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U.S. Citizenship  
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Services

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FILE:

EAC-03-013-51328

Office: VERMONT SERVICE CENTER

Date: JAN 31 2008

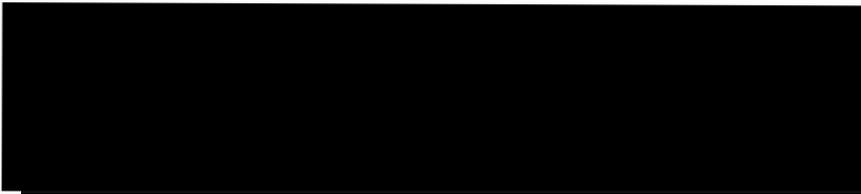
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition<sup>1</sup> was denied by the Director, Vermont Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner installs and repairs aluminum rain gutters. It seeks to employ the beneficiary permanently in the United States as a sheet metal installer (gutters and leaders installer). As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor (DOL).<sup>2</sup> The director denied the petition on the basis that the petitioner failed to establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The AAO affirmed the director's decision.

The record shows that the motion is properly filed and timely. The motion meets applicable requirements set forth at 8 C.F.R. §§ 103.5(a)(2) and (3). The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

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<sup>1</sup> The petitioner submitted two other petitions for the same beneficiary. The first petition (EAC-02-067-53171) was filed on December 14, 2001 and denied on July 3, 2002. The subsequent appeal was dismissed by the Administrative Appeals Office on April 28, 2004. The other petition (EAC-04-037-53349) was filed on November 15, 2003 and denied on October 20, 2006.

<sup>2</sup> The petitioner's two other petitions for the same beneficiary were filed based on the instant approved labor certification.

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 motion<sup>3</sup>. On motion, counsel submits a brief, and Form 1065 U.S. Partnership Return of Income filed by [REDACTED] Seamless Aluminum Gutters for 1998, Form 1120S U.S. Income Tax Return for an S Corporation filed by [REDACTED] Seamless Aluminum Gutters, Inc. (VJSSAGI) for 1999 through 2001, an affidavit of [REDACTED] and a bank statement for his savings account, an affidavit of Guadalupe Viera and statements for his credit card accounts, a letter dated August 30, 2006 from Kevin P. Finn, an attorney in the State of New York, an affidavit of [REDACTED] and [REDACTED] dated August 31, 2006, stock certificates of VJSSAGI for [REDACTED] and [REDACTED], a letter dated August 29, 2006 from [REDACTED] and a copy of a filing receipt from the New York Department of State for VJSSAGI as new evidence. Other relevant evidence in the record includes Form 1065 U.S. Partnership Return of Income filed by J.S. Seamless Aluminum Gutters for 1997, Form 1120S U.S. Income Tax Return for an S Corporation filed by VJSSAGI for 2002 and monthly bank statements of J S Seamless Aluminum Gutters' and/or VJSSAGI's business checking accounts for a period from February 1997 to October 2001. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The record shows that J.S. Seamless Aluminum Gutters, located at 265 Sunrise Highway, Suite 26, Rockville Center, NY 11570, filed a Form ETA 750 on behalf of the instant beneficiary on March 13, 1997 and the Form ETA 750 was certified on June 15, 2001 to J.S. Seamless Aluminum Gutters. On October 7, 2002, J.S. Seamless Aluminum Gutters filed the instant petition based on the instant approved labor certification after its first immigrant petition for the beneficiary was denied on July 3, 2002. Therefore, the petitioner in the instant case is J.S. Seamless Aluminum Gutters. On the petition, the petitioner identified itself with federal employer identification number (FEIN) [REDACTED] and claimed to have been established in 1996, to have a gross annual income of \$140,000, and to currently employ 2 workers. The petitioner submitted financial documents of VJSSAGI to establish the petitioner's continuing ability to pay the proffered wage beginning on the priority date in 1997.

On motion, counsel claims that the owners of the petitioner formed VJSSAGI to take over the petitioner's business as a general partnership and assumed all rights of the petitioner, and therefore, VJSSAGI qualifies to be the successor-in-interest to the petitioner. This status requires documentary evidence that the successor company has assumed all of the rights, duties, and obligations of the petitioner. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

The record contains the petitioner's tax returns for 1997 and 1998<sup>4</sup>. The tax returns show that the petitioner was a general partnership in those years identified with FEIN [REDACTED] and each of two general partners,

<sup>3</sup> The submission of additional evidence on motion is allowed by the regulation at 8 C.F.R. § 103.5(a). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>4</sup> The petitioner's 1998 tax return was filed under the name of [REDACTED] Seamless Aluminum Gutters, however, we consider the 1998 tax return as the petitioner's since the name used in all other attachments and schedules is the same as the petitioner's name and the FEIN is the same as the petitioner's in its 1997 tax return.

<sup>5</sup> However, it is noted that the FEIN on the tax return forms is different from the one the petitioner claimed on

[REDACTED] and [REDACTED], owned 50% of the interest in the general partnership. The record also contains the tax returns filed by VJSSAGI for 1999 through 2002. These tax returns show that VJSSAGI is structured as an S corporation, with FEIN [REDACTED] and the submitted stock certificates of VJSSAGI for [REDACTED] and [REDACTED] show that each of them holds 50% of stock of VJSSAGI. The filing receipt issued by the New York State Department of State Corporation Division shows that VJSSAGI initiated its filing on July 2, 1998. Counsel submits a letter dated August 30, 2006 from [REDACTED], an attorney in the State of New York (the attorney's August 30, 2006 letter), an affidavit of [REDACTED] and [REDACTED] dated August 31, 2006 [REDACTED] August 31, 2006 affidavit), and a letter dated August 29, 2006 from [REDACTED] (CPA August 29, 2006 letter) asserting that VJSSAGI was established to assume all of the rights, duties, obligations, and assets of the partnership, J.S. Seamless Aluminum Gutters. However, the record does not contain any documentary evidence to show that VJSSAGI has assumed all of the rights, duties, obligations, and assets of J.S. Seamless Aluminum Gutters. Counsel did not submit the articles of incorporation of VJAASAGI or any other documents showing that all of the rights, duties, obligations, and assets of J.S. Seamless Aluminum Gutters has been transferred to VJSSAGI when it was incorporated or that VJSSAGI has been doing business as J.S. Seamless Aluminum Gutters. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *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)). A letter from an attorney or CPA, and affidavit from the beneficiary cannot be accepted as the required documentary evidence.

In addition, this office accessed the New York corporation and business entity data,<sup>7</sup> but failed to find any information to support the petitioner's assertions that VJSSAGI is the successor-in-interest to J.S. Seamless Aluminum Gutters, that VJSSAGI is doing business as J.S. Seamless Aluminum Gutters, or that VJSSAGI and J.S. Seamless Aluminum Gutters are the same business entity. The New York Department of State Corporation Division official website indicates that there is no business entity under the name of J.S. Seamless Aluminum Gutters in its corporation and business entity data; a New York domestic business corporation named J.S. Seamless Aluminum Gutters, Inc. was formed on June 21, 1993 with an address of 265 Sunrise Highway, Suite 26, Rockville Center, NY 11570,<sup>8</sup> and is now inactive; and [REDACTED] Seamless Aluminum Gutters, Inc. was incorporated on July 2, 1998 as a New York State domestic business corporation with the address at 53 North Park Avenue, Suite 206, Rockville Center, NY 11570 and is currently active.

Furthermore, the record does not contain evidence showing when the general partnership, J.S. Seamless Aluminum Gutters was dissolved. If VJSSAGI had assumed all of the rights, duties, obligations, and assets of the general partnership, J.S. Seamless Aluminum Gutters on July 2, 1998 when it was incorporated as counsel claimed, J.S. Seamless Aluminum Gutters would no longer exist from that point. However, the petitioner filed all its three immigrant petitions on behalf of the beneficiary under the name of J.S. Seamless Aluminum Gutters on December 14, 2001, October 7, 2002, and on November 15, 2003, respectively. Counsel did not explain how a general partnership could file an immigrant petition three, four and even five

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the Form I-140 petition.

<sup>6</sup> This FEIN is same as the one claimed by the petitioner on the instant petition as its identification number.

<sup>7</sup> See [http://appsex8.dos.state.ny.us/corp\\_public/corpsearch.entity\\_search\\_entry](http://appsex8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry) (accessed on December 12, 2007).

<sup>8</sup> This is the address the petitioner claimed as the address of the general partnership J.S. Seamless Aluminum Gutters on the Form ETA 750 and the instant petition.

years after it was allegedly dissolved. *Matter of Ho*, 19 I&N Dec. 582, 591 (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.” The record does not contain any independent objective evidence to resolve this inconsistency.

The AAO finds that the petitioner in the instant case, J.S. Seamless Aluminum Gutters, has not submitted persuasive evidence that indicates that VJSSAGI qualifies as a successor-in-interest to the petitioner or that the petitioner and VJSSAGI are the same entity. The petitioner failed to establish that a relationship exists between the petitioner and VJSSAGI. Without establishing the successor-in-interest status for VJSSAGI, any petitions filed by the instant petitioner are not approvable because the petitioning entity no longer exists.

In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Even if it had been established that VJSSAGI were the successor-in-interest to the petitioner, it would have been established that the predecessor had the ability to pay the proffered wage from the priority date in 1997 to the time when the alleged successor-in-interest relationship had occurred, i.e., July 2, 1998 and that VJSSAGI as the successor-in-interest to the petitioner had the ability to pay the proffered wage from the time of successor-in-interest to the present. In the instant case, counsel submits the partnership income tax returns of J.S. Seamless Aluminum Gutters for 1997 and 1998, the corporate tax returns of VJSSAGI for 1999 through 2002, bank statements for the period from February 1997 to October 2001 for J.S. Seamless Aluminum Gutters’ and/or VJSSAGI’s business checking accounts, an affidavit of [REDACTED] and a bank statement for his saving account, and an affidavit of [REDACTED] and statements for his credit card accounts. The AAO will review the petitioner’s financial documents for 1997 and 1998 to determine whether the petitioner had the ability to pay the proffered wage as the predecessor in 1997, the year of the priority date, and 1998. The AAO will also review VJSSAGI’s financial documents submitted as if it were established as a successor-in-interest to the petitioner to determine whether VJSSAGI as the successor-in-interest had the continuing ability to pay the proffered wage from 1999 to the present.

In determining the petitioner’s ability to pay the proffered wage during a given period, Citizenship and Immigration Services (CIS) will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner’s ability to pay the proffered wage. In the instant case, the record does not contain any W-2 forms, 1099 forms, or payroll records showing that the beneficiary was paid any amount of compensation from the petitioner or VJSSAGI. Counsel asserted that the beneficiary was never employed by the petitioner or VJSSAGI. Therefore, the petitioner and/or its alleged successor-in-interest failed to establish their ability to pay the proffered wage through the examination of wages actually paid to the beneficiary.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner’s federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner’s ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080

(S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. Counsel claimed that the depreciation expenses of VJSSAGI for 1999 through 2002 should be added back to net income in determining the ability to pay the proffered wage. Counsel's reliance on depreciation is misplaced. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend 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* at 537.

The evidence indicates that the petitioner was a partnership in 1997 and 1998 and that VJSSAGI is structured as an S corporation. The record contains copies of the petitioner's Form 1065 U.S. Return of Partnership Income for 1997 and 1998 and VJSSAGI's Form 1120S U.S. Income Tax Return for an S Corporation for 1999 through 2002. According to the tax returns, their fiscal years are based on a calendar year. The tax returns demonstrate the following financial information concerning the ability to pay the proffered wage of \$49,587.20 per year from the priority date:

- In 1997, the Form 1065 stated net income<sup>9</sup> of \$25,161.
- In 1998, the Form 1065 stated net income of \$38,196.
- In 1999, the Form 1120S stated a net income<sup>10</sup> of \$67,732.

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<sup>9</sup> Where a partnership's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on Line 22 of page one of the petitioner's Form 1065. The instructions on the Form 1065, U.S. Partnership Income, state on page one, "Caution, Include only trade or business income and expenses on lines 1a through 22." Where a partnership has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K (pages 3-4 of Form 1065) is a summary schedule of all the partners' shares of the partnership's income, credits, deductions, etc. The net income is reported on Analysis of Net Income (Loss) line 1 Net income (loss) on page 4 of Form 1065. *See Internal Revenue Service, Instructions for Form 1065*, at <http://www.irs.gov/pub/irs-pdf/i1065.pdf>.

<sup>10</sup> 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

- In 2000, the Form 1120S stated a net income of \$39,866.
- In 2001, the Form 1120S stated a net income of \$63,968.
- In 2002, the Form 1120S stated a net income of \$52,543.

Therefore, for the years 1997 and 1998, the petitioner did not have sufficient net income to pay the proffered wage, and thus failed to establish its ability to pay the proffered wage with its net income in these years. For 1999, 2001 and 2002, VJSSAGI had sufficient net income to pay the proffered wage, however, its net income in 2000 was insufficient to pay the 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.<sup>11</sup> A corporation's year-end current assets are shown on Schedule L to the Form 1120 or Form 1120S, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. A partnership's year-end current assets are shown on Schedule L to the Form 1065, lines 1 through 6. Its year-end current liabilities are shown on lines 15 through 17. If the total of a corporation's or partnership's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 1997 were \$11,471<sup>12</sup>.
- The petitioner's net current assets during 1998 were \$1,617.
- VJSSAGI's net current assets during 2000 were \$4,489.

Therefore, for the years 1997 and 1998, the petitioner did not have sufficient net current assets to pay the proffered wage, and VJSSAGI had insufficient net current assets to pay the proffered wage in 2000.

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Schedule K. The Schedule K form related to the Form 1120S 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 line 23 or line 17e of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. For example, an S corporation's rental real estate income is carried over from the Form 8825 to line 2 of Schedule K. Similarly, an S corporation's income from sales of business property is carried over from the Form 4979 to line 5 of Schedule K. See Internal Revenue Service, Instructions for Form 1120S (2003), available at <http://www.irs.gov/pub/irs-prior/i1120s--2003.pdf>; Instructions for Form 1120S (2002), available at <http://www.irs.gov/pub/irs-prior/i1120s--2002.pdf>.

<sup>11</sup>According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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 accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>12</sup> Although the record contains different versions of the Schedule L to the Form 1065 for 1997, this office takes the figure from the IRS certified copy.

The record contains bank statements of the business checking accounts for the petitioner and/or VJSASAGI covering the period from February 1997 to October 2001. Counsel's reliance on the balances in the business checking accounts 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 show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. 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 petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that was considered in determining the petitioner's net current assets.

Counsel asserts that the petitioner had funds available in credit lines of \$12,205.15 in 1997 and \$12,000 in 1998 to pay the proffered wage to the beneficiary. 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 its 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 or audited financial statement 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).

The record shows that the petitioner was structured as a general partnership with two general partners, S [REDACTED] and C [REDACTED], each of them owned 50 percent of the partnership interests. A general partner is personally liable for the partnership's total liabilities. As such, a general partner's personal assets may be utilized to show the ability to pay the proffered wage. Therefore, CIS will consider the general partners' income and their liquefiable assets and personal liabilities as part of the petitioner's ability to pay. The general partners' liquid assets include cash balances in accounts of savings, money market, certificates of deposits showing extra available funds for the general partners to pay the proffered wage and/or personal expenses. In the instant case, counsel submits a bank statement for a period from August 13 to September 11, 1997 showing [REDACTED] has the balance of \$2,662.11 in his saving account as of September 11, 1997 and an affidavit of [REDACTED] attesting that the bank record for the end of 1997 is not available and that he had

no less than the amount of \$2,662.11 in that saving account on December 31, 1997. However, even if [REDACTED] had established that he had the balance of \$2,662.11 in his savings account at the end of the year 1997, these extra liquid assets would not be sufficient to cover the difference of \$24,426.20 between the proffered wage and the general partnership's net income that year. Further, the record does not contain any evidence showing that [REDACTED] had extra funds available to pay the difference of \$11,391.20 between the proffered wage and the general partnership's net income in 1998.

Counsel also submits an affidavit of [REDACTED] and the statements for his credit card accounts claiming that he had no less than the amount of \$9,815.20 in 1997 and \$10,000 in 1998 available through his credit cards. However, CIS will not accept the partner's personal credit card line as extra available liquid assets in determining the petitioner's ability to pay. Furthermore, a general partner's personal expenses and liabilities must also be examined in order to make a determination that his assets are truly available to pay the proffered wage. The record of proceeding does not contain enough information regarding the general partner's personal expenses. As such, the petitioner has not demonstrated that the general partners' assets may be utilized to pay the proffered wage and it is not clear whether the general partners had available funds sufficient to pay the proffered wage and the general partners' living expenses at the end of each year 1997 and 1998.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner would not have established that it had the ability to pay the beneficiary the proffered wage in 1997, the year of the priority date, and in 1998 as the predecessor entity through an examination of wages paid to the beneficiary, its net income or its net current assets, and the general partners' extra available liquid assets in 1997 and 1998; and the alleged successor-in-interest to the petitioner, VJSSAGI, would not have established that it had the ability to pay the beneficiary the proffered wage in 2000 through an examination of wages paid to the beneficiary, and its net income or its net current assets even if the successor-in-interest relationship between the petitioner and VJSSAGI had been established.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 motion is granted. The previous decision of the AAO, dated August 9, 2006, is affirmed. The petition is denied.