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**U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 12 2008**
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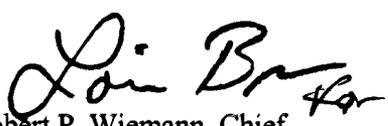
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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, 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer board design business. It seeks to employ the beneficiary permanently in the United States as an electronics engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and 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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's original May 2, 2008, 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 or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

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 either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

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 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is February 4, 2003. The proffered wage as stated on the Form ETA 750 is \$60,000 annually.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹ Relevant evidence submitted on appeal includes counsel's brief; a letter, dated May 28, 2008, from [REDACTED] CPA; a copy of a corrected 2003 Form 1120, U.S. Corporation Income Tax Return;² a copy of a 2003 through 2007 Vendor QuickReport; a copy of a lease between the petitioner and Sleepy Hollow Investment Company No. 2, dated December 9, 2005; a copy of the petitioner's active customer list for 2003; copies of purchase orders; a copy of a Certificate of Registration for the petitioner for conforming to the requirements of ISO 9001:2000; a copy of an equipment loan commitment letter, dated May 19, 2006, from Wells Fargo Equipment Finance, Inc. to the petitioner in the amount of \$250,000; a copy of a letter, dated May 30, 2006, from Wells Fargo Bank to the petitioner for a revolving line of credit in the amount of \$400,000; and a copy of a financial stress score percentile reflecting a financial stress score class of 1 (failure rate of 1.2%). Other relevant evidence includes a copy of the petitioner's originally submitted 2003 Form 1120; copies of the petitioner's 2004 through 2006 Forms 1120; copies of the 2003 through 2007 Forms W-2, Wage and Tax Statements, purportedly issued by the petitioner on behalf of the beneficiary;³ copies of what purport to be the petitioner's 2003 through 2006 Forms 941, Employer's Quarterly Federal Tax Returns; copies of what purport to be the petitioner's 2003 through 2006 Forms DE-6, Quarterly Wage and Withholding Reports, for the State of California; copies of the petitioner's 2003 through 2007 unaudited profit and loss statements and balance sheets;⁴ and copies of the petitioner's 2003 and 2004 bank

¹ 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).

² It is noted that the petitioner did not submit a Form 1120X, Amended U.S. Corporation Income Tax Return, for 2003 nor did it submit evidence that the new 2003 tax return was filed with the Internal Revenue Service (IRS). Therefore, the AAO will not consider the corrected 2003 tax return when determining the petitioner's ability to pay the proffered wage in 2003.

³ While the petitioner's Employer Identification Number (EIN) is the same on the Form I-140, Immigrant Petition for Alien Worker, and the petitioner's tax returns, the EIN on the Forms 941 and Forms W-2 is different, 77-0512744. There is no explanation in the record of proceeding for this discrepancy. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (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.

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.

⁴The 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 AAO will not consider the petitioner's 2003 through 2007 unaudited profit

statements. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's originally submitted 2003 Form 1120 reflects taxable income before net operating loss deduction and special deduction or net income of -\$13,282 and net current assets of \$10,147.

The petitioner's corrected 2003 Form 1120 reflects taxable income before net operating loss deduction and special deduction or net income of \$36,837 and net current assets of \$60,266.

The petitioner's 2004 through 2006 Forms 1120 reflect taxable incomes before net operating loss deduction and special deductions or net incomes of \$269,999, \$127,763, and \$38,681, respectively. The petitioner's 2004 through 2006 Forms 1120 also reflect net current assets of \$599,894, \$785,453, and \$520,704, respectively.

The 2003 through 2007 Forms W-2, purportedly issued by the petitioner on behalf of the beneficiary, reflect wages paid to the beneficiary of \$46,096.19, \$58,722.27, \$54,961.49, \$82,807.61, and \$75,097.62, respectively.

The petitioner's 2003 and 2004 bank statements reflect balances ranging from a low of \$1,344.95 to a high of \$313,731.61.

On appeal, counsel claims that the petitioner has established its ability to pay the proffered wage of \$60,000 based on its corrected 2003 tax return, its bank statements, its payroll records, and its expectation of a continued increase in business and profits.

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, Citizenship and Immigration Services (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, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750, signed by the beneficiary on January 20, 2004, the beneficiary claims to have been employed by the petitioner from May 2002 to the present (January 20, 2004). In addition, counsel has submitted the 2003 through 2007 Forms W-2, purportedly issued by the petitioner on behalf of the beneficiary, to corroborate the beneficiary's claim.

and loss statements and balance sheets when determining the petitioner's continuing ability to pay the proffered wage from the priority date of February 4, 2003.

The EIN on the Forms W-2, however, is not the petitioner's EIN. Thus, the petitioner has not established that it is the entity that paid the beneficiary. Thus, the petitioner must establish the ability to pay the full proffered wage in each year. Moreover, 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. Thus, this unexplained discrepancy reduces the evidentiary value of the remaining evidence.

Even if we accepted that the Forms W-2 represent payment to the beneficiary by the petitioner, the petitioner is obligated to establish that it has sufficient funds to pay the difference between the proffered wage of \$60,000 and the actual wages paid to the beneficiary of \$46,096.19 in 2003, \$58,722.27 in 2004, \$54,961.49 in 2005, \$82,807.61 in 2006, and \$75,097.62 in 2007. Those differences would be \$13,903.81 in 2003, \$1,277.73 in 2004, and \$5,038.51 in 2005. The difference between the proffered wage of \$60,000 and the actual wage paid to the beneficiary of \$82,807.61 in 2006 is \$22,807.61 more than the proffered wage. The difference between the proffered wage of \$60,000 and the actual wage paid to the beneficiary of \$75,097.62 in 2007 is \$15,097.62 more than the proffered wage. Therefore, the petitioner has established its ability to pay the proffered wage of \$60,000 in 2006 and 2007 by paying the beneficiary more than the proffered wage. However, the AAO notes that CIS records indicate that the petitioner has filed over 7 Form I-140 petitions with the Service Center since 2005. In addition, the petitioner has also filed 21 Form I-129 nonimmigrant petitions. Consequently, CIS must also take into account the petitioner's ability to pay the petitioner's wages in the context of its overall recruitment efforts. Presumably, the petitioner has filed and obtained approval of the labor certifications on the representation that it requires all of these workers and intends to employ them upon approval of the petitions. Therefore, it is incumbent upon the petitioner to demonstrate that it has the ability to pay the wages of all of the individuals it is seeking to employ.

As an alternative means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as 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 supported by federal case law. *See 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. Tex. 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.*, the court held that 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. 623 F.Supp at 1084. The court specifically rejected the argument that CIS should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to add back to net cash the depreciation expense charged for the year. *See Elatos Restaurant Corp.*, 632 F. Supp. at 1054. 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 Chang*, 719 F. Supp. at 537.

In 2003 through 2006, the petitioner was organized as a “C” corporation. For a “C” corporation, CIS considers net income to be the figure shown on line 28 of the petitioner’s Form 1120, U.S. Corporation Income Tax Return or line 24 of the petitioner’s Form 1120-A. The petitioner’s tax returns demonstrate that its net incomes in 2003 through 2005 (the petitioner has already established its ability to pay the proffered wage in 2006 and 2007 by paying the beneficiary more than the proffered wage) were -\$13,282 (according to the originally submitted 2003 tax return), \$269,999, and \$127,763, respectively. The petitioner could not have paid the difference of \$13,903.81 between the proffered wage of \$60,000 and the actual wages purportedly paid to the beneficiary of \$46,096.19 in 2003 from its net income using the originally submitted 2003 Form 1120.⁵ The petitioner could have paid the difference of \$1,277.73 in 2004 and \$5,038.51 in 2005 between the proffered wage of \$60,000 and the actual wages paid to the beneficiary of \$58,722.27 in 2004 and \$54,961.49 in 2005 from its net incomes in 2004 and 2005 provided that it had not filed additional immigrant and non-immigrant petitions.

As stated above, however, the petitioner has not credibly established that it is the entity that paid the beneficiary or the other employees identified on the quarterly returns since those documents reference a different EIN. Thus, the petitioner must establish that it can pay the full proffered wage. The petitioner could have paid the full proffered wage in 2004 and 2005, assuming we accept the information on the tax returns. The petitioner could not, however, have paid the full proffered wage in 2006 from its net current assets.

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.⁶ 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 could have paid the full proffered wage in 2006 out of its net current assets, assuming the information on the return is accurate. The petitioner’s net current assets in 2003, however, were \$10,147 (according to the originally submitted 2003 tax return). The petitioner could not have paid the full proffered wage from that amount, or even the difference of \$13,903.81 between the proffered wage of \$60,000 and the actual wages purportedly paid to the beneficiary of \$46,096.19. Moreover, it could not have paid the wages of the additional employees petitioned for from the priority date of February 4, 2003.

⁵ See footnote 2.

⁶ 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 payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

On appeal, counsel claims that the petitioner has established its ability to pay the proffered wage of \$60,000 based on its corrected 2003 tax return,⁷ its bank statements,⁸ its payroll records, and its expectation of a continued increase in business and profits.⁹

⁷ See footnote 2.

⁸ It should be noted that in calculating the ability to pay the proffered salary, CIS will not augment the petitioner's net income or net current assets by adding in the corporation's credit limits, bank lines, or lines of credit. A "bank line" or "line of credit" is a bank's unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. See *Barron's Dictionary of Finance and Investment Terms*, 45 (1998).

Since the line of credit is a "commitment to loan" and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner's existent loans will be reflected in the balance sheet provided in the tax return and will be fully considered in the evaluation of the corporation's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, CIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, CIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

⁹ The petitioner's CPA suggests that the AAO should consider the petitioner's depreciation when determining its ability to pay the proffered wage of \$60,000 per year. However, the CPA's argument that the petitioner's depreciation deduction should be included in the calculation of its ability to pay the proffered wage is unconvincing.

A depreciation deduction does not require or represent a specific cash expenditure during the year claimed. It is a systematic allocation of the cost of a tangible long-term asset. It may be taken to represent the diminution in value of buildings and equipment, or to represent the accumulation of funds necessary to replace perishable equipment and buildings. But the cost of equipment and buildings and the value lost as they deteriorate is an actual expense of doing business, whether it is spread over more years or concentrated into fewer.

While the expense does not require or represent the current use of cash, neither is it available to pay wages. No precedent exists that would allow the petitioner to add its depreciation deduction to the amount available to pay the proffered wage. *Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532 (N.D. Texas 1989). See also *Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049 (S.D.N.Y. 1985). The petitioner's election of accounting and depreciation methods accords a specific amount of depreciation expense to each given year. The petitioner may not now shift that expense to some other year as convenient to its present purpose, nor treat it as a fund available to pay the proffered wage. Further, amounts spent on long-term tangible assets are a real expense, however allocated.

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 cannot demonstrate a continuous ability to pay the proffered wage in this matter because any funds available to pay the proffered wage in one month would no longer be available in subsequent 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 was considered above when determining the petitioner's net current assets.

Nevertheless, if the petitioner does not have sufficient net income or net current assets to pay the proffered salary, CIS may consider the overall magnitude of the entity's business activities. Even when the petitioner shows insufficient net income or net current assets, CIS may consider the totality of the circumstances concerning a petitioner's financial performance. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). In *Matter of Sonogawa*, the Regional Commissioner considered an immigrant visa petition, which had been filed by a small "custom dress and boutique shop" on behalf of a clothes designer. The district director denied the petition after determining that the beneficiary's annual wage of \$6,240 was considerably in excess of the employer's net profit of \$280 for the year of filing. On appeal, the Regional Commissioner considered an array of factors beyond the petitioner's simple net profit, including news articles, financial data, the petitioner's reputation and clientele, the number of employees, future business plans, and explanations of the petitioner's temporary financial difficulties. Despite the petitioner's obviously inadequate net income, the Regional Commissioner looked beyond the petitioner's uncharacteristic business loss and found that the petitioner's expectations of continued business growth and increasing profits were reasonable. *Id.* at 615. Based on an evaluation of the totality of the petitioner's circumstances, the Regional Commissioner determined that the petitioner had established the ability to pay the beneficiary the stipulated wages.

As in *Matter of Sonogawa*, CIS may, at its discretion, consider evidence relevant to a petitioner's financial ability that falls outside of a petitioner's net income and net current assets. CIS may consider such factors as the number of years that the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that CIS deems to be relevant to the petitioner's ability to pay the proffered wage. In this case, the petitioner's tax returns indicate that it was incorporated on December 9, 1999. The petitioner has provided its tax returns for 2002 through 2006. While it would appear that the petitioner had sufficient funds to pay the proffered wage in 2004 through 2006, a review of CIS records indicate that the petitioner has filed additional immigrant and non-immigrant petitions¹⁰ with similar priority dates. Therefore, the petitioner must establish that it had sufficient funds to pay all the wages from the priority date and continuing to the present. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for

¹⁰ While an employer's ability to pay the proffered wage may not be an issue before CIS in adjudicating nonimmigrant petitions, the instant petition is an immigrant petition and the petitioner's ability to pay is at issue. The large number of nonimmigrant and immigrant petitions does not suggest that the petitioner has the available funds to pay the beneficiary the proffered wage.

multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2). In addition, the tax returns do not establish that the business has met all of its obligations in the past or to establish its historical growth. There is also no evidence of the petitioner's reputation throughout the industry or of any temporary and uncharacteristic disruption in its business activities. Furthermore, the petitioner has not explained the discrepancies regarding the different EIN numbers on its tax returns versus its Forms 941 and Forms W-2. This discrepancy casts doubt on the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

In examining a petitioner's ability to pay the proffered wage, the fundamental focus of the CIS' determination is whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). Accordingly, after a review of the petitioner's tax returns and other evidence, we conclude that the petitioner has not established that it had the ability to pay the salary offered as of the priority date of the petition and the additional salaries for the additional petitions and continuing to present.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal do not overcome the decision of the director.

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.