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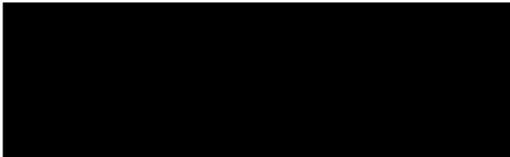
Office: TEXAS SERVICE CENTER

Date: DEC 17 2007

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (“director”), denied the immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be dismissed.

The petitioner is a health club and seeks to employ the beneficiary permanently in the United States in maintenance repair, industrial (“Maintenance & Cleaner”). As required by statute, the petition was filed with Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL). As set forth in the October 10, 2006 decision, the director denied the case on the basis that the petitioner had not established its ability to pay the beneficiary the proffered wage from the priority date continuing until the beneficiary obtains lawful permanent residence.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).<sup>1</sup>

The record shows that the appeal is properly and timely filed, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a skilled worker. 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 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 DOL. *See* 8 CFR § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

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

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on April 5, 2001. The proffered wage as stated on the Form ETA 750 is \$18.98 per hour,<sup>2</sup> 40 hours per week, for an annual salary of \$39,478.40 per year. The labor certification was approved on March 25, 2005, and the petitioner filed the I-140 on the beneficiary's behalf on May 10, 2006. On the I-140, the petitioner listed the following information: date established: 1997; gross annual income: "see attached;" net annual income: "see attached;" and current number of employees: 35.

On June 15, 2006, the director issued a Request for Evidence ("RFE") for the petitioner to provide additional evidence related to the petitioner's ability to pay from April 2001 to the present. Specifically, the RFE requested that the petitioner provide the following for the years 2002, 2003, 2004, and 2005: copies of the petitioner's federal tax returns and all schedules; copies of annual reports; or audited financial statements, as well as to submit W-2 Forms for the petitioner's employees during that time frame. Additionally, the RFE requested that the petitioner provide a copy of Form 941, Quarterly Tax Report for each quarter of 2006; additional evidence of the petitioner's ability to pay, including the petitioner's bank statements for the last six months; and to submit copies of the beneficiary's W-2 forms for 2001, 2002, 2003, 2004, and 2005. The petitioner responded. On October 10, 2006, the director denied the case based on the petitioner's inability to demonstrate that it could pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. The petitioner appealed to the AAO.

We will examine information contained in the record and then consider the petitioner's additional arguments on appeal. The petitioner must establish that its job offer to the beneficiary is a realistic one. 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, Citizenship and Immigration Services ("CIS") requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages.

First, in determining the petitioner's ability to pay the proffered wage during a given period, CIS will 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 case at hand, on Form ETA 750B, signed by the beneficiary on April 26, 2004, the beneficiary listed that he has been employed with the petitioner from March 1997 to the present (date of signature, April 26, 2004).

In response to the RFE, the petitioner provided that it did not issue the beneficiary a Form W-2 since the beneficiary did not have a social security number. On appeal, the petitioner provided copies of Form 1099 reflecting payments to the beneficiary in the amounts of: \$14,450 in 2001; and \$23,510 in 2002. We note that while the RFE specifically requested Forms W-2, the petitioner was on notice to submit evidence of the petitioner's prior payments to the beneficiary. 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 Obaighbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted

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<sup>2</sup> The petitioner initially listed an hourly rate of \$8.00 per hour. DOL required that the petitioner amend the wage to \$18.98 per hour prior to certification of the ETA 750.

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.<sup>3</sup>

As the petitioner did not submit evidence of wage payment in response to the RFE, the documentation will not be considered on appeal. Further, even if we were to consider such evidence, the amounts paid would reflect only partial payments in the years 2001 and 2002. The petitioner provided no evidence in the years 2003, 2004, or 2005. Accordingly, the petitioner cannot demonstrate that it can pay the beneficiary the proffered wage based on prior wage payment.

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. 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).

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 petitioner is formed and operates as a limited liability company (LLC). Although structured and taxed as a partnership, the owners of an LLC enjoy limited liability similar to corporation owners. An LLC, like a corporation, is a legal entity separate and distinct from its owners. The company's debts and obligations are generally not the owner's debts and obligations.<sup>4</sup> An investor's liability is limited to his or her initial investment. As the owners and others only are liable to his or her initial investment, the owners' individual total income and assets cannot be utilized to demonstrate the petitioner's ability to pay the proffered wage. The petitioner must show the ability to pay the proffered wage out of the petitioning company's funds.<sup>5</sup>

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<sup>3</sup> Further, we note that the Forms 1099 are handwritten, while Forms W-2 that the petitioner submitted on appeal to document wages to other employees are type printed. The petitioner did not provide any evidence to show that the beneficiary filed individual federal tax returns and declared the amounts listed on the handwritten Forms 1099.

<sup>4</sup> This general rule might be altered in some cases by contract or otherwise, however, no evidence appears in the record to indicate that the general rule would not apply in the instant case.

<sup>5</sup> In contrast, a sole proprietor is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can pay existing business expenses, and pay the proffered wage out of their adjusted gross income or other available funds, as well as show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

Where a LLC's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 22 of page one of the petitioner's Form 1065. The instructions on the Form 1065 U.S. Income Tax Return of Partnership Income state on page one, "Caution: Include only trade or business income and expenses on lines 1a through 22 below." The petitioner's Form 1065 tax return for 2002 shows that the petitioner's income in 2002 was not exclusively from a trade or business. Where a LLC has income from sources other than from a trade or business, net income is found on Schedule K, Form 1065, page 4, Analysis of Net Income (Loss), line 1. In the case at hand, the petitioner's Form 1065, line 22, reflects the following:

| <u>Tax year</u> | <u>Net income or (loss)</u> |
|-----------------|-----------------------------|
| 2005            | \$323,389                   |
| 2004            | -\$151,904                  |
| 2003            | \$21,696                    |
| 2002            | -\$55,879                   |
| 2001            | -\$157,293                  |

Based on the petitioner's net income, it would be able to pay the proffered wage in 2005, but not in any other year.

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are a LLC taxpayer's current assets less its current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A LLC's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 15(d) through 17(d). If a LLC's 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 net current assets would be converted to cash as the proffered wage becomes due. Thus, the difference between current assets and current liabilities is the net current assets figure, which if greater than the proffered wage, evidences the petitioner's ability to pay.

| <u>Tax year</u> | <u>Net current assets</u> |
|-----------------|---------------------------|
| 2005            | -\$92,178                 |
| 2004            | -\$182,503                |
| 2003            | -\$129,670                |
| 2002            | -\$194,904                |
| 2001            | -\$92,178                 |

The petitioner would not be able to demonstrate its ability to pay the beneficiary the proffered wage based on its net current assets either.

The petitioner also requested that CIS consider depreciation claimed on its tax returns. Depreciation as a tax concept is a measure of the decline in the value of a business asset over time. See Internal Revenue Service, *Instructions for Form 4562, Depreciation and Amortization (Including Information on Listed Property)* (2004), at 1-2, available at <http://www.irs.gov/pub/irs-pdf/i4562.pdf>. Therefore, depreciation is a real cost of doing business.

The depreciation argument has previously been addressed by courts, and dismissed this argument accordingly. The court in *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989) 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.

Therefore, the AAO is not persuaded that the petitioner's depreciation can show its ability to pay the proffered wage.

The petitioner also provided a letter in response to the RFE that the tax returns contain "deferred income" as part of its "other current liabilities." Specifically, the petitioner provides that:

"Deferred income" is comprised of advanced payments made by our members for membership services not yet provided. Deferred income is not an outlay of cash that we have made. It is a stream of payment made to us by our members in advance. If we take this into consideration, our current assets are greater than current liabilities.

If expenses or income are recognized in a given year, the petitioner may not shift those expenses or income to some other year in an effort to show its ability to pay the proffered wage pursuant to some hybrid of accrual and cash accounting. The amounts shown on the petitioner's tax returns shall be considered as they were submitted to IRS, not pursuant to any theoretical adjustment. The tax returns as reviewed above do not demonstrate the petitioner's ability to pay the proffered wage.

The petitioner additionally provided compiled financial statements for the years ending December 31, 2003, and 2004. First, we note that the statement provided is unaudited. 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. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. The petitioner has not provided any accountant's report to show that the statement was produced pursuant to an audit, rather than a compilation. Financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The petitioner provided bank statements for the time period January 31, 2003 to May 31, 2005.<sup>6</sup> The statements submitted show significant variation in the amount that the petitioner had in its account from a low balance of \$77,652.46 (as of September 30, 2003) to a high balance of \$336,144.14 (as of December 31, 2004).

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<sup>6</sup> The petitioner also submitted bank statements for "[REDACTED]" an entity listed as a partner on the petitioner's Form 1065, Schedule K. It is unclear whether the Double K bank statements represent funds beyond those listed on the tax returns.

First, we note that bank statements are not among the three types of evidence listed in 8 C.F.R. § 204.5(g)(2) as required to establish a petitioner's ability to pay a proffered wage. This regulation allows for consideration of additional material such as bank accounts "in appropriate cases." Further, the petitioner's cash assets listed on Schedule L have already been considered in calculating the petitioner's net current assets above. The petitioner has not established that the bank balances represent funds in addition to cash assets, and, therefore, the bank statements would not demonstrate the petitioner's ability to pay the proffered wage. Further, as a fundamental point, the petitioner's tax returns are a better reflection of the company's financial picture, since tax returns address the question of liabilities. Bank statements do not reflect whether the petitioner has any outstanding liabilities.

On appeal, the petitioner provides that it can pay the proffered wage. Counsel asserts that CIS erred in its determination and alleges that CIS relied solely on the petitioner's net current assets to make this determination. Counsel cites to the May 4, 2004 William R. Yates, Associate Director for Operations, Determination of Ability to Pay under 8 CFR 204.5(g)(2), Memo (May 4 Yates Memo). The May 4 Yates Memo provides that CIS should examine the petitioner's: (1) net income; (2) net current assets; or (3) the petitioner's employment of the beneficiary.<sup>7</sup>

We have considered all three points above. The petitioner's net income is insufficient to document the ability to pay for four of five years examined; the petitioner had substantial negative net current assets; and the petitioner's evidence to document prior wage payments to the beneficiary is insufficient to show its ability to pay for the entire time period in question.

Counsel then outlines the petitioner's ability to pay on a year-by-year basis. For the year 2001, counsel asserts that the petitioner only needs to demonstrate the ability to pay the prorated proffered wage of \$29,203.20 for 2001 as the petition was filed on April 5, 2001.

While CIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

Counsel then asserts that the petitioner paid the beneficiary for work performed in 2001 in the amount of \$14,450, documented by payment to the beneficiary on Form 1099.

As noted above, the RFE requested that the petitioner provide evidence in prior wage payment, or W-2 Forms. The petitioner did not submit this evidence in response to the RFE. *See Matter of Soriano*, 19 I&N Dec. at 764. Further, even if these wages were added to the petitioner's net income or net current assets in 2001, the amount paid to the beneficiary in combination, or alone, would be insufficient to establish the petitioner's ability to pay the proffered wage in this year.

Next, counsel asserts that the beneficiary will "take over the duties" of two employees that the petitioner previously employed who worked in the same occupation as the beneficiary. Counsel provides that the two

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<sup>7</sup> A review of the director's decision shows that the director discussed all aspects cited in the May 4 Yates Memo, and did not rely solely on the petitioner's net current assets as counsel asserts. The director's decision addressed prior wages paid to the beneficiary, which the petitioner failed to document; the petitioner's net income; as well as the petitioner's net current assets. The director further discusses the petitioner's bank statements submitted.

part-time employees earned wages of \$26,155. The petitioner submitted Forms 1099 to document these wages.

In general, wages already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. If the beneficiary were to be considered as a replacement for these workers, then the petitioner has not documented the termination of the workers who performed the duties of the proffered position. Moreover, there is no evidence that the positions of the terminated workers involved the same duties as those set forth in the Form ETA 750. The petitioner has not documented the position, duty, and termination of the worker who performed the duties of the proffered position. If that employee performed other kinds of work, then the beneficiary could not have replaced him or her. The record only contains counsel's statement that the beneficiary will replace those workers. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Additionally, the beneficiary's Form ETA 750B indicates that he has been employed with the petitioner since March 1997, and is already performing duties as a "maintenance superintendent." As he is already employed by the petitioner, the beneficiary would not be joining the petitioner's employment and replacing other workers.

Further, counsel asserts that based on *Matter of X*, WAC-980071-53033 (AAU June 30, 1999), and based on *Matter of X*, 2002 WL 32082473 (AAO June 3, 2002), that the petitioner can pay the proffered wage through a combination of depreciation and cash on hand.

While 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS), formerly the Service or INS, are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The cases that counsel cites to are not precedent. Further, we have considered both depreciation, and the petitioner's bank statements above.

Counsel further contends that CIS ignored the petitioner's cash funds available, as well as the cash listed on the petitioner's year-end tax returns.

We have addressed this issue above. Cash reported on the petitioner's tax returns would be considered under the petitioner's net current assets. Further, the petitioner did not provide any evidence to show that the funds available through its bank account represented funds in addition to those listed on Schedule L of its tax return.

For the year 2002, counsel provides that it paid the beneficiary \$23,510. Further, counsel provides that two different part-time workers wages should be considered as available to pay the beneficiary's wage. Next, counsel similarly contends that CIS should consider depreciation, which we have addressed above. In a similar fashion, for 2003, the petitioner provides that the beneficiary will replace three separate workers, and that those wages would be available to pay the beneficiary. Further, counsel provides that the petitioner can pay through the combination of depreciation and cash on hand.

Similar to above, the petitioner has not documented the termination of the workers who performed the duties of the proffered position. 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)).

Further, the wages paid to the other two workers identified in 2002, as documented by the Forms 1099 provided, only totaled \$4,204, and would not demonstrate the petitioner's ability to pay the proffered wage, even if combined with the beneficiary's Form 1099 wages. In 2003, counsel asserted that the beneficiary would replace three workers, but submitted only one Form 1099, which exhibited wages to one worker of \$4,625. Similarly, these wages would be insufficient to pay the proffered wage.

As noted above, the beneficiary was already employed by the petitioner. Based on counsel's assertion, the beneficiary would be replacing two workers in 2001, two additional workers in 2002, and three additional workers in 2003, and, therefore, would be replacing a total of seven additional workers, in addition to carrying out his own job duties. We find this scenario highly unlikely. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In 2004, the petitioner asserts that the director failed to take into account the petitioner's cash available listed on its bank statements, as well as to consider the petitioner's depreciation.

We have addressed all of these points above.

Counsel concludes that the director failed to adequately consider the petitioner's bank statements in determining its ability to pay. We have considered the petitioner's bank statements above. The petitioner has failed to show that the cash listed on its bank statements represents funds beyond what is listed on its Form 1065 Schedule L.

Based on the foregoing, the petitioner has failed to demonstrate its ability to pay the proffered wage. 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.