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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

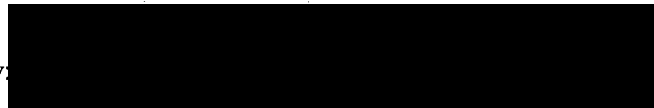
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IN RE:

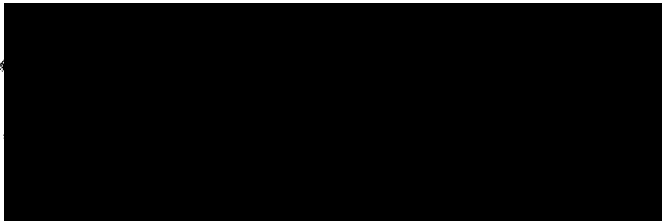
Petitioner:

Beneficiary:



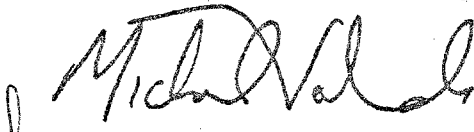
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a fishing/hunting lodge. It seeks to employ the beneficiary permanently in the United States as an executive pilot. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the petitioner failed to provide sufficient evidence that the beneficiary is qualified for the proffered position. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. In response to a request for evidence from the director, the petitioner indicated that it is seeking classification under the skilled worker category.

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

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Regardless of whether the petitioner is seeking to classify the petition under 203(b)(3)(A)(i) or (ii) of the Act, however; to be eligible for approval, a beneficiary must also have the education and experience specified on the labor certification as of the petition's filing date. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is January 22, 2002.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of programmer/analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education
Grade School

High School	--
College	4
College Degree Required	BSC
Major Field of Study	Aviation

The petitioner also specified that any applicants have two years of experience in the job offered. Under Item 15, the petitioner also set forth additional special requirements as follows: "Must possess ATP, CFII, SES & MEL qualifications. ATP: Airline Transport Pilot License, CFII: Certified Flight Instructor, SES: Single Engine Sea qualification, MEL: Multi Engine Land qualification." The job offered lists the following duties on Item 13: "Transport clients to fishing/hunting lodge; train pilots; promote/market lodge & design program for guests; liaise with FAA and Fish & Game on licensing/regulatory issues."

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated that he attended Trinity College in Malaga, Spain, during three different times, during which he earned a BSc in Aeronautical Science for studies from 1993 to 1997, an MBA in Business Admin. & Marketing for studies from 1987 to 1991, and a BA in "Liberal Arts, Langs., Comm." for studies from 1978 to 1982. He provides no further information concerning his educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct.

On Part 15, eliciting information concerning the beneficiary's past employment experience, the beneficiary indicated the following in reverse chronology:

1. Korean Air, Check Captain, Liaison Manager, Nov. 1996 to Present, for which he transported clients, trained pilots; assessed and tested pilot skills; facilitated contract discussions; and liaised with the FAA;
2. South African Airways, Senior Training Captain and Deputy Director – Crew planning, Sept. 1971 – Nov. 1996, for which he transported clients, trained pilots; assessed and tested pilot skills; and liaised with the FAA;
3. Grand Central Aviation, Chief Pilot/Instructor and Charter Manager, June 1966 – Aug. 1971, for which he trained pilots, transported clients to hunting/fishing lodges, promoted and marketed the company and its lodges, and liaised with fishing and gaming authorities and the FAA; and
4. South Africa Air Force, General Duty Pilot/Flying Instructor, Jan. 1964 – June 1966, for which he trained pilots, had general flying duties, and tested flights.

With the initial petition, the petitioner provided a copy of a credential evaluation from A.E.S.F. Inc., that concludes that the beneficiary "has achieved the equivalent of a Bachelor of Science degree in Aviation, at a regionally accredited institution in the United States." The petitioner also provided a copy of the beneficiary's diplomas from Trinity College for his three degrees, with accompanying transcripts, that indicate that the beneficiary's completion of his bachelor degree in aeronautical science was completed in 1972 and the bachelor of arts degree in liberal arts was completed in 1982. The petitioner also submitted various certificates issued to the beneficiary that do not relate to any requirement listed by the proffered position, such as computer programs and training courses. Also submitted with the initial petition is a copy of the beneficiary's airplane transport pilot licenses issued by the South African Civil

Aviation Authority, Republic of Korea, and the U.S. Department of Transportation's FAA; a flight instructor license from the FAA; medical certificates and Korean Air training certificates; and a letter from [REDACTED] Executive Manager and Chief Pilot of South African Airways, confirming the beneficiary's employment as an Executive Manager and Chief Pilot with South African Airways from September 1971 to November 2001.

Because the evidence was insufficient, the director requested additional evidence on August 6, 2003, specifically stating that the beneficiary's experience with Korean Air and South African Airways was not qualifying experience and requesting verification of the beneficiary's employment with Grand Central Aviation. Additionally, the director requested clarification concerning the dates of the beneficiary's completion of his educational programs and additional evidence that the education attained by the beneficiary constitutes a "foreign equivalent degree."

In response to the director's request for evidence, the petitioner submitted an affidavit from [REDACTED] (Mr. [REDACTED] who attested that he is a friend of the beneficiary's and worked at South African Airways with him. Mr. [REDACTED] also attested to the beneficiary's employment at Grand Central Aviation, which he stated does not exist anymore, as their Charter Manager and Chief Instructor and corroborated the beneficiary's job duties there. The petitioner also resubmitted copies of the prior credential evaluation and the beneficiary's academic accolades and counsel asserted in an accompanying cover letter that typographical errors were made concerning the beneficiary's dates of attendance on the Form ETA 750B but that the beneficiary completed the BSc in aeronautical science in 1972.

The director denied the petition on December 1, 2003, citing 8 C.F.R. § 103.2(b)(2) for the premise that [REDACTED] affidavit was insufficient without proof of the unavailability of required evidence. Additionally, the director found the affidavit insufficient evidence because [REDACTED] was not a supervisor of the beneficiary nor provided enough detail about the beneficiary's work experience at Grand Central Aviation. The director also questioned how the beneficiary could complete full-time coursework at Trinity College in Spain while concurrently employed full-time at Grand Central Aviation.

On appeal, counsel submits additional evidence including an additional affidavit from [REDACTED] (Ms. [REDACTED]), who states that she was the Human Resources Manager at Grand Central Aviation when the beneficiary was employed there as Charter Manager and Chief Instructor and confirmed his employment accordingly. She also states that the company operated for a number of years but was "absorbed by other companies" as a result of a series of mergers. Thus, she states that employment records are unavailable. Counsel states that this affidavit was previously unavailable because it was difficult to locate Ms. [REDACTED] since she relocated to Australia and the former executives of the company are deceased.

Counsel also submits a letter from [REDACTED] Vice-Chancellor of The Trinity College and University, stating that the beneficiary earned his degree:

primarily via correspondence, due to this employment with Grand Central Aviation from June 1966 to August 1971. Obtaining a Bachelor of Science Degree in Aeronautical Science from Trinity College and University via correspondence is not unusual – many candidates work full-time as pilots during their course of study, and are therefore located around the world, which often precludes them being physically present at the school.

Counsel asserts on appeal the following:

Please note that the standard flying time for a pilot is 75 hours per month, and the maximum is 100 hours per month, for safety reasons. During his time on the ground, [the beneficiary] spent time studying, spent time completing and submitting his university assignments, and spent time taking and submitting exams to the university.

Subsequent to counsel's appellate submission, he forwarded additional materials for consideration on appeal. Counsel submitted documents confirming the deregistration and dissolution of Grand Central Aviation.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for "professionals," states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision. And for the "professional category," the beneficiary must also show evidence of a "United States baccalaureate degree or a foreign equivalent degree." Thus, regardless of category sought, the petitioner must show that the beneficiary meets the requirements of the Form ETA 750A, which includes a baccalaureate degree.

Additionally, the regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* 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.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany 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). In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree of science in aviation; two years of experience in the job offered; and ATP, CFII, SES & MEL qualifications.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Here, the credential evaluation was prepared by a director of a credential evaluation service, A.E.S.F., Inc., who has a Ph.D. in electrical engineering and is unaffiliated with any educational establishment. Additionally, A.E.S.F. Inc. is not a member of NACES, the National Association of Credential Evaluation Services. The U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. In addition to its poor credentials, in light of the AAO's findings concerning the beneficiary's educational program, which will be discussed below, the credential evaluation provided by A.E.S.F. Inc. carries little evidentiary weight in these proceedings.

In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be an equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a "skilled worker," the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent degree to a U.S. bachelor's degree.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from Spain could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record is questionable concerning the beneficiary's completion of a four-year university program. To better understand the beneficiary's academic program, the AAO visited The Trinity College and University's website at <http://www.trinityeducation.com/>. The website provides the following information concerning the programs it offers:

The Trinity College and University is an organization, registered in Dover, Delaware, USA and running its degree programme from Spain. **There are no country residential requirements for the award of degrees from Trinity**, yet any official [sic] body requiring confirmation of the awards made would be supplied with confirmation of awards made. Under present legislation these awards are perfectly legal. It is becoming increasingly common for job specifications to state that a Degree is also a requirement, it is also a fact that having a degree enhances the holder's chance of attaining an interview. It is also common that people who have a working life, full of experience but have little or no formal qualifications.

Many people have operated at a level of expertise far in excess of their paper qualifications but are unable to obtain an interview when seeking new positions because of the **right qualifications** do not appear in their CV's. The arrival of "selection by computer", where CV's are surveyed electronically and **only** those containing the acceptable "buzz words" are passed through to the final human selection are likely to be successful, the necessity of having the right qualifications is of increasing importance.

Don't Get the Wrong Idea

It should be said that no-one is trying to "degrade" the efforts of those who have succeeded in completing a degree course, especially in an Engineering subject or indeed any other subject for that matter; rather many employers and agencies often fail to adequately answer that question as to why a degree qualification is preferable to a lifetime of experience in many subjects - clearly however there are subjects where a formal degree qualification is a precursor to the practice of a particular profession, the Medical profession is probably the immediate example and we don't issue such degrees. If your chosen subject is not listed, please don't despair, we will consider awarding degrees in any subject, given your experience.

People want degrees for different reasons, here are some of the reasons of the more common:

- For Prestige, i.e. to gain acceptance or a title, e.g. Doctor.
- For addition to letterheads etc., i.e. to enhance business in a particular field.
- To get qualifications missed out on earlier in your education.
- To gain recognition for experience gained in your given field.
- To follow a particular interest (opening doors).

At Trinity, we believe that by having an Accreditation Association, the Correspondence Accreditation Association (CAA), the awards are stimulated, strengthened and substantiated. So we formed the association, the Correspondence Accreditation Association, which will confirm your awards to any enquirer. Upon written request, we confirm the degree awarded, its date and subject, this is normally all that is required from any inquirer.

We can also supply **Transcript of Studies** at a cost of £30 (US\$50) and Legal Declarations of the authenticity of your degree certificates at a cost of £30 (US\$50) each. Not everyone needs transcripts since most European institutions do not supply them, but we will supply them on the basis of your degree and your experience where required.

We can also supply Trinity College academic robes should you require them - please ask for details.

Is there an ethical question involved? Only in as much as there is no formal course or examination as the award is based on your previous experience.

The pitfalls are that a potential employer must be sure that you know your subject, there is no point applying for a position in which you have no knowledge or experience of, yet why should you be precluded from having a chance at an interview on the basis of a paper qualification.

We will award degrees in any subject, except medicine, the following are examples of degrees we have already awarded.

- Bachelors Degree
- Masters Degree
- Doctorate

[Click here](#) to view Degree Sample (document_sample.gif, 198 kb).

(Emphasis in original). The Degree Sample is the same as the degrees awarded to the beneficiary.

The AAO concurs with the director's decision that the petitioner has not established that the beneficiary is qualified for the proffered position, either under a skilled worker or a professional under the third preference immigrant visa category, since it has not proven that the beneficiary holds a four-year baccalaureate degree or foreign equivalent. The beneficiary chose a school that provides degrees for sale not based on four years of educational coursework, examinations, and rigors equivalent to four years of education in the United States. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The website specifically states that attendance and examinations are not required. Thus, counsel's assertion that the beneficiary took exams while he was on the ground is inconsistent. The presentation of the beneficiary's educational accolades is dubious at best.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Thus, the AAO sustains the portion of the director's decision that determined that the beneficiary is not qualified for the proffered position for failure to prove that he has attained the foreign equivalent degree of a U.S. bachelor of science degree in aviation.

The AAO finds that the evidence presented on appeal and with supplementary appellate documentation satisfactorily proves that the beneficiary has two years of qualifying experience for the proffered position prior to filing the petition. The documentation concerning Grand Central Aviation's dissolution does not lack credibility and two affidavits from witnesses who provided sworn written testimony with a notary's seal confirming their identities are sufficient in lieu of personnel records or an experience verification letter typically required under 8 C.F.R. § 204.5(l)(3). The director was correct in the determination he made based on the record of proceeding at the time of his decision; however, the evidence presented on appeal has satisfactorily overcome this portion of the director's decision. Thus, the AAO withdraws this portion of the director's decision.

Beyond the decision of the director, there is insufficient evidence that the petitioner has established its continuing ability to pay the proffered wage beginning on the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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 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, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 CFR § 204.5(d). As noted above, the Form ETA 750 was accepted for processing on January 22, 2002. The proffered wage as stated on the Form ETA 750 is \$67,710 per year.

The petitioner is structured as a sole proprietorship. With the petition, the petitioner submitted an unaudited profit and loss statement for January 1 through August 8, 2002.

Because the evidence submitted was deemed insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on August 6, 2003, the director requested additional evidence pertinent to that ability. In accordance with 8 C.F.R. § 204.5(g)(2), the director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. The director specifically requested the petitioner's 2002 tax return, business bank account records, and personnel records.

In response, the petitioner submitted its Schedule C, Profit and Loss from Business statement to the sole proprietor's U.S. individual income tax return for 2002¹. The tax return reflects the following information:

¹ Financial information preceding the priority date in 2003 is not necessarily dispositive of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Any further proceedings on this matter would need to complete the record of proceeding with the most relevant financial information.

2002

Proprietor's adjusted gross income (Form 1040)	\$n/a
Petitioner's gross receipts or sales (Schedule C)	\$561,807
Petitioner's wages paid (Schedule C)	\$0
Petitioner's cost of labor (Schedule C)	\$111,448
Petitioner's net profit from business (Schedule C)	\$55,485

In determining the petitioner's ability to pay the proffered wage during a given period, CIS 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. The petitioner has not established that it has previously employed the beneficiary.

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, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. 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).

The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and ability to pay the proffered wage, those statements must be audited. Unaudited statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence of a petitioner's ability to pay the proffered wage.

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

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

In the instant case, there is insufficient information concerning the sole proprietor, the size of his family, his expenses, or even his adjusted gross income. The petitioner failed to provide a complete tax return for 2002. The

director failed to request the sole proprietor's living expenses or note such deficiencies in his decision. Since the petition will be denied based upon the petitioner's failure to establish the beneficiary's qualifications for the proffered position, this issue need not be further discussed in this proceeding. However, any further proceedings on this matter would need to overcome the evidentiary deficiency concerning the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.