor-in-interest to the filer of the labor certification application. See *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). Similarly, if the employer identified in a labor certification application is a sole proprietorship, and the petitioner identified in the Form I-140 is a business organization, such as a corporation which happens to be solely owned by the individual who filed the labor certification application, the petitioner must nevertheless establish that it is a *bona fide* successor-in-interest.

¹¹ The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest relationship unless the transfer results from the *bona fide* acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. See 19 Am. Jur. 2d *Corporations* § 2170; see also 20 C.F.R. § 656.12(a).

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

The director's NOIR informed the petitioner that the evidence in the record was not sufficient to establish that [REDACTED] is the successor-in-interest to [REDACTED]. The NOIR also informed the petitioner that a valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petitioner fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor.

While the letters and affidavits in the record contend that [REDACTED] successively acquired the petitioner's business, there is no contemporaneous evidence of a definitive transfer from [REDACTED] from [REDACTED] from [REDACTED] and from [REDACTED]. Instead, the petitioner relies on non-contemporaneous letters and affidavits to demonstrate the relationship between the entities. There is no evidence, such as purchase agreements, in the record, that establishes the actual transfer of assets/liabilities from one entity to another.

Therefore, the petitioner and its claimed successors have failed to establish the transfer of ownership from the petitioner to each subsequent claimed successor.

Ability to Pay

Further, in a successor-in-interest case, the petitioner must also establish that the original employer possessed the ability to pay the proffered wage from the priority date until the date the petitioner assumed the original employer's rights and responsibilities. *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481, 482 (Comm. 1981). As discussed in detail in the NOR, the record does not demonstrate that the petitioner possessed the ability to pay the proffered wage from the priority date to the date it was acquired by the successor. 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 proffered wage as stated on the labor certification is \$40,000.00 per year. The evidence in the record of proceeding shows that the petitioner was structured as a domestic limited liability company. On the petition, the petitioner claimed to have been established in [REDACTED] to have a gross annual income of \$522,171.00, and to currently employ 9 workers. The evidence in the record shows that [REDACTED] was structured as a general partnership. There is no evidence in the record of each of the subsequent claimed successors entity type/structure.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2).

In 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 failed to provide IRS Forms W-2, Wage and Tax Statements, reflecting payment of wages by either the petitioner or any of the claimed successors-in-interest from the priority date onwards.

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 (1st 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.

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.¹² If the total of the

¹²According to *Barron's Dictionary of Accounting Terms* 117 (3rd 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

petitioner'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 record contains [REDACTED] tax records for 2005 through 2009. The petitioner must show its ability to pay the proffered wage from 2001 to the date of transfer, and its claimed successors must show that each entity had the ability to pay the proffered wage from the date of transfer onward.

For the years 2001 and 2002 the petitioner and its claimed successors have failed to establish the petitioner's ability to pay the proffered wage. The record contains the petitioner's corporate bank statements for activity from March 30, 2001 to September 28, 2001. Reliance on the balances in the petitioner's bank account 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 and its claimed successors in this case have 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.

The record contains the petitioner's comparative balance sheet indicating that the petitioner had \$83,316.43 in net current assets on October 31, 2001. 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, we 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.

The record contains the petitioner's unsigned Forms 941, Employer's Quarterly Federal Tax Return, for March 31, 2001, June 30, 2001 and September 30, 2001 reflecting payment of \$86,860.98. The amount paid in wages does not indicate that the business is large. Moreover, the Forms 941 do not indicate the petitioner's net income and/or net current assets for 2001.

While the record contains [REDACTED] tax records for 2007 through 2009, these documents are not relevant as to whether the claimed successor-in-interest had the ability to pay during this period as, according to the affidavits discussed above, [REDACTED] was purchased by [REDACTED]¹³ Therefore, the appellant must establish [REDACTED] ability to pay the proffered wage from 2007 through 2009, the year in which it was purchased by the next successor-in-interest, [REDACTED] For 2007 to 2010 the petitioner has failed to provide required information regarding [REDACTED] net income and net

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.

¹³ While the record contains tax returns for [REDACTED] from 2005 to 2009, South Dakota State Secretary records indicate that [REDACTED] was dissolved in [REDACTED] As discussed above, this inconsistency should be addressed in any future filings. *Matter of Ho, Supra.*

current assets in the form of annual reports, federal tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2).

While counsel's brief indicates that he submitted [REDACTED] 2001 through 2013 tax returns, the record does not contain any information regarding [REDACTED] net income and net current assets in the form of annual reports, federal tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2).

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the appellant has not established that the petitioner, [REDACTED] and 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.

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.

In the instant case, the appellant has failed to provide relevant annual reports, federal tax returns, or audited financial statements for 2001, 2002 and 2007 through the present, preventing us from making a determination as to whether the petitioner and its claimed successors-in-interest had the ability to pay the proffered wages in those years. In addition, there is no evidence in the record of the historical growth of the businesses, of the occurrence of any uncharacteristic business expenditures or losses from which they have since recovered, or of the businesses' reputation within the industry. Further, while the petitioner claimed to have nine (9) workers, the Forms 941 reflect employment of only one (1) worker. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the appellant has not established that the petitioner, the claimed successors-in-interest and it had the continuing ability to pay the proffered wage.

Therefore, the petitioner and its claimed successors have failed to establish that each successive entity had the ability to pay the proffered wage and is therefore unable to establish valid successors-in-interest to the petitioner.

Beneficiary Qualifications

Beyond the decision of the director,¹⁴ the appellant has failed to establish the beneficiary meets the minimum requirements of the instant 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, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to “examine the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification].” *Id.* at 834 (emphasis added). USCIS will not look beyond the plain language of the labor certification to determine the employer’s claimed intent.

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

EDUCATION

Grade School: 8 years

High School: 4 years

College: 2 years

College Degree Required: Associate

Major Field of Study: civil engineering

TRAINING: None Required.

EXPERIENCE: Two (2) years in the job offered

¹⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

OTHER SPECIAL REQUIREMENTS: None.

The labor certification states that the beneficiary qualifies for the proffered position through the following education:

- [REDACTED] India studies in computer science from February 1990 to November 1990, resulting in a certificate.
- The [REDACTED] India studies in mechanical engineering from June 1988 to May 1990, resulting in a “studied diploma in Mech. Engi.”
- [REDACTED] India studies in civil drawing from May 1985 to April 1986, resulting in a certificate.
- [REDACTED] India general studies from June 1983 to March 1984, resulting in passing 11th Grade.
- [REDACTED] India general studies from June 1979 to March 1980, resulting in passing 10th Grade.

The record contains a copy of the beneficiary’s certificate from the [REDACTED] [REDACTED] certifying completion of the advanced computing course for professionals from February 21, 1990 to July 11, 1990.

The record contains the beneficiary’s April 1986 certificate course in civil draughtsman and estimating from the [REDACTED] India.

The record contains the beneficiary’s diploma in civil engineering from the [REDACTED] [REDACTED] India, issued in 1992, accompanied by statements of marks reflecting that the beneficiary passed semesters I and II of both the first and second year diploma in civil military engineering (CME) in November 1988, April 1989, December 1989 and May 1990.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.¹⁵

¹⁵ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse

According to EDGE, a post-secondary diploma from India, such as the beneficiary's diploma in civil engineering, is comparable to "one year university study in the United States." Edge does not indicate that the beneficiary's certificate from [REDACTED] or certificate course in civil draughtsman has any equivalency to education in the United States. Therefore, based on the conclusions of EDGE, the evidence in the record on appeal is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. associate's degree in civil engineering.

After reviewing all of the evidence in the record, it is concluded that the appellant has failed to establish that the beneficiary has a U.S. associate's degree or a foreign equivalent degree from a college or university. Therefore, the beneficiary does not meet the minimum requirements of the labor certification.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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). Here, that burden has not been met.

ORDER: The director's revocation is affirmed. The appeal is dismissed and the petition remains revoked.

its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.