U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 1 9 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Alien Worker as an Unskilled, Other Worker Pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 summarily dismissed.

The petitioner is a fast food and carryout business. It seeks to employ the beneficiary permanently in the United States as a food preparation manager. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

The petitioner seeks to classify the beneficiary as an unskilled, other worker pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). This category provides immigrant visas for qualified aliens who are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Provisions of 8 C.F.R. § 204.5(g)(2) state:

> *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.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered from the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The petition's priority date in this instance is April 10, 2001. The beneficiary's salary as stated on the labor certification is $9.27 per hour or $19,281.60 per year.

Counsel initially submitted the petitioner's 2001 and 2002 Forms 1120S, U.S. Income Tax Return for an S Corporation, as evidence of the petitioner's ability to pay the proffered wage. Federal tax returns showed ordinary income and (loss) from trade or business activities and net current assets as:

	2001	2002
Ordinary income	$ 7,381	$(1,735)
Current assets	$ 8,763	$ No entry
Current liabilities	$ 5,758	$ No entry
Net current assets[1]	$ 3,005	$ No entry

[1] The difference of current assets minus current liabilities equals net current assets. Current assets include cash, receivables, marketable securities, inventories, and prepaid expenses, generally, with a life of one year or less. Current liabilities consist of obligations, such as accounts payable, short term notes payable, and accrued expenses, such as taxes and salaries, payable within a year or less. *See Barron's Dictionary of Accounting Terms* 117-118 (3rd ed. 2000). If net current assets meet or exceed the proffered wage, the petitioner has demonstrated the ability to pay it for the period.

In response to a request for evidence, dated August 15, 2003 (RFE), the petitioner submitted, also, some bank statement fragments. These all omitted page 1, and, thus, they lacked the closing date or the year that the bank generated them. Scrawls on some of them undertook to supply that, but without any foundation or provenance. The bank statement fragments reflected balances of $3,649 at the priority date and $2,314 as of August 31, 2003. The bank stated average monthly balances, also, but none exceeded $3,500, less than the proffered wage. The petitioner's unaudited profit and loss statement, as of the year to date, August 31, 2003 (2003 unaudited statement), showed net income of $11,239.31 and, it was said, the possibility of ending the year with a sum equal to, or greater than, the proffered wage. Quarterly wage reports (Form 941) and the Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940-EZ) reflected neither names of employees nor wages paid to the beneficiary.

The director specifically addressed the bank statement fragments, reviewed all of the evidence, concluded that petitioner did not establish that it had the ability to pay the proffered wage, and denied the petition in a decision issued March 31, 2004.

On the appeal, received April 23, 2004, counsel states only:

> Will submit brief with new evidence not available before in support of I-140 application.

On the petitioner's instructions, counsel, on May 19, 2004, transmitted the same unpersuasive bank statement fragments, Form 940-EZ, Forms 941, and 2003 unaudited statement, stating the petitioner's concerns that the director had not reviewed them. The petitioner states no error in the director's summary of the bank statement fragments, but only its concern that the director did not review them. It is not an error of fact or law attributable to Citizenship and Immigration Services (CIS), formerly the Service or INS.

The AAO received no further brief or evidence after May 19, 2004. *See* 8 C.F.R. §§ 103.3(a)(2)(i) and (viii), regarding procedures for filing appeals. Counsel and the petitioner fail to identify, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is summarily dismissed.