

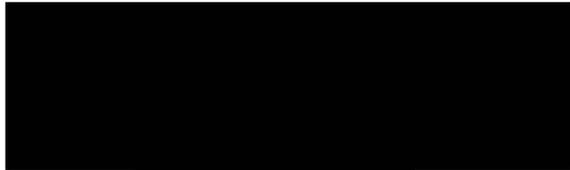
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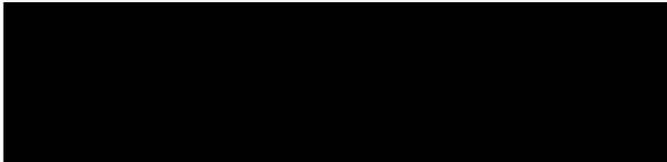


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 13 2008
WAC 04 031 51122

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Other Worker Pursuant to § 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 was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a farm. It seeks to employ the beneficiary permanently in the United States as a pipe fitter (irrigation equipment fabricator). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary met the requirements of the labor certification as of the priority date of April 23, 2001. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's original May 18, 2005, decision, the single issue in this case is whether or not the beneficiary met the experience requirements of the labor certification as of the priority date of April 30, 2001.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, 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(l)(3) states, 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.

(D) *Other workers.* If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 23, 2001.

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).

Citizenship and Immigration Services (CIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v.*

Landon, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In this case, Block 14 requires that the beneficiary must possess three months of experience in the job offered as a pipe fitter (irrigation equipment fabricator). Block 15 requires that the beneficiary must have or be able to obtain a Nevada driver's license and have a DMV record acceptable to insurance carrier.

Based on the information set forth above, it can be concluded that an applicant for the petitioner's position of pipe fitter (irrigation equipment fabricator) must have three months of experience in the job offered as a pipe fitter (irrigation equipment fabricator), must have or be able to obtain a Nevada driver's license, and must have a DMV record acceptable to insurance carrier.

The Form ETA 750B, which lists the beneficiary's employment, was signed by the beneficiary on April 17, 2001 under penalty of perjury, and it reports the beneficiary's work history as being employed by the petitioner from September 2002 to the present, being employed by Kings River Ranch in Orovada, Nevada from April 2000 to September 2002, and being employed by Ejidatorio Del Ejido El Colomo y La Arena in the Municipio De Manzanillo, Estado de Colima C.P. from 1995 to 1999. As explained below, the beneficiary's employment, as listed on the Form ETA 750B, is consistent with the evidence submitted with the exception of the second letter from [REDACTED] of Kings River Ranch. See also below the results of the investigation conducted by the U.S. Consulate General, Guadalajara, Jalisco, Mexico.

In the instant case, counsel provided a letter (not translated), dated June 14, 2003, from [REDACTED] Ejidatorio Del Ejido El Colomo Y La Arena and a letter, dated June 8, 2003, from Pat Kelly, Foreman, of Kings River Ranch, stating that the beneficiary was employed by Kings River Ranch from April 25, 2000 to September 23, 2002. The letter from [REDACTED] of Kings River Ranch further states that the beneficiary "is experienced in irrigation repair and maintenance technics [sic] that is highly desirable for her job position to run smoothly and efficiently."

In response to a request for evidence, counsel submitted another letter from [REDACTED] of Kings River Ranch, dated July 9, 2004, and another letter from [REDACTED], Owner of the common land El Colomo y la Arena, dated July 19, 2004.

The second letter from [REDACTED] states that the beneficiary was employed by Kings River Ranch from April 25, 2001 to September 23, 2002.¹ The letter reports that the beneficiary was hired as an Irrigation and Repair

¹ It is noted that the two letters show different start dates for the employment of the beneficiary with Kings River Ranch. The first letter states that the beneficiary began employment with Kings River Ranch on April 25, 2000, and the second letter states that the beneficiary began employment with Kings River Ranch on April 25, 2001. It is also noted that the director did not request a clarification of this discrepancy. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

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.

Maintenance Technician. "Her duties are to repair and maintenance the irrigation systems; working from 35-40 hours per week."

The second letter from [REDACTED], notarized by [REDACTED] states:

By means of the present one, I, C. Mexican [REDACTED] owner of the common land known as El Colomo y la Arena, I certify that her, [the beneficiary], worked in my land from 1995 to 1999 and was in charged [sic] of technical maintenance in systems of irrigation, she is a responsible, hard-working person and of good conduct, which has never had any problems with any other person.

On February 24, 2005, the director issued a notice of intent to deny (NOID) based on the results of an investigation conducted by the Consulate General of the United States of America, Guadalajara, Jalisco, Mexico which reported:

A check with the Mexican Social Security Institute revealed no employment on record for the above subject (the beneficiary) during 1995 and 1999. Last record was in 2000 for a company named Villasana y Compania.

The signer of the letter, [REDACTED], via phone stated that he issued the letter as a favor. He admitted that he does not know [the beneficiary] and never worked for him.

In response to the NOID, counsel pointed out that "[REDACTED] who you contacted, is not the employer, he was merely the notary/authenticator on the letter." Counsel also stated that the reason there are no social security records is because the beneficiary was paid on a cash basis. Counsel provided a telephone number for [REDACTED] the author of the letter, dated July 19, 2004, professing the beneficiary's employment from 1995 to 1999 who was charged with technical maintenance of irrigation systems.

The director determined that the evidence did not establish that the beneficiary met the three month experience requirement and denied the visa petition on May 18, 2005.

On appeal, counsel submits another copy of the July 19, 2004 letter from [REDACTED] and states:

The District Director denied the instant petition based upon incorrect information. The DD denial is based upon a "further inquiry reveals that notary, [REDACTED] issued the letter as a favor and that he does not know [the beneficiary]." The petitioner on rebuttal pointed out that the Notary did not issue the employment letter verifying prior experience.

[REDACTED], the owner of the land where the beneficiary worked, issued the letter. The owner's signature was notarized verifying his identify [sic]. The conclusion that he ([REDACTED]) did not know [the beneficiary] is understandable. No one ever talked to the employer who issued the verification of employment and experience. The DD

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.

indicates that the Notary is a signatory of the letter. While the notary signed the document, it was for the purpose of notarizing the employer's signature indicating that he was who he said he was. The notary did not sign the letter as a person providing the information.

The denial is based upon the "opinion" of the DD based upon the finding that the Notary does not know the beneficiary. The notary did the act for the employer as a favor. The notary would not know the person about whom the letter is written.

Therefore, the conclusion of the DD and his opinion are incorrect and cannot be the basis for denial. The employer and beneficiary provided verification of the alien's experience on two separate occasions. If the Service – during its investigation – contacted the correct person, the employer, - the letter would have been verified as true and correct.

The regulations at 8 C.F.R. § 204.5(l)(3)(ii)(A) state:

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.

The AAO is in agreement with counsel with regards to the mistake made by the U.S. Consulate General, Guadalajara, regarding the signature of the notary, [REDACTED]. Mr. [REDACTED] should not have been considered a signatory of the employment letter. Instead, [REDACTED] as a notary is merely an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's [REDACTED] identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). [REDACTED] would not have known the beneficiary and could not have confirmed her employment with Mr. [REDACTED].

However, there is another issue regarding the investigation of the beneficiary's employment with Mr. [REDACTED] that must be discussed. That issue concerns the lack of a social security record with the Mexican Social Security Institute between 1995 and 1999. Counsel reports that the lack of a social security record is due to the payment of wages to the beneficiary in cash by [REDACTED]. There is no explanation as to why the beneficiary would have been paid in cash since she is a Mexican citizen or that records would not be kept, and if the social security system in Mexico is similar to that of the United States, why the beneficiary would not have wanted the record to show that she had earned social security in order to be paid benefits at a later date. In addition, the beneficiary has not provided any further evidence to corroborate the claim that she was employed by [REDACTED] from 1995 through 1999 and was paid her wages in cash (i.e., affidavits from co-workers, neighbors, bank statements, tax returns, etc.). 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)).

Further, the discrepancy between the two letters provided by [REDACTED] of Kings River Ranch casts doubt on the beneficiary's employment with Kings River Ranch. If the beneficiary began employment with Kings River Ranch in 2000, then she would have had the required three months experience as a pipe fitter (irrigation maintenance fabricator). However, the director did not request, and the petitioner did not submit any explanation of this discrepancy. There is also no probative evidence, other than the letter from [REDACTED], of the beneficiary's employment by Kings River Ranch (i.e., Forms W-2, Wage and Tax Statement, Forms

1099-MISC, Miscellaneous Income, pay stubs, tax returns, etc.). *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Therefore, the AAO does not find that the petitioner has established that the beneficiary met the three month experience requirement as a pipe fitter (irrigation equipment fabricator) or that she possesses a Nevada driver's license or that she has a DMV record acceptable to insurance carrier.²

Beyond the decision of the director, the record in this case also lacks conclusive evidence as to whether or not the petitioner has established its ability to pay the proffered wage from the priority date of April 23, 2001 and continuing to the present. 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).

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). The priority date in the instant petition is April 23, 2001. The proffered wage as stated on the Form ETA 750 is \$10.92 per hour or \$22,713.60 annually.

Relevant evidence submitted in support of the petitioner's continuing ability to pay the proffered wage of \$22,713.60 from the priority date includes copies of the sole proprietor's 2000 through 2003 Forms 1040, U.S. Individual Income Tax Returns, including Schedule C, Profit or Loss from Business, and Schedule F, Profit or Loss from Farming, copies of the petitioner's 2001 through 2003 Forms 943, Employer's Annual Tax Return for Agricultural Employees (employees not listed), copies of the petitioner's 2001 through 2003 Forms 941, Employer's Quarterly Federal Tax Returns (employees not listed), a copy of the sole proprietor's personal monthly recurring expenses, and copies of the petitioner's business checking accounts for 2001 through 2003. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's 2000³ through 2003 Forms 1040 reflect adjusted gross incomes of \$8,134, -\$64,900, \$14,410, and -\$1,472, respectively.

² It is noted that no evidence was submitted of the beneficiary's Nevada driver's license or her DMV record.

The petitioner's 2000 through 2003 Schedule Cs reflect gross receipts of \$762,277, gross profit of \$277,244, wages of \$136,167, and net profit of \$4,313 in 2000; gross receipts of \$849,008, gross profit of \$230,119, wages of \$178,772, and net profit of -\$78,820 in 2001; gross receipts of \$854,662, gross profit of \$133,714, wages of \$9,189, and net profit of \$12,798 in 2002; gross receipts of \$566,894, gross profit of \$193,540, wages of \$112,682, and a net profit of \$4,661 in 2003.

The petitioner's 2000 through 2003 Schedule Fs reflect sales of \$135,136, gross income of \$147,556, labor hired of \$23,551, and net farm profit of \$2,534 in 2000; sales of \$158,746, gross income of \$170,616, labor hired of \$25,511, and net farm profit of \$11,728 in 2001; sales of \$168,731; gross income of \$187,289, labor hired of \$37,295, and net farm profit of \$168 in 2002; sales of \$126,802, gross income of \$138,421, labor hired of \$30,151, and net farm profit of -\$22,220 in 2003.

Since no employees were listed with the Forms 943 and Forms 941, the AAO is unable to determine the wages paid to the beneficiary in 2002 and 2003. Therefore, the wages paid to the beneficiary in 2002 and 2003 cannot be considered when determining the petitioner's ability to pay the proffered wage of \$22,713.60.

The petitioner's 2001 through 2003 business checking account reflected balances ranging from a low of \$486.86 to a high of \$36,158.43.

The sole proprietor's personal recurring monthly expenses are listed as \$1,853.32 (includes a car payment of \$179.32) per month or \$22,239.84 annually.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on April 17, 2001, the beneficiary claims to

³ It is noted that the petitioner's 2000 tax return is for the year before the priority date of April 23, 2001, and, therefore, has little evidentiary value when determining the petitioner's ability to pay the proffered wage of \$22,713.60 from the priority date and continuing to the present. Therefore, the AAO will not consider the petitioner's 2000 tax return when determining the petitioner's ability to pay the proffered except when determining the totality of the circumstances affecting the petitioning business if the evidence warrants such consideration.

have been employed by the petitioner from September 2002 to the present.⁴ However, counsel has not submitted any Forms W-2 or Forms 1099-MISC issued by the petitioner on behalf of the beneficiary to corroborate the beneficiary's claims.⁵ Therefore, any monies paid to the beneficiary in 2002 and 2003 cannot be considered when determining the petitioner's ability to pay the proffered wage.

As an alternative means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well 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. Tex. 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc.*, the court held that CIS had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. 623 F.Supp at 1084. The court specifically rejected the argument that CIS should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." See also *Elatos Restaurant Corp.*, 632 F. Supp. at 1054. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

The petitioner is a sole proprietorship, 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 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of approximately

⁴ It is unclear how the beneficiary signed the ETA 750 in 2001 when she did not begin employment with the petitioner until 2002.

⁵ Counsel claims that the Forms W-2 are not available as neither party has maintained a copy of them.

\$20,000 where the beneficiary's proposed salary was \$6,000 (or approximately thirty percent of the petitioner's gross income).

In the instant case, the sole proprietor supported a family of two in 2001 through 2003. The petitioner's owner's adjusted gross incomes in 2001 through 2003 were -\$64,900, \$14,410, and -\$1,472, respectively. The sole proprietor could not have paid the proffered wage of \$22,713.60 and the sole proprietor's personal monthly recurring expenses of \$22,239.84 from the sole proprietor's adjusted gross incomes in 2001 through 2003.⁶

In a previously submitted letter, the sole proprietor states:

Our main farm income is from the sell of alfalfa hay, and sometimes the main part of the hay doesn't sell until the following year.

This is the reason we have a loss some years on our income tax; to supplement our income when this happen[s] we have a business loan to carry us through until the hay is sold.

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

Since the line of credit is a "commitment to loan" and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the petitioner'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 of proceeding does not demonstrate that the petitioner has the continuing ability to pay the proffered wage beginning on the priority date.

⁶ It is also noted that the sole proprietor has filed an additional five petitions with the same priority date as that of the beneficiary. Four of the five have been approved. Therefore, the sole proprietor must establish the ability to pay all of the wages from the priority date and continuing until the various beneficiaries obtain lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

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 appeal is dismissed.