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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 04 094 50069

Office: VERMONT SERVICE CENTER

Date: DEC 10 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was initially denied by the Acting Director, Vermont Service Center. The petitioner filed an appeal with the Administrative Appeals Office (AAO). Before the appeal was forwarded, the director treated the appeal as a motion. The acting director reopened the decision and approved the petition. Subsequently, the director served the petitioner with a Notice of Intent to Revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner appealed the revocation and the matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a painting and carpentry business. It sought to employ the beneficiary permanently in the United States as a painter. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the I-140 petition was initially filed on February 7, 2004. It was denied on June 10, 2004, based on the acting director's determination that the petitioner had failed to demonstrate that it had the continuing ability to pay the proffered wage. The petitioner, through its original counsel, filed an appeal from this decision on July 9, 2004, asserting that the petitioner had established its continuing ability to pay the proffered wage. The director treated the appeal as a motion to reopen and reconsider. The director reopened the decision and the petition was approved on August 24, 2004.¹ Upon reexamination of the petition's approval, the director determined that it had been approved in error and issued a NOIR on October 12, 2006. The NOIR set forth that the petitioner had not established its continuing ability to pay the proffered wage. The director noted that the petitioner had filed "at least four petitions with a priority date falling in 2002," and that "the evidence provided does not establish the petitioner's ability to pay one beneficiary let alone four beneficiaries."² Where a petitioner files multiple I-140 petitions, the petitioner must demonstrate its continuing ability to pay the proffered wages of all beneficiaries as of their respective priority dates until they each obtain lawful permanent residence status. USCIS electronic records indicates that the petitioner has filed at least 11 I-140 petitions in the past several years. The director noted that the AAO had dismissed the appeals that the petitioner had filed on behalf of two other beneficiaries on the grounds that the petitioner failed to demonstrate its ability to pay the proffered wages for all sponsored workers.

¹ There is no written memo or document indicating the director's reasons for approving the petition, however the approval is documented by United States Citizenship and Immigration Services (USCIS) electronic records and by the stamped petition contained in the record of proceedings.

² On an addendum to Form I-140, the petitioner identified that it filed I-140 petitions for three other workers. Two petitions were denied, and subsequently dismissed on appeal, based on the petitioner's failure to demonstrate the ability to pay the proffered salary. The third petition was approved, but then revoked.

The petitioner was afforded thirty days to offer additional evidence or argument in opposition to the proposed revocation. New counsel³ submitted a response to the director's NOIR beyond the thirty days allotted, explaining the delay was due to the lack of timely receipt of the director's NOIR. In support of the petitioner's ability to pay the proffered wage, she submitted a partial copy of the petitioner's 2003 corporate tax return and points to its expenses of \$885,260 for cost of labor as reported on line 3 of Schedule A of the return. She also stated that the petitioner employs the beneficiary at an hourly wage of \$22.00 per hour. No record of wages paid to the beneficiary in the form of pay statements, Forms W-2 or Forms 1099 was provided with this response. Counsel additionally stated that the beneficiary and his spouse have purchased and renovated a home in expectation that they would be able to sponsor their children to come to the United States.

The petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). I-140 adjudication does not allow discretion for the beneficiary's personal or financial circumstances. Counsel cites no legal authority that this issue is relevant to these proceedings, and it will not be further considered in the decision herein rendered.

The director subsequently determined that the grounds for revocation of the petition had not been overcome and revoked the petition's approval on March 14, 2007, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

On March 28, 2007, the petitioner's original counsel filed an appeal from the revocation. On the notice of appeal, he indicated a request for an additional 60 days in which to submit a brief and/or evidence to the AAO. In response to the AAO's facsimile inquiry, the petitioner, through counsel, submitted a brief in support of the appeal.

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).

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

³ Instant counsel filed Form ETA 750, the Form I-140, the initial appeal, and the appeal related to the revocation on the petitioner's behalf. The petitioner obtained different counsel to file its response to the NOIR.

Section 203(b)(3)(A)(i) of 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.

The regulation at 8 C.F.R. § 204.5(g)(2) also provides 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 appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [(USCIS)].

As noted above, the regulation at 8 C.F.R. § 204.5(g)(2) requires a petitioner to establish its *continuing* financial ability to pay the certified salary as of the priority date. 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). If the preference petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

The priority date is the day the ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d); *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1971). Here, the ETA 750 reflects that it was accepted for processing on October 3, 2002, not on April 24, 2001, as asserted by original counsel in the initial appeal. The proffered wage as stated on Part A of the ETA 750 is \$26.29 per hour, which amounts to \$54,683.20 per year. On Part B of the ETA 750, signed by the beneficiary on September 27, 2002, the beneficiary claims to have worked for the petitioner from

July 1999 to present (date of signing). The address of the petitioner is listed as Conshohocken, Pennsylvania.⁴

On Part 1 of the I-140, which was filed on February 7, 2004, the petitioner, [REDACTED] indicates that it is located in King of Prussia, Pennsylvania. Its Internal Revenue Service (IRS) federal employer identification number (FEIN) is reflected as xx-xxxx-[REDACTED]. On Part 5 of the I-140, the petitioner claims to have been established in 1978, to have a gross annual income of \$2.5 million and to currently employ 35 workers.

In support of its ability to pay the certified salary of \$54,683.20, the petitioner provided copies of its Form 1120S, U.S. Tax Return for an S Corporation for 2001, 2002, and 2003. They reflect that the petitioner files its tax returns using a standard calendar year. The tax returns indicate that the petitioner was incorporated on January 1, 1992. Its FEIN of xx-xxxx-[REDACTED] is listed on these three tax returns as belonging to the filer, [REDACTED], which also matches the I-140 information. The returns contain the following information:

	2001 ⁵	2002	2003
Net Income ⁶	\$75,059	-\$12,312	\$55,155
Current Assets	\$36,526	\$35,071	\$18,178
Current Liabilities	\$15,097	\$31,714	\$31,930
Net Current Assets	\$21,429	\$ 3,357	-\$13,752

⁴ The ETA 750 additionally reflects the petitioner's address in Conshohocken, Pennsylvania which is in Montgomery County. It is also the location designated as the address where the alien will work. The petitioner's address in King of Prussia, Pennsylvania is shown on the I-140, the 2001-2003 tax returns and the consolidated financial statements. While this inconsistency is not an issue in this decision, when or if future proceedings may be pursued by the petitioner on behalf of this beneficiary, this discrepancy should be explained.

⁵ We note that the petitioner's 2001 tax return and figures represented therein, are not directly relevant to the petitioner's ability to pay the proffered wage of \$54,683.20 in 2002, the year covering the priority date of October 3, 2002.

⁶ Where an S Corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (2001, 2002, 2003) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional deductions shown on its Schedule K for 2001, 2002, and 2003, the petitioner's net income is found on line 23 of Schedule K.

Besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, USCIS will examine a petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. In this case, the corporate petitioner's year-end current assets and current liabilities are shown on Schedule L of its federal tax returns. Here, current assets are shown on line(s) 1 through 6 and current liabilities are shown on line(s) 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets.

The petitioner also provided a copy of a Wage and Tax Statement (W-2) issued to the beneficiary by ██████████ of New Jersey" with the FEIN of xx-xxxx██████. The employer's address listed on the W-2 is the same as the petitioner's address listed on the I-140 and on the ETA 750. The W-2 indicates that this entity paid the beneficiary \$31,885 in 2002. Further submitted are copies of reviewed consolidated financial statements covering the 2001-2003 years. ██████████ of NJ, Inc." is identified as the petitioner's affiliate and the financial data contained within the financial statements represents their consolidated figures. There is no indication on the petitioner's tax returns that any additional entities are included. Further, as the petitioner's FEIN and the FEIN held by ██████████ c. of NJ are different, the two companies are separate entities. Accordingly, wages and information of "Byrne Painting Inc. of NJ" cannot be used to show the petitioner's ability to pay the certified wage.

With respect to the financial statements, 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 whether the financial statements of the business are free of material misstatements. In the instant matter, the accountant's report that accompanied the financial statements makes clear that they are reviewed statements, as opposed to audited statements. These unaudited financial statements that counsel submitted with the petition are not persuasive evidence. Reviews are governed by the American Institute of Certified Public Accountants' Statement on Standards for Accounting and Review Services (SSARS) No.1., and accountants only express limited assurances in reviews. As the account's report states, the financial statements are the representations of management and the accountant expresses no opinion pertinent to their accuracy as a whole. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.⁸

⁷ 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.

⁸ In contrast to unaudited financial statements, individuals signing tax returns and submitting

Moreover, unlike the tax returns provided to the record, the financial statements also represent a combination of the affiliate company's figures. As noted above, these entities are structured as separate corporations. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the 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. *See Matter of Aphrodite Investment*. There is no evidence that the petitioner and its New Jersey corporate affiliate have a mutual contractual or legal obligation to pay their respective employees. It is noted that 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 [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

In determining a petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner may have 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 during a given period. If lesser amounts are paid, a petitioner's ability to pay the certified wage will be established if either its net income or net current assets can cover any shortfall between the actual money paid and the proffered salary during a given period. In the instant case, as mentioned above, the only documentary evidence provided to the record supports wages paid to the beneficiary in 2002 by a different corporate entity, not by the petitioning corporation. Former counsel asserted that the petitioner continues to employ the beneficiary at \$22.00 per hour. This assertion was not supported by any documentation that the petitioner, rather than Byrne Painting of NJ, Inc. has employed the beneficiary. This statement is reiterated on counsel's brief filed on appeal, and again is unsupported by any wage evidence. Both counsels' unsupported statements do not constitute evidence. *See Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

If a petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during the relevant period, as mentioned above, USCIS will also 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. *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. 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); *River Street Donuts, LLC v. Chertoff*, Slip Copy, 2007 WL 2259105, (D. Mass. 2007). Showing that the petitioner's gross income reached a

them to the Internal Revenue Service (IRS) do so under penalty of perjury and are subject to civil and criminal penalties for material misstatements.

certain level, or that labor costs or wages paid to other workers may have reached a certain amount, as is asserted here, is insufficient because it does not include consideration of all of the expenses incurred in order to generate a petitioner's revenue and does not include the beneficiary's certified wage as an additional obligation. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, 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.

In the petitioner's brief filed with the initial appeal, counsel asserts that the petitioner met the requirements related to the ability to pay based on a headquarters memorandum, *Memorandum by William R. Yates, Associate Director of Operations*, "Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2)," HQOPRD 90/16.45 (May 4, 2004), (*Yates Memo*). Counsel asserts that the petitioner's net income was equal to or exceeded the proffered wage in 2001, 2002 and 2003. Counsel's statement is inaccurate as the petitioner's net income in 2002 represented a loss of \$12,212.⁹ Further, the petitioner must demonstrate that it can pay all the sponsored beneficiaries the respective proffered wages from its net income. The net income does not reflect that the petitioner can cover all the sponsored workers.

Further, with regard to the May 4, 2004 *Yates Memo*, the memo is not intended to create any right or benefit or constitute a legally binding precedent within the regulation(s) at 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), but is merely offered as guidance.¹⁰ It does not supersede the plain language of the regulation at 8 C.F.R. § 204.5(g)(2), which requires that a petitioning entity to demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The memo provides guidance to adjudicators to review a record of proceeding and make a positive determination of a petitioning entity's ability to pay if, in the context of the beneficiary's employment, "[t]he record contains credible verifiable evidence that the petitioner is not only is employing the beneficiary but also has paid or currently is paying the proffered wage." Demonstrating that the petitioner is paying the proffered wage in a specific year or time period may suffice to show the petitioner's ability to pay for that year or period of time, but the petitioner must still demonstrate its ability to pay for the remainder of the pertinent period of time. As explained above, the petitioner has not established that it paid wages to the beneficiary, rather than a separate corporation. For that reason, the 2002 W-2 submitted to the record will not be considered as evidence of the petitioner's payment of wages the beneficiary. No other evidence of wages paid to the beneficiary by the petitioning corporation has been submitted to

⁹ Counsel uses the figure shown on line 21 of page 1 of the petitioner's corporate tax returns as net income, rather than line 23 of Schedule K as indicated above. Neither the \$18,339 used by counsel, nor the -\$12,212 indicated by this decision is equal to or exceeds the proffered wage in 2002.

¹⁰ See also, *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968).

the record. 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)).

Counsel also contends on both the earlier and the instant appeal that by employing a current ratio analysis should be considered. The current ratio is a result of “dividing current assets with current liabilities” and adding the depreciation and net income. Counsel asserts that this would show the petitioner had available funds of \$319,866.47 in 2002, the year covering the priority date, and \$370,608.89 in 2003.

These assertions are not convincing.¹¹ The regulation at 8 C.F.R. § 204.5(g)(2) specifies that the petitioner can demonstrate its ability to pay through evidence of its tax returns, annual reports, or audited financial statements. The Yates Memo sets forth that a petitioner can establish its ability to pay through prior wages paid, net income, or net current assets. Other formulas, which may be available are hypothetical and not applicable in the instant matter.

Additionally, depreciation will not be added back to a petitioner’s net income. This figure recognizes that the cost of a tangible asset may be taken as a deduction to represent the diminution in value due to the normal wear and tear of such assets as equipment or buildings or may 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 represents a real expense of doing business, whether it is spread over more years or concentrated into fewer. With regard to depreciation, 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. (Original emphasis.)

¹¹ Additionally, to determine a measure of liquidity as a current ratio, current assets are divided by current liabilities. Depreciation and net income are not part of the calculation, as is asserted by counsel. Generally, a higher current ratio produces more assurance that current liabilities can be paid. See *Barron’s Accounting Handbook* 403 (3rd ed. 2000). In this case, applying this formula to the figures set forth on Schedule L of the petitioner’s tax return, the result is a ratio of 1.1 (\$35,071 divided by \$31,714), which is neither a persuasive assurance that current liabilities could easily be covered, or that such a calculation is specifically relevant in an analysis where the additional obligation of the beneficiary’s proposed wage offer is part of the evaluation.

Chi-Feng Chang at 536. Therefore, the petitioner may not demonstrate its ability to pay through depreciation, or by combining depreciation with net income.

As noted above, the petitioner's 2002 and 2003 corporate tax returns are most relevant to its ability to pay the proffered wage. Although its net income of \$55,155 was sufficient to cover the certified salary of \$54,683.20 in 2003, neither the petitioner's net income of -\$12,312 nor its net current assets of \$3,357 was enough to pay the proffered wage in 2002. The evidence fails to demonstrate that the petitioner had the continuing ability to pay the proffered wage beginning at the priority date of October 3, 2002. However, if we consider the petitioner's multiple I-140 filings, the petitioner's 2003 net income is insufficient to pay all the sponsored workers. Similarly, the petitioner's 2002 net income or net current assets would be insufficient to pay all the sponsored workers in that year. The petitioner did not provide any W-2s or quarterly wage statements to show payments to other sponsored workers. Therefore, the petitioner cannot establish its ability to pay either the instant beneficiary or all the sponsored workers.

The AAO cannot conclude that the director erred in revoking the approval of the petitioner's I-140 based on the petitioner's failure to show its continuing ability to pay the beneficiary's wage offer as of the priority date of October 2, 2002. A petitioner must establish its *continuing* ability to pay based on the requirements set forth in 8 C.F.R. § 204.5(g)(2), which states that annual reports, federal tax returns or audited financial statements shall be provided to establish the ability to pay the certified wage. (Emphasis added.) In this matter, no additional evidence was submitted with the appeal filed on March 14, 2007 to establish the petitioner's ability to pay the proffered wage. Based on the financial data that was provided to the record, the petitioner has not demonstrated its continuing ability to pay the proffered wage as of the priority date of the petition.

In view of the foregoing, the AAO concludes that the director properly revoked the approval of the petition on this basis.

Beyond the director's decision, the employment verification letter submitted to corroborate that the beneficiary had the requisite work experience as set forth on the application for labor certification does not satisfy the terms of the ETA 750. The regulation at 8 C.F.R. § 204.5(l)(3) provides in pertinent part:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Item 14 of the ETA 750 requires two years of work experience in the certified job of painter. The petitioner provided a letter, dated November 19, 2003 that was signed by [REDACTED] of Kasas, a foreign firm. He is not specifically identified on the English version of the Spanish language letter as the beneficiary's employer or trainer, and the address is omitted. Moreover, the beneficiary's experience is not described as consisting of full-time work as a painter. The letter describes the duties that the beneficiary performed and merely states that he was employed from January 21, 1996 to January 12, 1998. As the letter fails to identify that the beneficiary's work was full-time, the experience may be less than the required two years. This does not satisfy the regulation and is not sufficient to verify the beneficiary's requisite work experience. 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 provided to the record is also not accompanied by a certified English translation pursuant to the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). This regulation provides that any foreign language document submitted to the record must be accompanied by a full English language translation that is certified by the translator to be complete and accurate along with the translator's certification that he or she is competent to translate from the foreign language into English. As the petitioner failed to submit certified translations of the document, the AAO cannot determine whether the letter supports the petitioner's claims.

Additionally, the letter from [REDACTED] is not corroborated by the beneficiary's employment history set forth on Part B of the ETA 750. Three jobs are listed by the beneficiary, who signed the ETA 750B on September 27, 2002. The only position located in a foreign country that is included on the ETA 750B does not name an employer and address, but merely states "Ecuador." Further, the dates of employment that the beneficiary claims that he worked in construction and painting are given as July 1990 to August 1998 and are inconsistent with the [REDACTED] claim that his dates of employment were from January 21, 1996 to January 12, 1998. The job at Kasas is not listed on the ETA 750B at all. Accordingly, the letter does not constitute credible or probative evidence supporting the beneficiary's requisite employment experience and will not be accorded any weight in this proceeding. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988); *See also Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Board

noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

Based on the foregoing, the AAO finds that the petitioner's failure to establish that the beneficiary possesses the requisite employment experience necessary to fulfill the terms of the ETA 750, constitutes an additional and independent basis to revoke the petition's approval.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Here, the director has revoked the petition's approval for good and sufficient cause.

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.