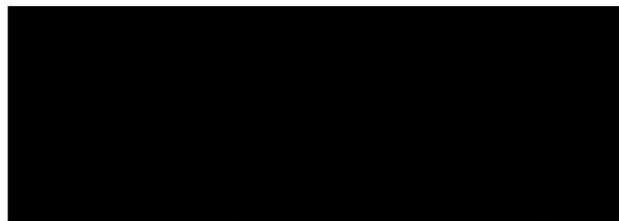


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



13

FILE:



Office: NEBRASKA SERVICE CENTER

Date: OCT 03 2008

LIN-06-207-52565

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:

SELF-REPRESENTED

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a consulting services and software development firm. It seeks to employ the beneficiary permanently in the United States as a computer programmer. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (ETA Form 9089 or labor certification application)¹ approved by the Department of Labor (DOL), accompanied the petition. The director analyzed the petition under the third preference professional category and determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a four-year U.S. bachelor's degree or foreign equivalent degree as required on the ETA Form 9089. 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 the decision. Further elaboration of the procedural history will be made only as necessary.

The instant petition and appeal were represented by [REDACTED] of Complete Immigration, Inc. as a non-attorney representative. A review of recognized organizations and accredited representatives reported in July 11, 2008 by the Executive Office for Immigration Review at <http://www.usdoj.gov/eoir/statspub/raroster.htm> (accessed September 30, 2008), does not mention Complete Immigration, Inc. or [REDACTED]. Under 8 C.F.R. § 292.1, persons entitled to represent individuals in matters before the Department of Homeland Security (DHS), and the Immigration Courts and Board of Immigration Appeals (Board), or the DHS alone, include, among others, accredited representatives. Any such representatives must be designated by a qualified organization, as recognized by the Board. A recognized organization must apply to the Board for accreditation of such a representative or representatives. Thus, the petitioner is considered self-represented in this matter.

As set forth in the director's March 26, 2007 decision, the primary issue in the current petition is whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position as set forth on the ETA Form 9089.

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

¹ The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current Department of Labor (DOL) regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. See 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Since the instant labor certification application was filed after March 28, 2005, it is governed by the PERM regulations.

States. Section 203(b)(3)(A)(ii) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.² On appeal, the petitioner submitted a brief, a copy of the ETA Form 9089 and a letter dated January 7, 2003 from Mr. Efren Hernandez III, Director, Business and Trade Services, of the US Citizenship and Immigration Services (CIS) Office of Adjudications (Mr. Hernandez January 7, 2003 letter). Other relevant evidence in the record includes the beneficiary's bachelor of commerce degree and transcripts from the University of Delhi, a certificate of completion of the course titled Computer Software and Application from August 19, 1985 to May 7, 1986 and transcripts from National Institute of Information Technology (NIIT) in India, certificates of completion of training courses from IBM, the Value City Training Center, Actuate, Crystal Decisions and Lawson Software, and an academic equivalency evaluation dated June 21, 2006 from The Trustforte Corporation (Trustforte June 21, 2006 evaluation). The record does not contain any further evidence concerning the beneficiary's educational qualifications. Because the record does not contain any evidence that the beneficiary obtained a single four-year bachelor's degree or foreign equivalent degree prior to the priority date, the AAO issued a request for evidence (RFE) on May 28, 2008 granting 12 weeks to respond. However, to date, more than 17 weeks later, no response from the petitioner has been received. This office will adjudicate the appeal based on evidence in the record.

The original ETA Form 9089 was accepted on April 6, 2006 and certified on April 18, 2006. The ETA Form 9089 in the instant case was filed and certified for the position of Computer Programmer. DOL assigned the occupational code of 15-1021.00, computer programmers, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/find/result?s=15-1021.00&g=Go> (accessed September 26, 2008) and its extensive description of the position and requirements for the position most analogous to network and computer systems administrator position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to programmer analyst position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* <http://online.onetcenter.org/link/summary/15-1021.00#JobZone> (accessed September 26, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

² 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).

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Therefore, according to the DOL assignment, a computer programmer position may be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience³ depending on the petitioner's specific requirements. In this case, the ETA Form 9089, Part H sets forth the minimum requirements for the position of computer programmer. The proffered position requires a bachelor's degree in any relevant field and 36 months (three years) of experience in the job offered or in any relevant/related job titles. The petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, but the director analyzed and denied the petition under the professional category. On appeal, the petitioner did not disagree the director's analysis under the professional category, nor did the petitioner specifically request for classification under the skilled worker category.

The ETA Form 9089, Part H Item 8 indicates that the employer will accept any suitable combination of education, training or three years of experience as an alternative. However, the petitioner did not further define the term "any suitable combination" on the ETA Form 9089 or any other documents. In order to determine whether the petitioner expressed its intent to accept alternatives to a four-year U.S. bachelor's degree and thus sought to classify the beneficiary under the skilled worker category, the AAO issued an RFE dated May 28, 2008. The RFE requested evidence concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed to DOL while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application, such as notice of the filing of the application for permanent employment certification, a job order and advertisements in a newspaper or professional journal and a recruitment report. However, the petitioner has not submitted any of the requested evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The record does not contain any evidence showing that the petitioner had intent to recruit the instant position as a skilled worker at any stage of labor certification process. Therefore, the AAO finds that the director properly analyzed this petition under the professional category and this office will adjudicate the instant appeal under the professional category only.

For the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

³ A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." It is noted that IT positions are not included in this section.

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The evidence in the record shows that the beneficiary possesses a three-year bachelor of commerce degree from the University of Delhi in India, a certificate for completion of a one-year course titled Computer Software & Application from NIIT in India, and training certificates from IBM, Value City, Actuate, Crystal Decisions and Lawson Software.

In determining whether the beneficiary possessed a single U.S. bachelor's degree or a foreign equivalent degree in a related field, as mentioned in our RFE, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO, according to its website, <http://www.aacrao.org>, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register>, EDGE is "a web-based resource for the evaluation of foreign educational credentials." EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's three-year bachelor of commerce degree from the University of Delhi in India cannot be considered a foreign equivalent degree.

The petitioner also submitted a copy of the Mr. Hernandez January 7, 2003 letter expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). The petitioner's assertion that the regulation does not require a single source degree or foreign equivalent degree for a professional position based on the Mr. Hernandez January 7, 2003 letter is misplaced. At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22

I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245.

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The beneficiary also holds a one-year certificate of completion of the course in computer software and application from NIIT in India, and certificates from IBM, Value City, Actuate, Crystal Decisions and Lawson Software. The AAO accessed NIIT's website to determine what type of educational services it provides.⁴ NIIT collaborates with India's government educational system from kindergarten through post-graduate levels. No admission requirements are posted on the website but it does reflect that it provides online courses to colleges and develops college graduates' technical skills to prime them for better employment positions. Thus, it appears that NIIT does not require a college degree in order to admit a student; however, in the instant case, it did clarify that the diploma it issued was pursuant to completion of post-graduate studies. There is no evidence that the beneficiary's admission to NIIT was predicated upon the completion of a bachelor's degree program. The AAO accessed AICTE's website, which does not list NIIT or any of these certificate issuers as an institute accredited by AICTE. The record does not contain any evidence showing that any of these certificates is issued for completion of a postgraduate program based upon a three-year bachelor's degree. Therefore, the beneficiary's certificate from NIIT or any of certificates submitted in the record cannot be considered as a post-graduate diploma or senior year level of undergraduate diploma from an accredited institute following a three-year bachelor's degree, and thus, the beneficiary's three-year bachelor's degree plus his certificates are not equivalent to a U.S. baccalaureate.

⁴ See <http://www.niit.com>.

On appeal, the petitioner asserted that the beneficiary possessed a single degree which is equivalent to a four-year U.S. bachelor's degree to a private credential evaluation from Trustforte. While the Trustforte June 21, 2006 evaluation correctly evaluated the beneficiary's three-year bachelor of commerce degree from the University of Delhi as equivalent to three years of academic studies toward a Bachelor's Degree in Business Administration at an accredited college or university in the United States, it further stated that the beneficiary's completion of the certificate program in computer software and application at NIIT was indicative of his fulfillment of a bachelor's level concentration in the field of Computer Science. The evaluation determined that the academic classes completed by the beneficiary at NIIT are analogous in content and duration to classes offered in bachelor's level programs at U.S. universities, and therefore, the beneficiary's certificate in computer software and application together with his prior bachelor's studies indicate that he attained the equivalent of a Bachelor of Science Degree, with a dual major in Computer Science and Business Administration, from an accredited U.S. college or university. However, the Trustforte June 21, 2006 evaluation did not provide any supporting evidence showing that either the beneficiary's three-year bachelor of commerce degree from the University of Delhi or the certificate in computer software and application from NIIT is a single foreign degree equivalent to a four-year U.S. bachelor's degree. The evaluator did not submit any evidence showing that the certificate in computer software and application program at NIIT is a post-graduate or at least college senior level education and that NIIT is an AICTE approved institute with authorization to grant bachelor's degrees. Therefore, the evaluation did not establish that the beneficiary's certificate from NIIT is a postgraduate diploma and thus, failed to establish that the combination of the beneficiary's three-year bachelor of commerce degree and the certificate in computer software and application from NIIT is equivalent to a four-year U.S. bachelor degree. Nor did the evaluator explain how the beneficiary's three-year studies in commerce combined with a one-year course in computer software and applications can be considered as a major in computer science.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree in a related field to the proffered position to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" in a related field, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act.

In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for "skilled workers," states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, *and any other requirements of the individual labor certification*, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation.

The minimum requirements for this classification are at least two years of training or experience.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification.” In the instant case, the certified ETA Form 9089 requires a bachelor’s degree in a related field and three years of experience in the job offered or the related occupation. The beneficiary’s three-year bachelor of commerce degree program at the University of Delhi and a one-year certificate in computer software and applications program at NIIT cannot be considered as an equivalent to a U.S. four-year bachelor’s degree in a related field because the three-year degree is not in a related field and the certificate from NIIT is not a postgraduate diploma from an accredited university or institution approved by the AICTE after the three-year bachelor’s degree.

Therefore, regardless of the category sought, the beneficiary must have a four-year bachelor’s degree or its foreign equivalent in related field and three years of work experience. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category.

Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and the petitioner’s assertions on appeal cannot overcome the grounds of denial in the director’s March 26, 2007 decision. Therefore, the director’s ground for denying the petition under the professional category must be affirmed.

Beyond the director’s decision and the petitioner’s assertions on appeal, the AAO has identified an additional ground of ineligibility and will discuss whether the petitioner established its continuing ability to pay the proffered wage beginning on the priority date and continuing until the beneficiary obtains lawful permanent residence. 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:

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.

The priority date in the instant case is April 6, 2006, and therefore, the petitioner must establish the ability to pay the beneficiary the proffered wage from 2006. The petitioner's 2005 tax return submitted in the record is not necessarily dispositive of its ability to pay the proffered wage beginning on the priority date because it precedes the priority date. The record does not contain any evidence such as wage statements, annual reports, tax returns or audited financial statements, showing that the petitioner paid the beneficiary the proffered wage or had sufficient net income or net current assets to pay the proffered wage for 2006. The instant petition is pending with the AAO and the beneficiary has not obtained his lawful permanent residence yet. Therefore, the petitioner must establish its ability to pay the proffered wage to the present, at least in 2007 with the most recent available W-2 forms for the beneficiary, annual reports, federal tax returns or audited financial statements. However, the petitioner did not submit its federal tax returns, annual reports or audited financial statements for 2006 (the year of the priority date) and the present, 2007. Despite the AAO's request in its RFE for evidence to establish the petitioner's ability to pay the proffered wage for 2006 through the present, the petitioner failed to respond to the RFE and submit the requested evidence to establish its continuing ability to pay the proffered wage. Without the petitioner's federal tax returns, annual reports or audited financial statements for 2006 and 2007, the AAO cannot determine whether the petitioner had the ability to pay the proffered wage in these relevant years, and thus, the petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending or approved simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2).

CIS records show that the petitioner has filed 41 immigrant petitions (one in 2004, eight in 2005, thirteen in 2006, fifteen in 2007 and four in 2008) as well as 193 non-immigrant petitions, totally 234 petitions. As previously discussed, the record does not contain any evidence showing that the petitioner had the ability to pay all beneficiaries of the thirteen immigrant petitions in 2006, the fifteen in 2007 and four in 2008 filed by the petitioner in each of the respective years. Therefore, the petitioner failed to establish its ability to pay for all the beneficiaries of the pending or approved immigrant petitions filed in 2006, 2007 and 2008 during the period from each priority date to each of the beneficiary obtains lawful permanent residence.

A review of the petitioner's federal tax return for 2005 in the record reveals that the petitioner had net income⁵ of \$141,431⁶ in 2005 which was sufficient to pay two beneficiaries at the same proffered wage level

⁵ 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.

⁶ 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."

as the instant beneficiary for that year. However, CIS records show that the petitioner filed at least eight I-140 immigrant petitions in 2005. The petitioner's financial documents for 2005 in the record cannot establish the petitioner's ability to pay all proffered wages for which the petitioner was responsible in 2005. The petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date to the present. Therefore, the petition cannot be approved.

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.

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 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.** 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>.