U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: **JUN 05 2007**
SRC 05 120 51356

IN RE: Petitioner:
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.

Kevin S. Poulos for

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is an automobile parking garage. It seeks to employ the beneficiary permanently in the United States as a manager, automobile parking lot. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. Therefore, the director denied the petition accordingly.

The record shows that the appeal is properly filed, timely 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.

As set forth in the director's denial dated August 24, 2005, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, 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). 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).

Here, the Form ETA 750 was accepted on January 14, 1998.[1] The proffered wage as stated on the Form ETA 750 is $450.00 per week ($23,400.00 per year). The Form ETA 750 states that the position requires two years of experience in the proffered position.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See 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 AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

Relevant evidence in the record includes copies of the following documents: an explanatory letter from counsel dated March 16, 2005; a Westlaw publication relating to employee leasing companies in the context of H-1B nonimmigrant classification along with exhibits; the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; a Citizenship and Immigration Services (CIS) Interoffice Memorandum (HQOPRD 90/16.45) dated May 4, 2004; a letter from the petitioner dated March 9, 2005; U.S. Internal Revenue Service Form 1120 tax returns for 1998, 1999, 2000, 2001, and 2002; the beneficiary's W-2 Wage and Tax statements for 1998 through 2004; and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

Because the director determined the evidence submitted with the petition was insufficient to demonstrate, *inter alia*, the petitioner's continuing ability to pay the proffered wage beginning on the priority date, consistent with 8 C.F.R. § 204.5(g)(2), the director requested on May 21, 2005, pertinent evidence of the petitioner's ability to pay the proffered wage beginning on the priority date.

The director requested evidence in the form of copies of annual reports, and, U.S. federal tax returns transcripts for the period 1998 through 2004.

The director also requested the contracts that the petitioner had undertaken to "lease" employees from 1998 through 2004, and, also requested that the petitioner explain the relationship between U.S. Parking Consultants and US Parking Ltd.

In response counsel submitted copies of the following documents: an explanatory letter dated August 10, 2005; an IRS Form 4506; a letter from the petitioner dated August 10, 2005; three pages from an Internet website for a service named Paychex as accessed August 11, 2005; a letter and statement for the period July 18, 2005 to July 31, 2005 from Paychex to U.S. Parking Consultants Inc. concerning its payroll totals and tax deposits; a letter from Presidion Solutions of Jupiter, Florida, dated August 12, 2005; two webpage print-outs providing corporate information about Sunshine Staff Leasing, Inc. and Sunshine Companies Inc., IV, both of Hollywood, Florida, as accessed August 11, 2005; a letter from Gevity of Bradenton, Florida dated August 12, 2005; three webpage print-outs providing corporate information about Gevity HR III, L.P. and Sunshine Companies Inc., IV, both of Hollywood, Florida, as accessed August 11, 2005; a letter from U.S. Parking

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[1] It has been approximately nine years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

[2] The submission of additional evidence on appeal is allowed by the instructions to the CIS 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).

dated August 10, 2005; three webpage print-outs providing corporate information about U.S. Parking Consultants Inc. of Coral Gables, Florida, as accessed July 11, 2005; a CIS Interoffice Memorandum (HQOPRD 90/16.45) dated May 4, 2004; and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1987 and to currently employ 200 workers. According to the tax returns in the record, the petitioner's fiscal year is not based on a calendar year but rather it begins each year on December 1st and ends on November 31st. On the Form ETA 750B, signed by the beneficiary on January 13, 1998, the beneficiary claimed to have worked for the petitioner from May 5, 1993 to present (i.e. January 13, 1998).

On appeal, counsel asserts that the director failed to consider uncertified tax returns; the director failed to consider wages paid by "a payroll service;" and, the director failed to consider wages paid to the beneficiary by U.S. Parking Consultants Inc., an affiliate of the petitioner.

Counsel also asserts that there were irregularities in documentation attached to the Notice of Denial, and the notice of denial is "missing pages." In regard to this assertion, the heading on page two and three of the director's decision is for another case, otherwise the decision is internally whole and consistent without "missing pages." Counsel has not further explained his allegation. We find that the decision does not have missing pages.

Accompanying the appeal, counsel submits a legal brief and additional evidence that includes copies of the following documents: counsel's cover letters dated September 22, 2005 and November 15, 2005; the director's decision dated August 24, 2005; IRS tax transcripts for 2000, 2001 and 2002 (the transcripts for years 1998 to 2000 were stated in the IRS transmittal to be unavailable in its records); a letter from the petitioner's accountant dated November 15, 2005; the petitioner's U.S. federal tax returns Form 1120 for 1998, 1999, 2000, 2001, 2002, 2003; the U.S. federal tax return Form 1120 for U.S. Parking Consultants Inc. for 2004; seven IRS Form 4506 requests for a copy of tax return; letters from the petitioner dated August 10 and August 12, 2005; three webpage print-outs providing corporate information about U.S. Parking Consultants Inc., and U.S. Parking Limited Inc. both of Coral Gables, Florida as accessed July 11, 2005; three pages from an Internet website for Paychex accessed August 11, 2005; a letter and statement for the period July 18, 2005 to July 31, 2005 from Paychex to U.S. Parking Consultants Inc. concerning its payroll totals and tax deposits; a letter from Presidion Solutions of Jupiter, Florida, dated August 12, 2005; two webpage print-outs providing corporate information about Sunshine Staff Leasing, Inc. and Sunshine Companies Inc., IV, both of Hollywood, Florida, as accessed August 11, 2005; a letter from Gevity of Bradenton, Florida dated August 12, 2005; three webpage print-outs providing corporate information about Gevity HR III, L.P. and Sunshine Companies Inc., IV, both of Hollywood, Florida, as accessed August 11, 2005; a CIS Interoffice Memorandum (HQOPRD 90/16.45) dated May 4, 2004; and, the beneficiary's W-2 statements for the period 1998 to 2004.

As a preface to the following discussion, contrary to counsel's assertion, 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 a similar case, the court in *Sitar v. Ashcroft*,

2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

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 Sonegawa,* 12 I&N Dec. 612 (BIA 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 1998, 1999 and 2000 the beneficiary received wages in the amounts of $18,500.62, $19,351.06 and $20,932.83 respectively from Bradenton Florida 34206. According to the W-2 statement the ., federal employer's identification number (FEIN) is (the number is obscured for privacy purposes).

In 2001 the beneficiary received wages in the amount of $21,501.47 from According to the W-2 statement, the Gevity HR II, L.P. federal employer's identification number is different than Staff Leasing III, L.P.'s FEIN number. It is (the number is obscured for privacy purposes).

In 2002 the beneficiary received wages in the amount of $21,898.28 from Presidion Solutions V, Inc., 5825 US 27 North, Sebring Florida 33870. According to the W-2 statement, the Presidion Solutions V, Inc., federal employer's identification number is different than Staff Leasing III, L.P's or Gevity HR II, L.P.'s FEIN numbers. It is (the number is obscured for privacy purposes).

In 2003 the beneficiary received wages in the amount of $950.00 from Sunshine Staff Leasing, 5825 US Hwy 27 North, Sebring Florida 33870. According to the W-2 statement, the Sunshine Staff Leasing federal employer's identification number is different than Presidion Solutions V, Inc., Staff Leasing III, L.P.'s or Gevity HR II, L.P.'s FEIN numbers. It is 0 (the number is obscured for privacy purposes).

In 2003 and 2004 the beneficiary received wages in the amounts $20,150.83 and $21,038.70 respectively from U.S. Parking Consultants, Inc. Since the proffered wage is $23,400.00 per year, this is less than the proffered wage. According to the W-2 statements, the federal employer's identification number for U.S. Parking Consultants, Inc. is different than Sunshine Staff Leasing, Presidion Solutions V, Inc., Staff Leasing III, L.P.'s or Gevity HR II, L.P.'s FEIN numbers. It is 6 (the number is obscured for privacy purposes).

According to the petition and the labor certification, the petitioner/employer is U.S. Parking Limited, Inc. Its FEIN number is 6 **(the number is obscured for privacy purposes).** According to the W-2 statements, the federal employer's identification number for U.S. Parking Limited is different than U.S. Parking Consultants, Sunshine Staff Leasing, Presidion Solutions V, Inc., Staff Leasing III, L.P.'s or Gevity HR II, L.P.'s FEIN numbers.[3]

In the instant case, the petitioner, U.S. Parking Limited, Inc., has not established that it employed and paid the beneficiary the full proffered wage from the priority date based upon the evidence submitted with the petition.

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 sales and profits exceeded the proffered wage is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

The petitioner's appellate argument that its depreciation expenses should be considered as cash is misplaced. In *K.C.P. Food Co., Inc. v. Sava*, 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. *Id.* at 1084. 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 that 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[4] demonstrate the following financial information concerning the petitioner's ability to pay:

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[3] There is a letter and statement for the period July 18, 2005 to July 31, 2005 from Paychex to U.S. Parking Consultants Inc. concerning U.S. Parking Consultants Inc. payroll totals and tax deposits. If, as counsel suggests, the petitioner leases its employees, no explanation is found in the record why the petitioner issued W-2 statements to its employees, rather than a payroll service such as Paychex.

[4] In 2004, the Form 1120 submitted for U.S. Parking Consultants Inc. based upon a calendar year stated net income of $679,193.00. Although as is discussed herein, U.S. Parking Consultants Inc. assets and revenues cannot be used as evidence of the petitioner's ability to pay the proffered wage, (*See Matter of M*, 8 I&N Dec.

- In the period December 1, 1997 to November 30,1998, the Form 1120 stated net income[5] of $4,063.00.
- In the period December 1, 1998 to November 30, 1999, the Form 1120 stated a loss of <$7,063.00>.[6]
- In the period December 1, 1999 to November 30, 2000, the Form 1120 stated net income of $5,857.00.
- In the period December 1, 2000 to November 30, 2001, the Form 1120 stated a loss of <$43,337.00>.
- In the period December 1, 2001 to November 30, 2002, the Form 1120 stated net income of $24,202.00.
- In the period December 1, 2002 to November 30, 2003, the Form 1120 stated net income of $14,512.00.
- In the period December 1, 2003 to November 30, 2004, the Form 1120 stated net income of $11,210.00.

Since the proffered wage is $23,400.00 per year, the petitioner did not have the ability to pay the proffered wage from an examination of its net income for tax years December 1, 1997[7] to November 30, 2001, and, from December 1, 2002 to November 30, 2003. The petitioner had sufficient net income to pay the proffered wage for tax year December 1, 2001 to November 30, 2002.

If the net income the petitioner demonstrates it had available during the 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. Counsel states on appeal that the petitioner has assets stated on its tax returns submitted "well over the offered wage." 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.[8] A

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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), counsel's statement that stock certificates, that would prove common ownership and control, have been lost or destroyed and are unavailable is not credible. There has been sufficient time for the corporate officials of these entities to re-issue the lost certificates.

[5] IRS Form 1120, Line 28 that states the petitioner's taxable income before net operating loss deduction and special deductions, which will be referred to as net income in these proceedings.

[6] The symbols *<a number>* indicate a negative number, or in the context of a tax return or other financial statement, a loss.

[7] As stated, the tax return marked 1997 was for the petitioner's reporting year that begins on December 1, 1997 and ends November 30, 1998. The petitioner's ability to pay is ascertained from the priority date during that tax year that was January 14, 1998.

[8] 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 as accounts

corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. 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 tax years 1997, 1998, 1999, 2000, 2001, 2002, and 2003 were <$26,605.00>, <$71,677.00>, <$120,338.00>, <465,709.00>, <$85,817.00>, <$92,420.00>, and <$42,008.00> respectively.[9]

Therefore, for the periods examined, 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 because of a lack of evidence of wages paid to the beneficiary by the petitioner, or an examination of the petitioner's net income or net current assets.

According to counsel, the beneficiary has worked for the petitioner, U.S. Parking Limited, Inc. since 1998. According to the W-2 statements submitted in this matter, the beneficiary has worked for and been paid by U.S. Parking Consultants, Inc., Sunshine Staff Leasing, Presidion Solutions V, Inc., Staff Leasing III, L.P. and Gevity HR II, L.P. since 1998. The director requested the contracts that the petitioner had entered into to lease employees from 1998 through 2004. No contracts were submitted by the petitioner. Instead, counsel has a letter from Presidion Solutions of Jupiter, Florida, dated August 12, 2005, and, a letter from Gevity of Bradenton, Florida dated August 12, 2005.

According to the letter statement of Presidion Solutions, the petitioner was a client between January 7, 2002 and January 10, 2003. According to the statement, the petitioner and Presidion Solutions formerly Sunshine Staff Leasing were "co-employers" with Presidion Solutions processing payroll, administering health insurance and retirement benefits, workers compensation insurance, unemployment compensation claims, issuing W-2's and paying the beneficiary. According to Presidion Solutions, the employees "actually work at the client worksite." There is no agreement present in the record of proceeding between the petitioner and Presidion Solutions. Further, the letter does indicate that the beneficiary was "leased" by Presidion Solutions to the petitioner. Therefore, the statement made by Ms. Cindy Richards, HR Assistant of Presidion Solutions does not support counsel's argument that the beneficiary has worked for the petitioner since 1998.

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)). The letter statement from Gevity of Bradenton, Florida dated August 12, 2005, simply indicates that between December 19, 1994 through January 7, 2002, the petitioner was a client of Gevity that according to the letter is a professional employer organization licensed under the laws of Florida. Although the letter states that it was formerly called Staff Leasing V., L.P., it was Staff Leasing III, L.P. that was the employer of the beneficiary according to the W-2 statement submitted by the petitioner. The letter does not indicate that the beneficiary was leased by Gevity to the petitioner, nor does the letter describe the employer related duties performed by Gevity for the

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payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

[9] Counsel has also submitted a tax return for U.S. Parking Consultants Inc. that stated net current assets of $18,752.00 in 2004.

petitioner. Although counsel claims that the petitioner is an affiliate of U.S. Parking Consultants Inc., as noted herein, assets of other entities cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *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). Therefore, the letter from Gevity does not support counsel's argument that the beneficiary has worked for the petitioner since 1998.

Since the director did request the contracts that the petitioner had to lease employees from 1998 through 2004, but none were submitted, the petitioner has failed to present independent objective evidence that U.S. Parking Consultants, Sunshine Staff Leasing, Presidion Solutions V, Inc., Staff Leasing III, L.P. and Gevity HR II, L.P. were not the beneficiary's employers according to the W-2 statements submitted from 1998 through 2004. 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).

Counsel also contends, in various arguments, that it is the ability to control the details of the work that is evidence of an employer/employee relationship. Counsel refers to a Westlaw publication relating to employee leasing companies in the context of H-1B nonimmigrant classification with correspondence relating to H1-B petitions. As counsel noted there is a difference in law, regulation and case precedent between nonimmigrant and immigrant visas. Immigrant preference petitions and their labor certifications require one employer, not "co-employers" as Presidion Solutions characterized its role with the beneficiary above. In the instant case, the petitioner has not demonstrated that it has paid the beneficiary any wages during any relevant year. The proffered wage in the instant case is $23,400.00 per year. Although the petitioner demonstrated that it had sufficient net income to pay the proffered wage in tax year 2001, the petitioner has not established that it had sufficient net income or net current assets to pay the proffered wage in any other relevant year for which evidence was submitted.[10]

The evidence submitted fails to establish that the petitioner has the continuing ability to pay the proffered wage beginning on the priority date.

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

ORDER: The appeal is dismissed.

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[10] Since the director requested the petitioner's employee leasing contracts from 1998 through 2004, but none were submitted, the petitioner has failed to present independent objective evidence that U.S. Parking Consultants, Sunshine Staff Leasing, Presidion Solutions V, Inc., Staff Leasing III, L.P. and Gevity HR II, L.P. were not the beneficiary's employers according to the W-2 statements submitted from 1998 through 2004. The evidence in the record indicates that the wages paid to the beneficiary were not paid by the petitioner.