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**U.S. Citizenship  
and Immigration  
Services**

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File: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 10 2008**  
WAC-02-051-51961

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:

[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 Director, California Service Center (“director”) initially approved the employment-based preference visa petition. Following approval, the director served the petitioner with a Notice of Intent to Revoke the Approval of the Petition (“NOIR”). Subsequently, the director revoked the Form I-140 approval. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be dismissed.

The petitioner is in the business of manufacturing jewelry and seeks to employ the beneficiary permanently in the United States as a jeweler (“Goldsmith/Modelist”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (“DOL”). As set forth in the director’s March 25, 2006, Notice of Revocation (“NOR”), the petition’s approval was revoked based on a determination that the petitioner had not established its continuing ability to pay the proffered wage beginning on the priority date. Further, following an interview of the beneficiary, the director questioned the petitioner’s intent to employ the beneficiary in accordance with the terms of the certified labor certification. Accordingly, the petition was revoked.

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

The record shows that the appeal is properly 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.

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

The petitioner must establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner’s filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d). Therefore, 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).

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

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

*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 history of the case follows:

- On September 6, 1996, the petitioner filed Form ETA 750 on behalf of the beneficiary for the position of goldsmith/modelist, 40 hours per week, at a pay rate of \$11.99 per hour, equivalent to an annual salary of \$24,939.20;
- On November 1, 2000, the Form ETA 750 was approved;
- On November 26, 2001, the petitioner filed the I-140 Petition on behalf of the beneficiary, and listed the following information: established: January 1, 1986; gross annual income: not listed; net annual income: not listed; annual income listed as \$537,630; and current number of employees: 3.
- On May 16, 2002, the director approved the I-140 petition;
- On February 1, 2005, the Citizenship & Immigration Services (“CIS”) interviewed the beneficiary at the Los Angeles District Office in connection with the beneficiary’s pending I-485 Adjustment of Status application;
- On February 8, 2006, the director issued a NOIR.

The NOIR outlined the petitioner’s net income, and wages paid from the time of the priority date onward. The petitioner initially operated its business as a sole proprietorship, and, accordingly, the NOIR requested that the petitioner should provide a statement of the sole proprietor’s monthly expenses, including its housing costs, food, car payments, insurance, utilities, credit cards, clothing, school, house cleaners, gardeners, nanny, daycare, or other monthly recurring expenses. Additionally, the NOIR addressed information obtained from the beneficiary’s interview. The director noted that, “during the interview with the beneficiary, it was discovered that the beneficiary never intended to work for the petitioner based on his full time employment with [REDACTED] and [REDACTED] where the beneficiary is the owner since 1980.”

Counsel responded to the NOIR on behalf of the petitioner. Counsel examined the petitioner’s tax returns on a year-by-year basis and asserted that the petitioner’s net current assets, the petitioner’s net income, or net profit would be sufficient in each year to pay the proffered wage. Further, he asserted that the petitioner was a fast-growing business, and had been in business for over 20 years. Counsel provided that as an S corporation, the petitioner had sufficient ability to pay the proffered wage, and therefore, did not submit a list of the owner’s monthly expenses.<sup>2</sup>

Regarding the petitioner’s full-time employment of the beneficiary, counsel provided that he had recently had seven operations performed on his eyes, and his “serious and substantial medical issues . . . temporarily precluded him from employment in parts of the past two years.” In support, counsel submitted various medical records, some of which were dated January 2004 and others August 2005, mainly in the form of

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<sup>2</sup> The petitioner’s tax return reflects that it incorporated as an S corporation on January 23, 2001. Prior to that, the petitioner was structured as a sole proprietorship, and accordingly, the sole proprietor’s monthly expenses would have been relevant to determining whether the petitioner could pay the proffered wage in the years 1996 through 2001. We will address this issue below.

physical therapy records related to a foot injury. The records indicated other medical conditions, but do not refer to the eye surgeries.

Following consideration of the petitioner's response, on March 25, 2006, the director revoked the petitioner's approval. 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). Accordingly, the director has the authority to revoke the petition at any time for good and sufficient cause.

The director's NOR raised many of the same points addressed in the NOIR: that the petitioner failed to establish its ability to pay the proffered wage, and further, that the petitioner failed to provide documentation of the sole proprietor's expenses for the years that the petitioner was structured as a sole proprietorship. Further, the documentation that the petitioner submitted related to the petitioner's intention to employ the beneficiary did not overcome the basis for the petition's revocation. The petitioner appealed, and the matter is now before the AAO.

First, in determining the petitioner's ability to pay the proffered wage during a given period, CIS will examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. The beneficiary did not list on Form ETA 750B that the petitioner employed him. Rather, he listed that he was self-employed as a jewelry retailer from July 1994 to the present (date of signature, September 19, 1997). The petitioner provided a letter dated January 31, 2005, which stated that the beneficiary was working for the petitioner on a full-time basis. A handwritten note on the letter notes that the beneficiary "started December 18, 2004."<sup>3</sup> The petitioner provided a copy of a quarterly wage filing, which showed that the beneficiary was paid \$1,000 for the quarter ending December 31, 2004. The petitioner additionally provided paystubs dated January 14, January 21, and January 28, 2005, which exhibited payment to the beneficiary at a rate of \$12.50 an hour, and year to date earnings of \$2,500 as of January 28, 2005.

As the priority date is September 6, 1996, the petitioner is unable to establish its ability to pay the beneficiary based on prior wage payment alone from the priority date onward. The petitioner must show that it can pay the full proffered wage in the years 1996 through 2003, and the difference between the wages paid and the proffered wage in the years 2004, and 2005.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

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<sup>3</sup> The note is in red pen, and may have been written on the letter at the time of the interview to confirm information obtained at the interview, as the red pen is consistent with other markings from the interview.

The petitioner initially operated as a sole proprietorship until January 23, 2001, and then incorporated as an S corporation. Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S, U.S. Income Tax Return for an S Corporation, state on page one, "Caution, include only trade or business income and expenses on lines 1a through 21." Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120 states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on lines 1 through 6 of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. See Internal Revenue Service, Instructions for Form 1120S, 2003, at <http://www.irs.gov/pub/irs-03/i1120s.pdf>, Instructions for Form 1120S, 2002, at <http://www.irs.gov/pub/irs-02/i1120s.pdf>, (accessed February 15, 2005). The petitioner lists only income from its business and so its net income is found on line 21:

<u>Tax year</u>	<u>Net income or (loss)</u>
2004	\$16,024
2003	\$15,891
2002	\$27,235
2001	\$28,169

The petitioner's net income would allow for payment of the beneficiary's proffered wage of \$24,939.20 in 2001, and 2002, but not in 2003, or 2004.

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

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

Forms 1040 reflect that the sole proprietor supported himself, his wife, and two children and resided in Northridge, California. The tax returns<sup>4</sup> reflect the following information:

Tax	Sole	Proprietor's	Petitioner's	Petitioner's	Petitioner's Net Profit
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<sup>4</sup> The petitioner initially only submitted Schedules C to reflect the business income. Counsel submitted the sole proprietor's full tax returns in response to the NOIR. As Schedule C does not contain the sole proprietor's Adjusted Gross Income, Schedule C alone is insufficient to determine whether the sole proprietor can support himself and his family and pay the beneficiary the proffered wage.

Year	Adjusted Gross Income ("AGI") (1040)	Gross Receipts (Schedule C)	Wages Paid (Schedule C)	from business (Schedule C)
2000	\$27,965	\$583,158	\$23,424	\$29,995
1999	\$29,212	\$537,630	\$14,345	\$31,399
1998	\$30,809	\$461,673	\$18,500	\$33,093
1997	\$35,969	\$266,640	\$14,840	\$27,928
1996	Tax return not provided			

If we reduced the sole proprietor's AGI by the proffered wage that the petitioner must demonstrate that it can pay the beneficiary, the owner would be left with adjusted gross income in the following amounts: 2000: \$3,025.80; 1999: \$4,272.80; 1998: \$5,869.80; 1997: \$11,029.80.

Based on the amounts remaining after payment of the proffered wage, it is unlikely that the sole proprietor could pay the proffered wage and support his family in any of the foregoing years. The sole proprietor did not provide evidence of other assets based on which he could support himself and his family. Further, the sole proprietor did not provide an estimate of his family's monthly expenses as the NOIR requested, so that CIS could accurately determine whether he could support his family.<sup>5</sup>

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A corporation's current assets are shown on Schedule L, lines 1 through 6. Its current liabilities are shown on lines 16 through 18 on the Forms 1120S. If a corporation's net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets, and evidences the petitioner's ability to pay. The net current assets would be converted to cash as the proffered wage becomes due.

<u>Tax year</u>	<u>Net current assets</u>
2004	\$109,007
2003	\$123,236
2002	\$122,540
2001	\$114,873

The petitioner's net current assets would establish its ability to pay the proffered wage in the years 2001 through 2004. However, as noted above, the petitioner cannot demonstrate that it had sufficient funds to pay the proffered wage for the years of 1996 through 2000, and sufficient income for the sole proprietor to support himself and his family.

On appeal, in response to the Notice of Revocation, counsel provided an analysis of the petitioner's tax returns looking at each year individually.

<sup>5</sup> The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

For 2005, counsel asserts that the petitioner's "net taxable income" was \$30,000, with over \$500,000 in gross sales and \$80,000 in gross income. Counsel did not submit the petitioner's 2005 return, but instead provided that the petitioner's tax returns will be filed in early April 2005.<sup>6</sup> Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel asserts that in the years 2001, 2002, 2003, and 2004 the petitioner had either sufficient net current assets, or net income to pay the proffered wage. We have addressed this above, and agree that the petitioner can demonstrate its ability to pay for these years.

For the prior years, counsel provides that the sole proprietor's tax returns reflect gross sales of over \$500,000 in 1998, 1999, and 2000, and approximately \$30,000 in net profit in each year. In 1997, counsel provides that the petitioner had over \$300,000 in gross sales and \$27,928 in net profit.

As noted above, the petitioner was formed as a sole proprietorship for the years 1996 through 2000. The sole proprietor would need to show that it could pay the proffered wage, as well as support the sole proprietor's family out of his adjusted gross income. *See Ubeda v. Palmer*, 539 F. Supp. at 647, sole proprietors must show that they can sustain themselves and their dependents. The sole proprietor's tax returns for these years would not demonstrate this. Further, the petitioner failed to provide an estimate of his monthly expenses for the years that he operated as a sole proprietor.

Counsel further asserts that the totality of the petitioner's circumstances should be examined and cites to *Matter of Sonegawa*, 12 I&N Dec. 612 (BIA 1967) in support.

*Matter of Sonegawa*, 12 I&N Dec. 612 (BIA 1967), relates to petitions filed during uncharacteristically unprofitable or difficult years, but must be viewed in comparison to a petitioner's prior profitable or successful years. The petitioning entity in *Sonegawa* had been in business for over eleven years, and during that time period had routinely earned a gross annual income of approximately \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations. The petitioner provided evidence to show that as a result of the move, that the petitioner had sustained significant expenses in one year related to the relocation, including an increase in rent, as the company paid rent on both the old and new locations for five months. The petitioner also sustained large moving costs. Further, the petitioner was unable to do regular business for a period of time. All of the foregoing factors accounted for the petitioner's decrease in ability to pay the required wages. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. The articles provided helped to establish the petitioner's reputation, and potential future growth, particularly when viewed against the company's prior performance.

Counsel, here, has not provided any evidence to show any large one-time incident impacting the business' finances, or other factor, which previously impacted its ability to pay the prevailing wage. Additionally, by reviewing the petitioner's net income, as well as the petitioner's net current assets, the petitioner's financial

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<sup>6</sup> As counsel refers to the petitioner's 2005 tax return, it is likely that he meant the tax return would be filed in April 2006, and not in "April 2005."

status has been fairly considered. Further, we note that the petitioner's tax returns reflect low salaries paid to employees in every year.<sup>7</sup>

Based on the foregoing, the petitioner has failed to establish its continuing ability to pay the proffered wage from the time of the priority date until the beneficiary obtains permanent residence, and the petition's approval was revoked for good and sufficient cause.

The second issue raised in the director's NOR was that the petitioner failed to establish its intent to employ the beneficiary in accordance with the terms of the certified labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966). The director based this conclusion on information obtained from the beneficiary at the interview "that the beneficiary never intended to work for the petitioner, based on his full time employment with [REDACTED] and [REDACTED] where the beneficiary is the owner."

On appeal, counsel provides that the beneficiary had substantial medical issues, including seven procedures performed on his eyes in 2004. Following that, counsel provides that the beneficiary began employment and reported \$7,944 in income on his personal income tax return, all of which counsel asserts he earned based on his employment with the petitioner. In 2005, counsel provides that the beneficiary had further medical issues, and provided documentation of these conditions and that these issues prevented the beneficiary from working full-time for the petitioner, but that the petitioner does intend to employ the beneficiary on a full-time basis.

The record of proceeding contains the petitioner's Form W-3, which exhibits wages paid to all employees in the amount of \$1,000 for the year 2004. The beneficiary's 2004 tax return does reflect earnings of \$7,944, however, the record does not contain a copy of the beneficiary's W-2 statement so that we cannot conclude that all of the beneficiary's earnings were wages paid by the petitioner. Further, in light of the petitioner's filed W-3 statement reflecting only wages paid of \$1,000, we would not conclude that all of the beneficiary's earned income was based on the beneficiary's work for the petitioner. Additionally, Form 1040 lists the beneficiary's occupation as "retired," and that his spouse was employed as a clerk. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. at 591-592.

The beneficiary's prior tax returns for the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003,<sup>9</sup> all reflect that he operated his own business "[REDACTED]." Form G-325A filed with the beneficiary's I-485

<sup>7</sup> The petitioner's tax returns reflect the following wages paid: 2004: \$1,000; 2003: \$7,600; 2002: \$20,000; 2001: \$22,320; 2000: \$23,424; 1999: \$14,345; 1998: \$18,500; 1997: \$14,840. In each year, the wages paid to all employees were less than the beneficiary's proffered wage.

<sup>8</sup> The beneficiary's tax returns for the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, reflect that he operated his own business "[REDACTED]" as a sole proprietorship. The beneficiary reflected his business income on Schedule C, which listed a business address of [REDACTED]. It is unclear whether the beneficiary still operates this business. A search of the Internet shows that there is an "[REDACTED] Design" at [REDACTED]. See [http://yellowpages.superpages.com/profile~SRC-portals~C\\_Gemologists~LID\\_PwHVzoQ](http://yellowpages.superpages.com/profile~SRC-portals~C_Gemologists~LID_PwHVzoQ) accessed on January 9, 2008. It is unclear whether this listing represents the beneficiary's business, or whether it is a separate jewelry design company. No information is available online regarding "[REDACTED]" the business that the beneficiary operated in Canada.

<sup>9</sup> The record additionally contains the beneficiary's tax records to reflect income prior to 1995 from the

Adjustment of Status application similarly reflects that he was "self-employed" as a jeweler from 1995 to the present (signed on August 15, 2003).

Additionally, we note that the record of proceeding contains Forms 941 Quarterly Tax Returns for the year 2001, along with W-2 statements, which reflected the petitioner's employment of two individuals that each earned around \$10,000. As noted above, in no single year did the petitioner pay any one employee or all employees' wages, which were greater than the proffered wage. Based on the record before us, the petitioner has not clearly established that it would employ the beneficiary on a full-time basis, or that the business requires an employee on a permanent full-time basis.

20 C.F.R. § 656.3, related to the labor certification process for permanent employment of aliens in the United States, defines employment as "permanent, full-time work by an employee for an employer other than oneself." The Form ETA 750 job offer of permanent full-time work forms the basis of the petitioner's I-140 Petition for an immigrant visa. 8 C.F.R. 204.5(l)(3) requires that the Form I-140 be filed with an individual labor certification from the Department of Labor, which provides that job offer of permanent full-time employment. The petitioner must establish that its job offer to the beneficiary is a realistic one. 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. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). Whether the petitioner is able to establish that it could employ the beneficiary from the time of the priority date on a full-time basis is part of establishing that it had a realistic job offer.

Based on a review of the record as a whole, considering the beneficiary's past employment, his tax records, as well as the petitioner's history of wage payment and employment of other workers, we would not conclude that the petitioner intends to employ the beneficiary in accordance with the terms of the certified labor certification. *See Matter of Izdebska*, 12 I&N Dec. at 54.

Accordingly, the petition's approval was properly revoked for good and sufficient cause as the petitioner failed to establish its ability to pay the proffered wage, and its intent to employ the beneficiary in accordance with the terms of the certified labor certification. 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.

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beneficiary's business. As the beneficiary previously resided in Montreal, the records are in French. No translations were submitted. 8 C.F.R. § 103.2(b)(3) provides:

*Translations.* Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.