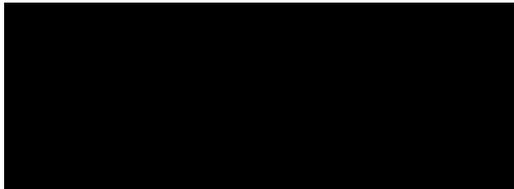


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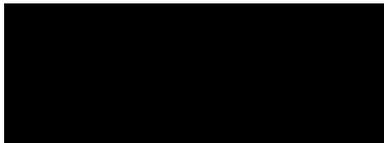
B6

FILE: EAC 02 068 53550 Office: VERMONT SERVICE CENTER Date: **AUG 29 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

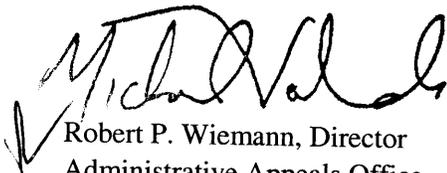
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 service center director denied the employment-based visa petition on June 28, 2002, and the AAO subsequently denied the appeal on August 12, 2003, 2002. The matter is now before the Administrative Appeals Office (AAO) as a motion to reconsider, and/or reopen. The motion to reopen is granted. The previous decision of the director will be withdrawn. The petition is remanded to the director.

The petitioner is an opto-electronic manufacturing company. It seeks to employ the beneficiary permanently in the United States as an opto-electronic technician. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. Accordingly, the director denied the petition. The AAO in its decision on appeal reversed portions of the director's decision, and then upheld the denial of the instant petition. On motion, counsel submits additional documentation with regard to the financial resources of the petitioner, as well as correspondence from an accounting firm.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The petitioner has submitted new documentation with regard to the petitioner's financial resources. This evidence is viewed as sufficient to reopen the proceedings.

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

The regulation 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). Here, the Form ETA 750 was accepted for processing on February 14, 1997. The proffered wage as stated on the Form ETA 750 is an hourly wage of \$21.73, (\$32.59 overtime) or an annual salary of \$45,198.40. On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since 1994.

In support of the petition, the petitioner submitted IRS Form 1120S, the petitioner's corporate income tax return, for the tax years 1997 and 2000. The petitioner also submitted a W-2 Form for the beneficiary for the year 1997.

Because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on February 12, 2002, the director requested additional evidence pertinent to that ability. The director specifically requested that the petitioner provide additional information to establish that the beneficiary possessed the required two years of experience as of the 1997 priority date. The director stated that the petitioner claimed to have six employees and yet its tax return indicated that no wages were paid in 1997. The director also noted that the petitioner submitted a W-2 Form for the beneficiary but that the beneficiary did not claim to have a social security number in the petition. Finally the director requested an IRS certified copy of the beneficiary's 1997 income tax return.

In response, the petitioner submitted a letter that explained the petitioner's interactions with the New Jersey Department of Labor in 1999, with regard to the petitioner's inability to train a new person for the position offered. The petitioner submitted a copy of the DOL response to the petitioner. The petitioner further stated that the accounting firm used by the petitioner listed wages paid under Schedule A, Line 3 "Cost of Labor" on the petitioner's Form 1120S tax returns. The petitioner stated that in 1997, the cost of labor was \$36,524; in 1998, it was \$35,849, in 1999, it was \$58,536, and in 2000, it was \$119,476. Finally the petitioner stated that the social security number on the I-140 petition was left blank because prior to the filing of the petition, the petitioner had it brought to its attention that the beneficiary did not possess a valid social security number. The petitioner also submitted an IRS generated copy of the beneficiary's jointly filed Form 1040 for 1997.

On June 28, 2002, the director denied the petition. In his denial of the petition, the director stated that the petitioner's 1997 tax return showed a net loss of \$14,107, depreciation of \$6,486, and cash of \$2,662. The director stated that these figures left the petitioner \$36,050 short of resources needed to pay the proffered wage of \$45,198. The director stated that the petitioner claimed to have six employees and claimed their combined wages in 1997 as \$36,524, listed as "cost of labor." With regard to the question of the beneficiary's social security number, the director stated that the beneficiary had no social security number, and, therefore, the W-2 form submitted by the petitioner is fraudulent, and no evidence existed that the petitioner ever had paid the beneficiary any wages.

On appeal, counsel stated that the petitioner is a New Jersey S Corporation, and as such the petitioner has limited liability while avoiding many of the tax disadvantages of incorporation. Counsel continued that earnings and losses pass through to stockholders without tax effect at the corporate level, thus avoiding double taxation. Counsel stated that the petitioner was advised by its accountant that, for tax planning purposes, all excess cash reserves were to be transferred to the shareholders prior to year end in the form of bonuses or cash distributions (compensation of officers). Counsel continues that if the petitioner required additional funding in a subsequent year, for example to pay wages, the funds are transferred back to the corporation via shareholder loans. Counsel also stated that it is customary in small closely held S corporations for the officers' compensation to vary from year to year due to these practices. Counsel then stated that if the petitioner was required to pay the beneficiary the proffered wage in 1997, it could have done so, since more than \$19,000 was transferred to the shareholders in this manner and the \$19,000 is part of the figure given

under officers' salary on the petitioner's federal tax return. Counsel states that the petitioner could have paid the difference in actual wages and the proffered wage, which he identified as \$17,027.29 (\$45,198.40-\$28,171), by utilizing the \$19,000 transferred to the shareholders for tax planning purposes. Counsel also stated that the petitioner paid an additional \$8,068 in prepaid rents, contained in the \$19,252 in rents shown on the petitioner's 1997 tax return, which was also available to compensate the beneficiary.

Counsel also stated that the beneficiary was paid \$52,540 in 2001, a sum greater than the proffered wage. With regard to the issue raised by the director with regard to an invalid W-2 form, counsel states that the fact that the social security number is inaccurate does not detract from the primary purpose of a W-2 form, namely to establish to the IRS that the stated wages were paid to the employees named on the W-2 forms. In addition, counsel stated that the beneficiary reported the income on her 1997 tax return. Finally counsel stated that CIS incorrectly assumed that the petitioner has employed six individuals in 1997, and that the six employees indicated on the I-140 petition are employees as of December 17, 2001, when the I-140 petition was filed. Counsel stated that the petitioner never claimed it paid wages to six employees in 1997.

On August 12, 2003, the AAO denied the appeal. In its decision, the AAO stated that counsel was correct that insufficient reason existed to disregard the wages indicated on the beneficiary's 1997 W-2 Form.

With regard to counsel's assertions with regard to monies paid to shareholders and prepaid rents in 1997, the AAO determined that counsel submitted no evidence that \$8,068 of these monies, as listed on line 11 of the 1997 tax return, was prepaid rent. Line 7 of the 1997 return showed that \$76,800 was paid toward compensation of officers, but counsel submitted no evidence that over \$19,000 of that was an optional payment to shareholders. The AAO further noted that if the petitioner had withheld \$8,068 in prepaid rent and the more than \$19,000 allegedly paid to shareholders, these amounts have offset the petitioner's negative ordinary income of \$14,107, and resulted in a profit of approximately \$13,000. The AAO states that this profit, when added to the \$28,171, shown on the 1997 W-2 Form, would still have equaled less than \$42,000, which is less than the proffered wage. The AAO finally stated that even if counsel's allegations with regard to prepaid rents and optional payments to shareholders were taken as fact, counsel had offered no reason why the insufficiency of the resulting revised net profit should be disregarded. The AAO then determined that the petitioner had not established that it had the capability of paying the proffered wage in 1997, and dismissed the appeal.

On motion, counsel submits the following new documentation:

A letter dated September 10, 2003, from [REDACTED] (Mr. [REDACTED]), [REDACTED] New Jersey, with an accompanying letter from Mr. [REDACTED] to the petitioner's owner dated July 16, 2002.

The petitioner's Form 1120 S for 1998 with accompanying attachments and statements.

W-2 Forms for the petitioner's owner/shareholder for the years 1997 to 2002. These documents indicate that the petitioner's owner received the following compensation: in 1997, \$76,800; in 1998, \$51,200; in 1999, \$37,800; in 2000, \$75,620, in 2001, \$99,996; and in 2002, \$99,996.

A letter from [REDACTED], the petitioner's president, and 50 percent shareholder. Mr. [REDACTED] states that officer compensation varied from year to year for tax planning purposes. Mr. [REDACTED] states that his Form W-2 demonstrated that if the petitioner were required to pay the beneficiary the prevailing wage in 1997, it could have utilized a sizeable amount from the \$76,800 paid to him as the petitioner's officer. Mr. [REDACTED] also states that the difference between the beneficiary's actual wages and the proffered wage in 1997 was \$17,027.29 or \$1,418.94 a month. Mr. [REDACTED] states that the petitioner's business banking account statement from 1997 to the present consistently show balances that were more than sufficient to pay the additional \$1,418.94 per month to meet the prevailing wage.

Copies of monthly statements for the petitioner's commercial banking accounts with CoreStates Bank, Philadelphia, Pennsylvania, and First Union Bank from 1997 to 2002.

In his letter, Mr. [REDACTED] states that rent expenses reported for income tax purposes in 1997 were \$19,252 and in 1998 the rent expenses as recorded on the petitioner's Form 1120S were \$8,388. Mr. Somers states that this decrease in rent expenses reported on a cash basis is consistent with the claim that \$8,068 was prepaid rent. According to Mr. [REDACTED], had the rent not been prepaid in 1997, it would have been deducted on the 1998 tax return resulting in a more consistent rent expenses from year to year. Mr. [REDACTED] states that the election to pay the rent and claim a current tax deduction was at the discretion of the petitioner. If funds were necessary to pay additional compensation to the beneficiary, rent could have been deferred into 1998.

Mr. [REDACTED] also reviews the officer compensation reported on the corporate tax returns from 1997 to 2001, and as documented on the petitioner's owner's W-2 Forms. Mr. [REDACTED] states that the wages vary from year to year ranging from a low of \$37,8000 to a high of \$99,996. Mr. [REDACTED] states that based on his 18 years of experience in public accounting, officer wages for many small closely held corporation are somewhat discretionary and vary with a company's available cash. Mr. [REDACTED] states that the petitioner conservatively claimed that over \$19,000 of officer compensation for 1997 was optional payments to the shareholder. However, in comparing the 1997 officer compensation to compensation paid in later years, in particular to the year 1999, compensation to the shareholder/officer could have been as low as \$37,900 in 1997 which means in reality, up to \$39,000 could have been available to pay employee wages in 1997, if necessary.

Mr. [REDACTED] notes the AAO determination in its dismissal of the appeal that if the excess wages and prepaid rent were added back to the company loss reported on the tax returns, that the petitioner would only have a profit of \$13,000. Mr. [REDACTED] asserts that the AAO determination does not consider that depreciation of machinery and equipment (\$6,486), which is a non-cash expense, should be added back to determine if cash would be available for additional expenses. Mr. [REDACTED] states that by adding back the petitioner's depreciation, the petitioner's profit for 1997 would increase to approximately \$19,500. In summary, Mr. [REDACTED] states that an additional \$39,000 in officer compensation could have been available to pay the proffered wage, provided the officer compensation in 1997 had been reduced to the 1999 level of \$37,800. Mr. Somers states that an additional \$8,068 could have been added to the December 31, 1997 cash on hand balance of \$2,662, by electing to not prepay the 1998 rent in 1997. Based on these monies that could have

been added to the cash on hand which was \$2,662 on December 31, 1997, a total of \$49,730 in additional funds were available to pay the beneficiary in 1997.

Upon review of the record, the petitioner's 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 in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L that will be considered below in determining the petitioner's net current assets.

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 submitted a 1997 W-2 salary statement for the beneficiary that established the petitioner paid the beneficiary an annual salary of \$28,171.11, which is \$17,027.29 less than the proffered annual wage. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 1997. In addition, the record reflects no further evidence as to the beneficiary's actual wages from 1997 to the present time.¹ Although counsel stated in its appeal of the initial decision, that the beneficiary earned \$52,540 in 2001, or more than the proffered wage, counsel provided no further documentation of this assertion. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has not established that it employed and paid the beneficiary an amount equal or greater than the proffered wage from 1997 and onward.

It is noted that counsel on appeal raised the issue of whether the petitioner is required to pay the proffered wage at the time the petition is filed. As counsel correctly noted, the petitioner is required to pay the proffered wage only when the beneficiary, with an approved visa petition, adjusts her status in the United States or enters the country using an immigrant visa issued on the basis of an approved employment-based petition and labor certification. Nevertheless, the AAO examines what wages, if any, were paid to the beneficiary as of the priority date, as one analytical approach in determining whether the petitioner had the ability to pay the proffered wage as of the priority date. Such an analysis does not imply that the petitioner is required to pay the proffered wage as of the priority date.

¹ Since the record was effectively closed by the director's decision dated June 28, 2002, the documentation to establish more completely the beneficiary's actual wages in the time period in question would consist of the W-2 Forms provided by the petitioner to the beneficiary from 1998 to 2002.

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). Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

The evidence indicates that the petitioner is structured as an S corporation. For an S corporation, CIS considers net income to be the figure shown on line 21, ordinary income, of the IRS Form 1120S. With regard to the petitioner's ordinary income, the record only contains the petitioner's corporate income tax returns for the years 1997 to 1998. According to these documents, the petitioner had net income of -\$14,107, and in 1998, a net income of -\$8,676. These figures are not sufficient to establish that the petitioner could pay the difference between the beneficiary's actual wages and the proffered wages in either 1997 or 1998.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. 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, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Thus, contrary to the petitioner's accountant statements provided on motion, the AAO would not consider adding back the petitioner's 1997 depreciation figures to further augment the petitioner's assets. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.² 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 a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner submitted the following information for tax years 1997 and 1998:

² According 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 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.

	1997	1998
Ordinary Income	\$ -14,107	\$ -8,676
Current Assets	\$ 2,662	\$ 0
Current Liabilities	\$ 1,001	\$ 1,222
Net current assets	\$ 1,661	\$ -1,222

These figures fail to establish the ability of the petitioner to pay the proffered wage. The petitioner has not demonstrated that it paid the full proffered wage to the beneficiary in either 1997 or 1998. In 1997, the petitioner shows a net income of -\$14,107, and net current assets of only \$1,661, and has not, therefore, demonstrated the ability to pay the difference between the wage paid and the proffered wage out of its net income or net current assets. In 1998, the petitioner shows a net income of -\$8,676, and net current assets of -\$1,222, and has not, therefore, demonstrated the ability to pay the difference between the wage paid and the proffered wage out of its net income or net current assets.

With regard to counsel's remarks with regard to adding back the prepaid rent to the petitioner's ordinary income, as commented on by the AAO in its dismissal of the appeal, the petitioner still has not fully document that the rent was prepaid. For example, although counsel on appeal referred to a building owned by the two shareholders with a mortgage and that a building lease apparently set the rent of the building in 1997; however, no such document is found in the record to establish what the monthly rent for the petitioner's business operations was in 1997. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Nevertheless, the petitioner and counsel on appeal and on motion raise the issue of using officer compensation to establish the petitioner's ability to pay the proffered wage. As noted previously, the compensation provided to the owner/shareholder varies from year to year. The AAO acknowledges that it is certainly not an uncommon practice for a petitioner's sole owner/stockholder (or, in certain cases, joint stockholders) to take the corporation's income and compensate themselves with it, thus sheltering it from corporate additional taxation. On motion, the petitioner's owner and shareholder also asserts that part of his compensation could have been used to pay the proffered wage in 1997.

Within the context of *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) and the totality of circumstances of the petitioner's business, the AAO will consider the petitioner's and counsel's remarks with regard to officer compensation being used to pay the difference between the beneficiary's actual wages and the proffered wage. The officer's compensation varies from year to year with the exception of the years 2001 and 2002, with the same high compensation provided to the owner/shareholder. Nevertheless, in the years 1997 to 2000, the officer's compensation appears to be discretionary. On motion, the petitioner's owner and shareholder asserts that if the petitioner were required to pay the beneficiary the proffered wage in 1997, it could have utilized a sizeable amount from the \$76,800 paid to the owner as the petitioner's president. The adjustment of the officer's compensation in 1997 to pay the difference between the beneficiary's actual wages and the proffered wage, namely, \$17,027.29 appears reasonable.

We note here that the compensation received by the company's owner during the seven years documented by either W-2 Forms or federal income tax returns is not a fixed salary. CIS (legacy INS) has long held that it may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. In the present case, however, counsel is not suggesting that CIS examine the personal assets of the petitioner's owner but rather the financial flexibility that the owner has setting his salary based on the profitability of his company. To the extent that the petitioner's officer's compensation varies from year to year, and in only one year is less than the proffered wage, the officer's compensation can be viewed as a discretionary source of additional funds with which to pay the proffered wage.

However, as noted previously, since the record contains no information as to the actual wages paid to the beneficiary from 1998 to 2002, the petitioner cannot establish that it had the ability to pay the difference between the beneficiary's actual wages and the proffered wage out of the officer's compensation from the 1997 priority date to 2002. Also, in considering the totality of circumstances of the petitioner's business, it should be noted that the petitioner has not placed its federal income tax returns for 1999 to 2002 in the record, nor has it provided any specific documentation with regard to increased numbers of employees, and increased profitability and revenues for the years 1999 to 2002. Such factors can also be used to ascertain the overall business viability of the petitioner and also whether the use of officer compensation to pay the difference between the beneficiary's actual wages and the proffered wage from 1998 to 2002 would also be viewed as reasonable. For example, in 1998, total officer compensation was \$51,200, an amount higher than the proffered wage. However, it is not likely that the corporation's officer would forego approximately 90 percent of his annual compensation. Similarly, in 1999, the total amount of officer's compensation, namely, \$37,800, was less than the proffered wage. Without evidence of wages paid to the beneficiary, the petitioner would be unable to demonstrate its ability to pay the difference between the beneficiary's actual wages and the proffered wage in these two years via its officer compensation flexibility.

Without more persuasive evidence, the petitioner has not established that either the petitioner paid the beneficiary the proffered wage, or that the officer's compensation for the years 1998 to 2002 was sufficient to pay the difference between the beneficiary's actual wage and the proffered wage. It is noted that neither the director nor the AAO in its previous review of the petition addressed the issues of the beneficiary's wages from 1998 to 2002. Therefore the director's decision shall be withdrawn, and the matter remanded for further consideration of the wages paid to the beneficiary from 1998 to 2002, and whether the officer's compensation was sufficient to pay the difference between the actual wages and the proffered wage.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issue stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.