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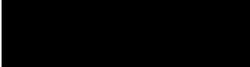
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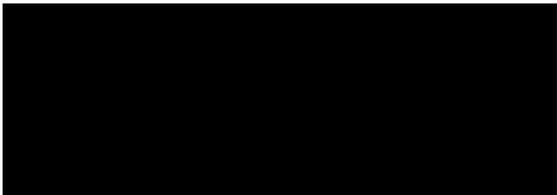
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the District Director, Portland, Oregon local office, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a donut and coffee shop. It seeks to employ the beneficiary permanently in the United States as a doughnut baker (or doughnut maker). The petition was filed for classification of the beneficiary under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act) as a skilled worker. As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

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

The petitioner's Form ETA 750 was filed with DOL on April 18, 2001, the priority date of this petition, and certified on February 1, 2003. The petitioner subsequently filed Form I-140 with Citizenship and Immigration Services (CIS) on March 7, 2003. The director of the Nebraska Service Center issued a request for evidence on April 11, 2003 concerning, *inter alia*, the beneficiary's qualifications for the proffered position. The petitioner submitted an employment experience letter.

The petition was denied because of inaccuracies in represented information concerning the beneficiary's employment history in interviews and on the Form ETA 750B, and because of the beneficiary's admission in 1974 that he paid a U.S. citizen to marry him to "get residency in the United States" that resulted in the application of the marriage fraud bar under section 204(c) of the Act.

On appeal, counsel states that because the beneficiary's fraudulent marriage occurred in 1974, a date preceding the enactment of the marriage fraud bar provisions of the Act, his conduct is excluded from application of 204(c) of the Act. Additionally, counsel states that the beneficiary failed to submit an accurate employment experience letter previously and submits an amended version on appeal.

The first issue to be discussed in this case is whether or not 204(c) of the Act applies to the instant case. Section 204 of the Act governs the procedures for granting immigrant status. Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)¹ no petition shall be approved if

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [director] to have been entered into for the purpose of evading the immigration laws or
- (2) the [director] has determined that the alien has attempted or conspired to enter into a

¹ Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

marriage for the purpose of evading the immigration laws.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). In *Tawfik*, the Board held that visa revocation pursuant to section 204(c) may only be sustained if there is substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. See also *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

Tawfik at 167 states the following, in pertinent part:

Section 204(c) of the Act . . . prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Accordingly, the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy. As a basis for the denial it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative.

(citing *Matter of Kahy*, Interim Decision 3086 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972); and 8 C.F.R. § 204.1(a)(2)(iv) (1989)). *Tawfik* states that the revocation decision may be made at any time and is properly determined by the district director in the course of his adjudication of the subsequent visa petition. *Id.* at 168 (citing *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974)).

Tawfik states that "in order to find that an alien has attempted to enter into a marriage for the purpose of evading the immigration laws, the evidence of such an attempt must be documented in the alien's file." In the instant case, the AAO concurs with the district director that there is substantial and probative evidence in the record of proceeding to support a reasonable inference that the beneficiary's prior marriage was entered into for the purpose of evading immigration laws. Counsel and the petitioner do not dispute that the beneficiary's prior marriage was entered into to evade immigration laws².

Counsel claims that the application of section 204(c) of the Act is erroneous because the beneficiary admitted to doing so prior to the establishment of section 204(c) of the Act. Counsel cites to a case, *Amarante v. Rosenberg*, 326 F.2d 58 (9th Cir. 1964), that involved revoking an approved petition; however, in this case, no approval was ever issued and that case is thus not dispositive of the issue. Counsel has cited no other relevant and applicable legal authority to support his premise that section 204(c) is not retroactive. Counsel is incorrect. The marriage

² A transcribed interview of the beneficiary held on July 3, 1974 contains the beneficiary's admission that he paid \$1,050 to [REDACTED] for a fraudulent marriage entered into so that he could, in his own words "get residency in the United States." Tr. at 6-7. The district director properly discussed the sworn statement in his decision.

fraud bar applies to all petitions filed after November 10, 1986; however, the bar may be based upon fraud occurring before that date. *See Ramilo v. DOJ*, 13 F.Supp.2d 1055, 1058 (D.Hawaii 1998)³.

Additionally, the pertinent amendment to section 204(c) of the Act included the following:

SEC. 4. RESTRICTIONS ON FUTURE ENTRY OF ALIENS INVOLVED WITH MARRIAGE FRAUD.

- (a) IN GENERAL. -- Section 204(c) of the Immigration and Nationality Act (8 U.S.C. 1154(c)) is amended -- (1) by inserting "(1)" after "if", (2) by inserting ", or has sought to be accorded," after "previously been accorded", and (3) by inserting before the period at the end the following: ", or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws".
- (b) EFFECTIVE DATE. -- The amendment made by subsection (a) "8 USC 1154 note" shall apply to petitions filed on or after the date of the enactment of this Act.

Pub. L. No. 99-639, 100 Stat. 3537, __ (1986).

In *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988), the Board held that despite the marriage fraud conduct occurring prior to the amendment of section 204(c), the section still applied since the petition for immigrant benefits was filed after the date of the amended section and its effective date. Thus, the plain meaning of the amended text and interpretive precedent clearly indicates that the application of 204(c)'s bar concerns the filing date of the petition not the date the marriage fraud conduct occurred. The beneficiary applied for this petition after 1986 when the Act was amended. Thus, section 204(c) of the Act applies to the instant case and the petition was correctly denied under subsection (2) of the provision since the beneficiary admitted to conspiring to marry a U.S. citizen to obtain immigration benefits.

Therefore, an independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. There is ample evidence that the beneficiary attempted to evade the immigration laws by marrying [REDACTED] and that attempt is documented in the alien's file. Thus, the director's determination that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by CIS to have been entered into for the purpose of evading the immigration laws is affirmed.

The second issue to be discussed in this case is whether or not the beneficiary is qualified to perform the duties of the proffered position. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is April 18, 2001. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's

³ Applicable to both employment-based and family-based petitions. *See Oddo v. Reno*, 17 F.Supp.2d 529 (E.D. Va. 1998)(upholding I-140 revocation).

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).

The regulation at 8 C.F.R. § 204.5(I)(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.

In the instant case, 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 doughnut baker or doughnut maker. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	Blank
	High School	Blank
	College	Blank
	College Degree Required	Blank
	Major Field of Study	Blank

The applicant must also have six months of experience in order to perform the job duties listed in Item 13 of the Form ETA 750 A, which will not be restated in this decision since it is incorporated into the record of proceeding.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 9, 2001 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he worked for Ashraf & Sons Bakery in Karachi, Pakistan from June 1997 to December 1999 as a baker.

The record of proceeding contains a letter, dated January 1, 1999, on Ashraf & Sons Bakery letterhead signed by its "Managing Director," without identifying that individual, and certifying that the beneficiary worked for them from June 1997 to December 1998 as a baker.

In his decision, the district director stated the following, in pertinent part:

On March 24, 2004, agents of Immigration and Customs Enforcement [(ICE)] interviewed the beneficiary at his home. During the interview, the beneficiary admitted to working at the petitioner's business as a server/cashier, receiving a cash salary and not employed as a doughnut maker as specified on the petition. The beneficiary also admitted that the Form ETA-750 incorrectly reflects that he has over two years' work experience in the bakery business working for Ashraf and Sons Bakery. He stated that he actually worked for Ashraf and Sons Bakery from June 1997 to December 1998. Based upon the preceding information, the beneficiary clearly is not employed in the occupation specified on the labor certification.

Furthermore, it is clearly established that the employment history listed on the Form ETA-750 is inaccurate.

Counsel claims on appeal that the beneficiary failed to list his entire employment history and so for “[our] convenience,” he submits another letter from the beneficiary’s employer on appeal. That letter is on Bakery letterhead located in Karachi, Pakistan and is signed by _____, Managing Director, and states that the beneficiary worked as a doughnut and pastry maker from March 1995 to May 1997.

This new letter lacks credibility. ICE’s Fraud Division Unit (FDU) has already conducted an investigation and determined that the beneficiary committed fraud in his representations of past employment for the primary qualifying employment experience he listed on the Form ETA 750 Part B. Counsel did not even address that ground for denial in the district director’s decision that could lead to a summary dismissal in this case⁴. The silence could be construed as a concession. However, considering the totality of circumstances in this case, the prevalence of fraudulent conduct, and the lack of a credible reason and explanation for the omission of other pertinent employment experience on the Form ETA 750 Part B, the new letter submitted this late in these proceedings cannot be accepted⁵. It is noted that the instructions on Part 15 of Form ETA 750 Part B state the following: “List all jobs held during the last three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.” Thus, the beneficiary was directed to list all relevant work experience that applied to his qualifications for the proffered position. *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. at 591-592 also 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.” Additionally, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

⁴ As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

⁵ It is noted that the director requested evidence of the beneficiary’s qualifications earlier in these proceedings. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director’s request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

Thus, the AAO affirms the district director's determination that the beneficiary is permanently barred from seeking eligibility as an immigrant based on the application of section 204(c) of the Act and is not qualified to perform the duties of the proffered position.

Beyond the decision of the director, there are other reasons why the petition would not be approved not mentioned by the district director⁶. The regulation 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, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. See 8 C.F.R. § 204.5(d). As noted above, the priority date in this case is April 18, 2001. The proffered wage as stated on the Form ETA 750 is \$13.33 per hour (\$27,726.40 per year). The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1993 and to currently employ three workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. As noted above, on the Form ETA 750B, signed by the beneficiary on April 9, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). See also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

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. In the instant

⁶ 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).

case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2001 or subsequently⁷.

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). Reliance on the petitioner's gross receipts and wage expense is misplaced. 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 court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of \$27,726.40 per year from the priority date:

- In 2001, the Form 1120S stated net income⁸ of \$18,074.

Therefore, in 2001, the petitioner did not have sufficient net income to pay the 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, including real property that counsel asserts should be considered. 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.

⁷ The district director noted in his decision that the beneficiary admitted to working for the petitioner for cash but provided no evidence of those cash payments.

⁸ Ordinary income (loss) from trade or business activities as reported on Line 21.

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.⁹ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 2001 were \$18,765.

Therefore, in 2001, the petitioner did not have sufficient net current assets to pay the proffered wage.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets. Although the record of proceeding was completed on April 28, 2003, the petitioner submitted no additional regulatory-prescribed evidence of its continuing ability to pay the proffered wage in 2002 despite the regulatory provision's clear requirement that it do so. *See* 8 C.F.R. § 204.5(g)(2). The record of proceeding contains an unaudited profit and loss statement for December 31, 2002. However, the regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. Therefore, the petitioner has also failed to demonstrate its continuing ability to pay the proffered wage beginning on the priority date.

Finally, it is questionable whether the petitioning entity is still in business or intends to continue its business. The ICE memorandum contained in the record of proceeding states the following: "According to a [redacted] article in the March 31, 2004 Metro Section of the Sunday Oregonian, [the petitioner's] business is set to be dissolved (in an interview on March 25, 2004, [the beneficiary] verified this)." It is noted that the Form G-28, Notice of Entry of Appearance as Attorney or Representative, is signed by a "Former Officer, [redacted] Additionally, according to the fraud investigation undertaken by ICE's FDU [redacted] is the nephew of [redacted] the beneficiary's wife. Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). If the petitioning entity is no longer in business and if the petitioner's owner or officer is related to the beneficiary, then there is neither a realistic nor a *bona fide* job offer.

⁹According 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.

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.