U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 6 2004

IN RE: Petitioner: [redacted]
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, Director
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 sustained. The petition will be approved.

The petitioner is a Citgo gas station/open pantry firm. It seeks to employ the beneficiary permanently in the United States as a supervisor cashier. 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 possesses the requisite computer background required by the terms of the labor certification. The director also determined that the beneficiary had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

On appeal, the petitioner submits a letter and additional evidence.

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 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

To be eligible for approval, a beneficiary must have the education and experience the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. This also establishes the priority date at which the petitioner must begin to show its continuing ability to pay the proffered wage. *See* 8 CFR § 204.5(d); *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is March 8, 2001.

The proffered wage as stated on item 12 of the Application for Alien Employment Certification, (Form ETA 750A) is $9.92 per hour, which amounts to $20,633.60 annually. Item 14 and item 15 set forth the minimum education, training, and experience that an applicant must have for the position of supervisor cashier. In the instant case, the beneficiary must have completed four years of high school, have accrued two years in the job offered as a supervisor cashier, and must also be proficient in DOS, Lotus 123, and Windows.

Because the evidence submitted was insufficient to demonstrate that the beneficiary possessed the necessary experience and training required by the terms of the labor certification, as well as evidence demonstrating the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on August 14, 2003, the

director requested additional evidence pertinent to those requirements. The director requested that the petitioner submit proof of completion of four years of high school and letters from the beneficiary's current or former employers establishing that he has the requisite work experience. The director informed the petitioner that the evidence must also show that the beneficiary has proficiency in DOS, Lotus 123 and Windows. The director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements covering 2001 and 2002 that demonstrate its continuing ability to pay the proffered wage beginning on the priority date.

In response, the petitioner provided copies of the beneficiary's secondary school credentials including an evaluation report from the Educational Credential Evaluators, Inc., letters from two former employers attesting to the beneficiary's prior employment as a supervisory cashier, and a copy of a 1994 diploma representing the completion of a course in "computer application" issued by the JAST Computer Training Centre in Pakistan.

The petitioner also submitted copies of its Form 1120, U.S. Corporation Income Tax Return for 2001 and 2002. The tax returns reflect the following information for those years:

	2001	2002
Net income	- $33,048	- $ 6,135
Current Assets	$64,181	$45,578
Current Liabilities	$33,879	$20,703
Net current assets	$30,302	$24,875

In addition, the petitioner submitted copies of two groups of various unaudited financial reports. They were dated December 31, 2002 and November 30, 2001, respectively.

The director determined that the evidence submitted did not establish that the beneficiary had proficiency in DOS, Lotus 123, and Windows. The director also concluded that the petitioner had failed to establish its continuing ability to pay the proffered wage beginning on the priority date, and, on February 18, 2004, denied the petition.

On appeal, the petitioner resubmits a copy of the beneficiary's JAST Computer Training Center's diploma and asserts that it shows the beneficiary's proficiency in DOS, Lotus 123 and Windows by his grade of "B+." The AAO concurs. The diploma specifically states that the beneficiary successfully passed eight computer courses that specifically included DOS, Lotus 123, and Windows. It also states that he obtained 72% marks, which represents a "B+" or a "very good" score. This sufficiently demonstrates his proficiency in those skills.

The petitioner also submits copies of its balance sheets as of December 31, 2002 and November 30, 2001 that were previously submitted as part of its response to the director's request for additional evidence. It is noted that unaudited financial statements that the petitioner has submitted with the petition and on appeal are not persuasive evidence. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and ability to pay the proffered wage, those statements must be audited. Unaudited statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence of a petitioner's ability to pay the proffered wage.

In reviewing a petitioner's ability to pay the proposed wage offer, CIS will 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). In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, 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. The court specifically rejected the argument that the Service, now CIS, should have considered income before expenses were paid rather than net income.

CIS will also 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.[1] A corporation's year-end current assets and current liabilities are shown on Schedule L of its federal tax return. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

In this case, although the director noted that the petitioner's declared net income showed losses of $33,048 in 2001 and $6,135 in 2002, the director failed to review the petitioner's current assets and liabilities as set forth on Schedule L of its federal tax returns. They show that the petitioner's 2001 and 2002 net current assets of $24,875 and $30,302, respectively, were sufficient to cover the beneficiary's proposed wage offer of $20,633.60 and establish the petitioner's ability to pay the proffered salary.

Following a review of the evidence submitted with the petition, the AAO concludes that the petitioner has sufficiently demonstrated that the beneficiary possesses the necessary computer proficiency to meet the requirements of the position offered. The evidence also supports the petitioner's continuing ability to pay the proffered annual wage of $20,633.60.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.

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[1] According to *Barron's Dictionary of Accounting Terms* 117 (3rd 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.