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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 21 2005
EAC 03 194 50624

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:

[redacted]

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a residential and industrial floor construction company. It seeks to employ the beneficiary permanently in the United States as a sales manager. 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, which is listed on the ETA 750 as three corporations, 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 and denied the petition accordingly.

On appeal, counsel states that the petitioner does have the ability to pay the proffered wage and submits additional evidence.

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

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 April 20, 2001. The proffered wage as stated on the Form ETA 750 is an hourly salary of $21.12 for a 35-hour workweek, or an annual salary of $38,438.40. On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner.

On the petition, the petitioner claimed to have a gross annual income of $450,000. The petitioner did not indicate the number of its employees on the petition, when it was established, or submit any supporting documentation as to the petitioner's ability to pay the proffered wage.

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 July 23, 2003, the director requested additional evidence pertinent to that ability. The director specifically requested that the petitioner provide additional evidence of its ability to pay the proffered wage of $38,438, by submitting the petitioner's 2000, 2001 and 2002 Federal income tax returns, with all schedules and attachments. The director also requested that the petitioner submit additional documentation with regard to the beneficiary's qualification for the position of sales manager. The director requested that letter from current or former employer or trainer be submitted that included the name, address, and title of the writer and a specific description of the duties performed by the beneficiary or of the training received. If such evidence was shown to be unavailable, the director stated that other documentation would be considered. Finally the director requested that a Form W-3 (Wage Transmittal Statement) for all wages paid to all employees for the tax years 2001 and 2002 be submitted.

In response, counsel submitted IRS Form 1120S for RVK, Inc., for the tax year 2001. This document indicated that the petitioner had an ordinary income of -$675 in 2001. Counsel also submitted a 2001 W-3 Form that indicated RVK, Inc. paid wages of $41,500 in 2001. Counsel also submitted Mellon Bank account statements for the petitioner (identified as RVK, Inc., Langhorne, Pennsylvania) for November and October 2001. With regard to tax year 2002, counsel submitted a Form 1120S for RVK, Inc. that indicated the petitioner had ordinary income of -$16 in 2002. In addition, the petitioner submitted a W-3 statement for RVK, Inc. for 2002 that indicated the petitioner paid $19,002 in wages. The petitioner also submitted Mellon Bank statements for RVK, Inc. for two different bank accounts for May, June, and August 2002. These two accounts are 046-2111, and 846-1998. The petitioner also submitted a bank statement for a third account, 846-2020, for June 2002.

With regard to the other corporations identified on the ETA 750 as businesses the petitioner was doing business as, counsel submitted a 2002 Form 1120S for [redacted] Pennsylvania. This document indicated an ordinary income of $4,020 during 2002. Counsel also submitted bank statements for the second company listed as the petitioner, namely, Barefoot Floors, Inc. for the months May, June, and July 2003. In addition, counsel submitted a bank statement for Software Design Services, Inc, [redacted] Langhorne, Pennsylvania dated June 2002 (account number 266-8515), and a W-3 Form for tax year 2002 that indicated Software Design Services, Inc., paid $23,083 in wages that year.

Counsel also submitted a letter from [redacted] dated October 10, 2003, in which [redacted] identified himself as the petitioner's owner. In this letter [redacted] stated that as of April 20, 2001, he had over $38,438 in his bank account that was available as of April 20, 2001 to pay the beneficiary's salary. Mr. [redacted] stated that by filing his letter, he was assuming personal responsibility for the payment of the beneficiary's salary. Counsel also submitted a letter written by [redacted] Financial Center Manager, Wachovia Bank, Rosemont, Pennsylvania. This letter stated that [redacted] had an account with Wachovia Bank since 2000, and that the available balance in his account as of April 20,2001 was $53,790, and that as of September 9, 2003, the available balance was $60,137.

The final document submitted by counsel is a letter written by [redacted] Managing Director, MSD IDEA, Inc., Kiev, Ukraine. In this letter, [redacted] stated that beneficiary was one of the world's best

researchers in the diagnosis and treatment of systemic scleroderma. stated he became acquainted with the beneficiary through her employment as scientific advisor/sales manager with Merck, Sharp, and Dohme, Eastern Europe. stated that the health care system in Moldova and Ukraine is not privatized, and recommendations of government recognized experts were of utmost importance before any medication might be recommended for nationwide use. described the beneficiary's duties in her position as scientific advisory/sales manager as involving using her expertise and connections in the field to direct sales of pharmaceutical products activities. According to the beneficiary also examined performance requirements, delivery schedules, and estimated costs to ensure completeness and accuracy of orders; negotiated contracts and provided recommendations to potential clients on the selection of company drugs using her expertise in the field, in addition to recruiting, hiring and training sales representatives for the Moldova area. Finally stated that the beneficiary was employed by MSD IDEA, Inc, from May 1, 1996 to May 30,1998.[1]

In his cover letter, counsel stated that despite a net income in 2001 of -$675, the petitioner had over $49,000 invested in 2001 as a loan from shareholders, and this money was available to pay the beneficiary's salary. In addition, counsel stated that the $41,500 paid to the petitioner's officer was also available to pay the beneficiary's salary. Counsel also stated that the RVK Floor Inc. 2001 bank statements indicated that over $17,000 was available monthly on the average which was in excess of the beneficiary's proffered monthly salary of $3,203.16. Therefore, counsel stated the petitioner established its ability to pay the beneficiary's proffered wage as of 2001.

Counsel further stated that in 2002, the petitioner continued doing business as RVK Floor, Inc. and as Barefoot Floors, Inc. Counsel stated that despite having only $4,000 in net income in 2002, the companies still demonstrated their ability to pay the beneficiary's salary of $38,438, annually or $3,203.16 a month. Counsel stated that cash available for both companies at the end of 2002 was $31,500. In addition, counsel stated that the combined officers' compensation of $42,000 was also available to pay the proffered wage.

Counsel stated that in response to the director's request for documentation that the beneficiary had the requisite two years of work experience as a sales manager, it submitted the letter from her previous employer in the Ukraine. On April 21, 2004, the director denied the petition. The director stated the petitioner offered the beneficiary a salary of $885.60, for an annual salary of $46,051.20.[2] The director stated that the ETA 750 listed the three corporations as the petitioner, and stated that the financial assets for all three corporations could not be considered when determining the petitioner's ability to pay the proffered page. The director stated that a corporation is a separate and distinct legal entity from its shareholders, and that any assets of its shareholders or other enterprises or corporation could not be considered in determining the petitioning corporations ability to pay the proffered wage. The director then considered the ability of each corporation listed on the labor certification to individually pay the proffered wage.

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[1] It is noted that the record contains another I-140 petition for an alien of extraordinary ability that has not been adjudicated.

[2] It is not clear how the director determined this weekly salary, or annual salary. The I-140 petition indicates a weekly salary of $739.20, and a 35-hour workweek with an hourly salary of $21.12. These figures result in an annual salary of $38,438.40.

With regard to RVK Floor, Inc. the director stated the 2001 tax return showed a net loss of $675 and current assets of $4,650 over current liabilities, while the 2002 tax return showed a net loss of $16 and current net assets of $6,400. With regard to the bank statements submitted for RVK Floor, Inc, the director stated that the statements did not meet one of two criteria for such evidence. The director described the two criteria as either the petitioner's year-end balances were greater to or equal to the amount of the proffered wage, or the petitioner's monthly bank statement had to increase incrementally with the amount of funds necessary to meet the proffered monthly wage. Finally the director examined the W-3 forms submitted for RVK Floor, Inc for 2001 and 2001. While the director identified the wages paid out by RVK Floor, Inc. during these two years, he mad no further comment as to the weight to give these documents in evaluating RVK Floor Inc.'s ability to pay the proffered wage.

With regard to the second company listed on the ETA 750, namely Barefoot Flooring, Inc, the director stated that the bank statements for May, July, and August did not meet either of the criteria addressed in the director's examination of RVK Floor, Inc.'s bank statements. The director identified the net income and current assets of the company for 2002 as $4,020 and $23,362. Although the director did not specifically determine whether the corporation's net income or net current assets were sufficient to pay the proffered wage of $38,848, he did determine that based on the evidence submitted, Barefoot Flooring, Inc. did not have the ability to pay the proffered wage.

With regard to SDS, Inc., the third company identified as the petitioner on Form ETA 750, the director also determined that the bank statements submitted for this company did not establish its ability to pay the proffered wage. The director also examined the issue of officers' compensation being utilized to pay the beneficiary's salary. The director determined that the compensation of officers represented monies already expended by the corporation and therefore this expense could not be considered to be readily available funds with which to pay the proffered wage. The director also determined that [redacted] statement as to his willingness to pay the proffered wages from his personal assets did not establish the petitioner's ability to pay the proffered wage as the petitioner, as a corporation is a separate and distinct legal entity from its shareholders. The director reiterated that any assts of shareholder or of other enterprises or corporation could not be considered in determining the petitioner's ability to pay the proffered wage.

In addition, the director noted other unresolved issues prompted by the evidence submitted to the record. First, the petitioner noted the petitioner submitted evidence that SDS, Inc. changed its name to Barefoot Floors. The director stated further evidence was needed to establish that SDS, Inc., a software design company, became Barefoot Floors, Inc., a flooring company. In addition, the director noted that [redacted] was listed as 33 per cent owner on RVK Floors, Inc.'s 2001 tax return while R. Klebanov was listed as 100 per cent owner on RVK Inc.'s 2002 tax return. If,aq as the tax returns suggest, RVK Floors, Inc. was sold, the director stated that the petitioner had to explain how the tax returns of RVK Floors Inc. could establish the petitioner's ability to pay. Finally the director stated that the petitioner had two I-140 petitions pending at the Vermont Service Center, and that the evidence submitted to the record did not warrant the approval of either petition.

On appeal, counsel states that the director requested evidence that the petitioner had the ability to pay the proffered salary of $885.60 per week or $46,051.20 annually as of July 22, 2002.[3] Counsel states, that in reference to the financial assets of Barefoot Floors, Inc. the corporation can pay the proffered wage by combining cash available at the end of the year in the amount of $24,173, loans from the shareholders in the amount of $19,242. and retained earnings in the amount of $4,020. Based on this combination of funds, counsel states that at least $51,455 was available in 2002 to pay the proffered salary. Counsel also asserts that documentation from the Pennsylvania Department of State Corporation Bureau was submitted that confirmed Barefoot Floors, Inc is actually doing business as SDS, Inc. Counsel states that SDS Inc. did not file separate tax returns, and that the SDS correspondence for the IRS indicates its FEIN number of 23-2845673 is the same number that appears on Barefoot Floors, Inc.'s 2002 federal corporate income tax return. Counsel also stated that the owner of SDS Inc. assumed personal responsibility to use his personal funds to pay the beneficiary's salary if necessary, and that the owner's bank statement balances indicated that funds greater than the proffered wage were available to pay the wage.

Counsel concludes the brief by stating that the combined available funds of $51,455 in the company assets, and the petitioner's owner's personal assets of over $50,000 from 2002 to 2003, clearly demonstrated the petitioner's ability to pay the proffered wage of $46,051 as of July 28, 2002.

On July 26, 2004, counsel submitted further evidence in support of the petitioner's appeal. Counsel states that the director indicated in his denial that bank statements reflecting end of year balances for the petitioner would be acceptable evidence to reflect ability to pay; however, the director never specifically required such evidence prior to denying the petition. Counsel further states he is submitting bank statements for two checking accounts at Citizens Bank, as well as a listing of credit card payment made to a credit merchant account as of the end of 2002. Counsel states this evidence shows at least $77,500 available to pay the beneficiary's salary, in addition to the funds previously discussed and for which other evidence had already been submitted. Included among the new documentation submitted by counsel is:

> A Citizens Bank statement for a business partners checking I account for Software Design Services, Inc, doing business as Barefoot Flooring, Langhorne, Pennsylvania. This statement is for the month of December 2002 and shows an ending balance of $26,372.
>
> A second Citizens Bank statement for a business partners checking I account for Barefoot Floors, Inc, Langhorne, Pennsylvania. This document indicates an ending balance of $16,519.16
>
> A third document for Barefoot Floors, c/o Ark Zhorov, from Humboldt Bank, Eureka, California, entitled "Merchant Statement, Summary of Deposits." This document indicates that at the end of December 2002, a total of $35,013.81 of deposits were in the account.

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[3] It is not clear how counsel arrived at the hourly salary or annual salary, or whether counsel refers to another petition filed on behalf of the beneficiary. As stated previously, the Form ETA 750 indicated an hourly salary of $21.12, or proffered annual salary of $38,438.40, and the I-140 petition indicated a weekly salary of $739.20. In addition, the priority date for the instant petition is April 20, 2001.

First, contrary to counsel's assertions on appeal, the Form ETA 750 in the instant petition establishes the priority date for the instant petition as April 20, 2001. Therefore, the petitioner has to establish its ability to pay the proffered salary from the 2001 priority date to the present, rather than from July 2002 to the present. Second, counsel's assertion on appeal with regard to the proffered wage, as previously stated, is erroneous. The proffered wage, also established by the Form ETA 750, is an hourly wage of $21.12 for a thirty-five hour workweek, or $38,438.40 annually. Third, contrary to counsel's assertion, and after review of the record, no documentation from the Pennsylvania Department of State Corporation Bureau is found in the record. Although the director stated that evidence was submitted that RVK, Inc changed its name to Barefoot Floors, it is not clear to what evidence the director referred. Based on the employer identification numbers (EIN), Barefoot Floors, Inc and SDS, Inc., the second and third companies listed on the Form ETA 750 as businesses the petitioner was doing business as, appear to be the same company. Their joint EIN is 23-2845673. However, as established by its 2001 Form 1120S and 2001 W-3 Form, RVK Floors, Inc. appears to have a distinct EIN from either Barefoot Floors, Inc., or SDS, Inc. RVK Floors Inc.'s EIN is 23-2825420.

In response to the director's request for further evidence, counsel also raised the issue of officer compensation and how such compensation could be viewed used as available funds to pay the beneficiary. However, compensation of officers is more routinely considered a possible source of additional funds, if the record substantively establishes that the officer who is compensated is the sole officer or the majority shareholder, that varying compensation for officers is discretionary, that the compensation is not provided in lieu of wages, that are not discretionary, and that compensation is substantially greater than the proffered wage. In the instant petition, the RVK Floor Inc. federal income tax return for 2001 indicates three owners who each have a 33 percent interest in the petitioner. These individuals are identified a[redacted]nd R. Klebanov. Although the return shows $41,500 in officer compensation, no other documentation is found that identifies the officers of the corporation and if the documented officer compensation was distributed among all three shareholders. In 2002, RVK Floors, Inc. indicated in its Form 1120S that it paid $19,002 in officer compensation. However, as noted below, the ownership interests in RVK Floors, Inc. changed in 2002, and it is not clear that the 2001 owners such as[redacted]ould declare any officer compensation provided in 2002 as discretionary and available to pay the proffered wage.

The director in his decision suggested that RVK Floors, Inc. had been sold. The director did not state on what evidence he based his comment. However, the Forms 1120S submitted by the petitioner for RVK Floors, Inc. and Barefoot Floors, Inc. indicate a change in the ownership interests o[redacted]n 2001[redacted] had a 33 percent stock ownership in RVK Floors, Inc. In 2002, based on the 2002 federal income tax returns submitted by the petitioner,[redacted]wned 100 percent of RVK Floors, Inc. while Mr. Zhorov owned 100 per cent of Barefoot Floors, Inc. As stated previously, the relationship between RVK Floors, Inc. and Barefoot Floors, Inc. is not clearly established in the record. They presently appear to be two distinct corporations. If RVK Floors Inc., as suggested by the director, was sold, this would raise the questions of whether the new corporation or remaining corporation was a successor-in-interest to the original petitioner, and subject to the regulatory criteria applied to successors-in-interest with regard to the ability to pay the proffered wage. It is also noted that the Department of Labor in its final determination on the ETA 750 addressed the petitioner as SDS, Inc.

With regard to the use of personal assets to pay the proffered wage, the director noted that these funds would not be available to pay the proffered wage. The director's comment is well founded. While a sole proprietorship business structure does allow for the use of the owner's assets to pay the expenses of the business, that could include wages, the S corporation structure of the petitioner in the instant petition does not allow for such an action. Contrary to counsel's assertion, Citizenship and Immigration Services (CIS) 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 its response to the director's request for further evidence, counsel recommends the use of retained earnings to pay the proffered wage. Retained earnings are the total of a company's net earnings since its inception, minus any payments to its stockholders. That is, this year's retained earnings are last year's retained earnings plus this year's net income. Adding retained earnings to net income and/or net current assets is therefore duplicative. Therefore, CIS looks at each particular year's net income, rather than the cumulative total of the previous years' net incomes represented by the line item of retained earnings.

Further, even if considered separately from net income and net current assets, retained earnings might not be included appropriately in the calculation of the petitioner's continuing ability to pay the proffered wage because retained earnings do not necessarily represent funds available for use. Retained earnings can be either appropriated or unappropriated. Appropriated retained earnings are set aside for specific uses, such as reinvestment or asset acquisition, and as such, are not available for shareholder dividends or other uses. Unappropriated retained earnings may represent cash or non-cash and current or non-current assets. The record does not demonstrate that the petitioner's retained earnings are unappropriated and are cash or current assets that would be available to pay the proffered wage.

Counsel also stated that a loan from the shareholders be considered as available additional funds to pay the beneficiary's wage; however, as will be shown further in these proceedings, loans from shareholders are not considered as part of the petitioner's net income, after expenses are paid, and, in fact, are identified as long term rather than current liabilities on Schedule L of the Form 1120S. As a long-term liability, such loans would not be considered when calculating the petitioner's net current assets.

Finally, counsel'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. For example, counsel submitted some bank statements from 2001 for RVK Floors, Inc. and other statements from other months in 2002. Counsel also submitted bank statements for specific months in 2003 for Barefoot Floors, Inc., another corporation under which the petitioner claims to be doing business. None of these statements provide further evidence of the petitioner's sustainable ability to pay the proffered wage. They only provide information on ending balances for several months. 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 would be considered in determining the petitioner's net current assets.

Upon review of the record, without more persuasive evidence, at the time of filing, the petitioner appears to be RVK, Inc. For purposes of examining the petitioner's net income and net current assets, the AAO will only consider the federal income tax returns of RVK, Inc., in these proceedings.

In determining the petitioner's ability to pay the proffered wage during a given period, Citizenship and Immigration Services (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. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 2001 and onward.

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. The petitioner's tax return for 2001 and 2002 shows the following amounts of ordinary income: -$675, and -$16. Neither sum establishes the ability of the petitioner to pay the proffered wage.

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. 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.[4] 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 2001 and 2002:

	2001	2002
Ordinary Income	$ -675	$ -16
Current Assets	$ 5,036	$ 6,400
Current Liabilities	$ 386	$ 0
Net current assets	$ 4,650	$ 6,400

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 2001, the petitioner shows a net income of -$675, and net current assets of $4,650, and has not, therefore, demonstrated the ability to pay the proffered wage of $38,438.40 out of its net income or net current assets. The petitioner has not demonstrated that it paid the full proffered wage to the beneficiary. In 2002, the petitioner shows a net income of -$16, and net current assets of $6,400, and has not, therefore, demonstrated the ability to pay the proffered wage of $38,438.40 out of its net income or net current assets. As noted previously, the assets of the shareholders, loans from shareholders, retained earnings, bank balances for any of the three corporations named on the Form ETA 750, assets of other corporations, or the personal assets of an individual who as of 2002 has no ownership interest in the petitioner, are not viewed as corporate assets. Therefore, the petitioner has not demonstrated that any other funds were available to pay the proffered wage. The petitioner has not, therefore, shown the ability to pay the proffered wage during the salient portion of 2001 and continuing to the present date.

Beyond the decision of the director, the petitioner has not established that the beneficiary has the requisite two years of sales management for a flooring company. In response to the director's request for further evidence with regard to the beneficiary's work experience as a sales manager, the petitioner submitted a letter from the managing director of MSD IDEA, Inc, in Kiev, Ukraine. Although this letter establishes the beneficiary's abilities to use her scientific expertise in rheumatology to promote various pharmaceutical products, the record is not clear as to the relationship between her previous job duties with MSD IDEA in the Ukraine, and her proposed sales manager job in the residential and commercial flooring field. Without more persuasive evidence, the petitioner has not established that the beneficiary's two years of work experience in pharmaceutical sales is analogous to the two years of work experience as sales manager in the flooring business. 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.*

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[4] 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.

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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.