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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: NOV 26 2008

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner was incorporated in the State of Texas in 2002 and claims to be engaged in the import and manufacture of commercial ovens. It seeks to employ the beneficiary as its president pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The petitioner claims to be the subsidiary of C.P. Machinery S.A. de C.V. located in Mexico.

The director denied the petition, determining that the beneficiary will not be employed in a primarily managerial or executive capacity in the United States. Specifically, the director noted discrepancies with regard to the number of employees claimed by the petitioner, and further noted that the beneficiary appeared to be primarily engaged in the performance of duties directly related to the production of the petitioner's products. In conclusion, the director noted that the beneficiary was not primarily engaged in performing qualifying managerial or executive duties.

On appeal, counsel for the petitioner claims that the petitioner provided sufficient evidence to establish that the beneficiary qualifies for the benefit sought. In addition, counsel contends that the director erred with regard to the conclusions reached based on the number of employees at the time of filing, and refutes the director's finding that the perceived inconsistencies cast doubt upon the entire petition. Counsel submits a brief and additional evidence in support of these contentions.

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

On Form I-140, which was filed on October 12, 2006, the petitioner claimed that it currently employed eight persons including the beneficiary as its president On Form I-140, the petitioner briefly described the beneficiary's job duties, stating that he would "supervise design and manufacture of bakery equipment; directs and oversees the business enterprise." In a letter of support dated January 11, 2006, the petitioner provided another brief description of the beneficiary's role in the company:

> **[The beneficiary]** has been employed with **[the petitioner]** since 06/2002 to the present, in the capacity of **President.** His main duties include: Supervise design and manufacture of bakery equipment; directs and oversees the business enterprise.

The petitioner also submitted an organizational chart for the U.S. entity, which indicated that the beneficiary, as president, oversees the following employees:

[redacted] Customer Service
[redacted], Sales
[redacted], Office Manager
[redacted] External Book Keeper
[redacted], Service Technician

The petitioner also submitted copies of its quarterly tax returns for the first two quarters of 2006. These documents established that all of the employees listed above, except for [redacted], the external bookkeeper, were employed by the petitioner as of June 2006.

In a request for evidence issued on August 23, 2007, the director requested detailed information pertaining to the beneficiary's role in the petitioner's business, including a more detailed overview of his duties and an explanation with regard to his interaction with subordinate employees. The director further requested that the petitioner provide an organizational chart and a statement regarding the types of employees supervised by the beneficiary. The director specifically asked the petitioner to establish that the beneficiary met each of the four requirements set forth in the regulatory definitions of either managerial or executive capacity.

Counsel for the petitioner responded in a letter dated October 2, 2007. In this letter, counsel presented the following summary of the beneficiary's duties:

> In the case at hand, the beneficiary meets all elements of the statutory definition of both executive and manager as defined above. Therefore, the beneficiary qualifies under the definition of executive and/or manager.
>
> I. As president of [the petitioner], he directs the entire management of the organization.

II. As president of [the petitioner], he establishes all the goals, policies, and procedures for the entire business organization.

III. As president of [the petitioner], he exercises the highest level of authority regarding all company decision-making. This includes making investment decisions, approving contracts, approving the budget, hiring and firing of personnel.

IV. As president of [the petitioner], he is the highest ranking executive in the organization and receives only general supervision from the stockholders.

In summary, the beneficiary is an executive because he meets all the elements of executive capacity required by the federal statute 8 C.F.R. § 1101(a)(44)(B), and furthermore, he complies with all four of the elements required by the federal statute.

I. As president of [the petitioner], he manages the entire organization.

II. As president of [the petitioner], he meets both alternative factors for the second element of managerial capacity. The beneficiary directs, supervises and controls the work of other professional managers, including a conventions planner, a financial manager and a delivery / transportation manager. Moreover, the beneficiary also manages an essential function for [the petitioner] in that he manages the entire organization as president.

III. As president of [the petitioner], he meets both alternative factors for the third element of managerial capacity. The beneficiary has the highest level of authority regarding all personnel actions, including hiring, firing and promoting. The beneficiary has already hired a conventions planner, financial manager and a delivery / transportation manager.

Moreover, the beneficiary functions at the most senior level of the organization in the position of president.

IV. As president of [the petitioner], he exercises the highest discretion over the day-to-day operations of the entire organization, including supervising subordinate professional managers, approving the budget and managing finances, analyzing financial statements and sales reports to measure productivity and determine cost reductions.

The beneficiary is also responsible for establishing sales and market share targets, approving pricing and discount policies for the sale of commercial ovens and related services, and pursuing new markets and new customers for the sale of commercial ovens and related services.

> In summary, the beneficiary is an executive because he meets all the elements of executive capacity required by the federal statute 8 C.F.R. § 1101(a)(44)(A).

In a separate letter written by the petitioner, the beneficiary's duties were further described as follows:

> As company president, [the beneficiary] makes investment decisions, signs contracts, opens accounts for the company, is directly responsible for bank loans, hires personnel and if the need arises, fires workers who don't meet the company's high standards, and also makes the day to day decisions that are all important for the company's success.
>
> Due to his background in engineering and machinery, he is responsible for all the systems that have been designed and carried out within the United States, related to the electronics and combustion of gas LP and natural gas burners. He trains and supervises the implementation work of the technicians for the assembling of food plants. Further, he is directly responsible for the design of equipment, its capabilities and location within the industrial plant.
>
> His experience in the soldering field with TIG, MIG processes – automatic and revision with X rays – make him the ideal director and supervisor to comply with the international combustion standards. Therefore I can certify that [the beneficiary] has met with all the company's objectives and is highly qualified to continue in his position as President of the company. His studies in Europe, Spain and Italy certify him as superior engineer in Metallurgy, with a Master's in automation of industrial soldering, as well as Civil Engineering with a specialization in direction of technological projects, in the design of machinery and combustion processes as well as the leadership needed to be president director of the company. . . .

An updated organizational chart showed that the hierarchy of the petitioner had changed. Namely, the beneficiary now supervised the following persons in the following positions:

[redacted], Expo's/ Conventions/Communication
[redacted] External Accountant
[redacted] Accounts Receivable/Accounts Payable
[redacted], Deliveries/Transportation

It is further noted that another position, identified as Plant Director/Frozen Plants / Designer is attributed to the beneficiary. The petitioner briefly indicated that this position is responsible for "new projects, designs, customer contacts."

Finally, the petitioner's Form W-2, Wage and Tax Statements, for 2006 established that petitioner paid wages to five persons, including the beneficiary, in 2006. The beneficiary's subordinates all earned wages of $6,000 or less during 2006.

On January 3, 2008, the director denied the petition, finding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director found that the staffing of the petitioner was unclear due to discrepancies between the claimed number of employees and the number of employees who actually received wages. Additionally, the director noted that some of the duties outlined by the petitioner indicated that the beneficiary was instrumental in the production of the petitioner's products and therefore rendered him ineligible for the benefit sought.

On appeal, counsel makes a strong argument regarding the director's reliance on the number of employees, and contends that the director misinterpreted the evidence and unfairly held the petitioner to a stricter standard of review as a result thereof. Moreover, counsel contends that the director's reliance on *Matter of Ho*[2] was inappropriate.

Upon review, the AAO concurs with the director's findings. The AAO will first address the issue surrounding the staffing of the petitioner and the director's findings therein. On Form I-140, the petitioner claimed to employ eight persons, including the beneficiary. The petitioner submitted documentation (W-2 Forms) indicating that it paid wages to five employees in 2006, including the beneficiary. Therefore, the director questioned the validity of the petitioner's claim to have eight persons on the payroll, and relied upon the premise set forth in *Matter of Ho* regarding evidentiary discrepancies.

On appeal, counsel strongly argues against the director's conclusions. Specifically, counsel rejected the director's conclusion that the petitioner's claims lacked veracity, and explained that the petitioner also paid wages to independent contractors in 2006, thereby explaining the petitioner's claim of eight employees on Form I-140. On appeal, counsel submits copies of three Form 1099 (Miscellaneous Income) forms, evidencing compensation to three persons totaling $34,350 for 2006.

As stated by the director, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this matter, though the director specifically articulated the discrepancies upon which he based the denial, counsel on appeal fails to rectify these issues, and instead attacks the director's reliance on the decision of *Matter of Ho*. On appeal, counsel incorrectly states that there is only one piece of evidence which creates a discrepancy, and claims that relevant and probative documentation has been submitted to resolve the discrepancy. The AAO disagrees.

The director's conclusions, based on the evidence contained in the record at the time of adjudication, were valid and well reasoned. Although information regarding the subordinate staff and the organizational hierarchy of the petitioner was requested in the request for evidence, the petitioner did not claim or discuss its alleged employment of independent contractors. Instead, for the first time on appeal, it claims that it compensated three persons in addition to its five employees, thereby rectifying the discrepancy in the number of employees claimed on Form I-140. While this explanation on its face seems reasonable, further review of the documentary evidence casts doubt upon this claim.

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[2] 19 I&N Dec. 582 (BIA 1988).

Counsel submits three 1099 forms on appeal. They indicate that [redacted] earned $13,150; [redacted] earned $10,200; and [redacted] earned $11,000. The AAO notes that these independent contractors, who were not identified by name or position prior to adjudication, earned approximately double, if not more, than the petitioner's actual employees. Moreover, while the petitioner submits Forms 1099 for these persons, its 2006 tax return makes no mention of its $34,350 in non-employee compensation. Normally, such payments are listed on Line 3 of Schedule A, under "Cost of Labor," or an attached statement detailing "other deductions." The petitioner's Line 3, however, is blank, and its itemized deductions do not indicate wages paid to contractors. On appeal, it is noted that the petitioner addresses the issue of the contractors, but limits its assertions to the question of whether salaried employees are different than contractors. The issue, however, is that the AAO is unable to determine the role of these three contractors, who are compensated more than the petitioner's employees, in relation to the beneficiary and the organizational hierarchy of the company. The petitioner fails to identify the nature of their positions or their roles within the hierarchy on appeal. Based on these unresolved discrepancies, and the more confusing documentation submitted on appeal, the AAO concurs with the director's findings and his reliance on *Matter of Ho*.

As noted by the director, 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. *Matter of Ho*, 19 I&N Dec. at 591. Specifically, the discrepancies in the initial evidence, and the insufficient response to the request for evidence, require the AAO to stringently review the evidence of record. Moreover, the fact that three 1099 forms are submitted for the first time on appeal, and are not supported by the statements on the petitioner's tax return for the same year, cast doubt upon the veracity of these claims. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). As stated above, it is unclear how these three independent contractors, who allegedly earned substantially more than the petitioner's employees, could have been overlooked by the petitioner when presenting the organizational structure of the U.S. entity. If their earnings are commensurate with their role in the petitioner, it is reasonable to expect them to be acknowledged or discussed in the organizational chart. Finally, the AAO notes that the petitioner claimed to employ an "external accountant" (Rosa Elena Aguilar), and she is listed on both organizational charts as an employee. However, no documentation of any wages or compensation paid to her in 2006 is submitted. Therefore, the AAO concludes that the director's reliance on *Matter of Ho* was proper in this matter, and based upon the precedent set therein, the AAO concludes that the unresolved discrepancies render the petition ineligible for approval.

The next issue is the director's conclusion that the beneficiary is primarily performing non-qualifying, as opposed to managerial and/or executive duties. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Although both counsel and the petitioner provided a lengthy overview of the beneficiary's duties in the response to the request for evidence, the descriptions provided present two problems. First, the duties outlined in counsel's letter are nondescript and merely paraphrase the regulatory definitions. Based upon the evidence submitted, it does not appear that the beneficiary would be primarily engaged in qualifying managerial or executive duties. The AAO, therefore, agrees with the director's conclusions.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Counsel's description of duties simply adopts many of the key phrases used in the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. In fact, counsel letter dated the petitioner's letter dated October 2, 2007 uses the definitions of both managerial and executive capacity in the beneficiary's list of stated duties. These general statements do little to clarify the exact nature of the beneficiary's duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Second, the petitioner's description of duties suggests that the beneficiary is engaged in the production of the petitioner's products. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

The petitioner, however, failed to articulate how much time the beneficiary devotes to the production aspect of the petitioner's business as opposed to the managerial and executive components. Although on appeal, counsel contends that the beneficiary devotes a mere 10% of his time to non-qualifying tasks, this assertion is not supported by independent evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner's letter dated August 29, 2007 clearly indicates that the beneficiary performs duties not traditionally deemed managerial. For example, the petitioner claims that as a result of his background in engineering and machinery, the beneficiary "is responsible for all the systems that have been designed and carried out within the United States, related to the electronics and combustion of gas LP and natural gas burners." Moreover, the petitioner claims that he "trains and supervises the implementation work of the technicians for the assembling of food plants," and that he is "directly responsible for the design of equipment, its capabilities and location within the industrial plant." Clearly, these tasks are necessary for the

petitioner's products to be produced. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial or executive, nor can it deduce whether the beneficiary is primarily performing the duties of a manager. *See, e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

On appeal, the petitioner and counsel have failed to overcome the stated bases for the denial. For the reasons set forth above, the director correctly concluded that the beneficiary will not be employed in the United States in a primarily managerial or executive capacity.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the U.S. and Mexican entities. The petition claims that it is the wholly owned subsidiary of CP Machinery, S.A. de C.V. In support of this claimed relationship, the petitioner submitted an unauthenticated "support declaration" with the initial petition, as well as a copy of a stock certificate indicating that the foreign entity owned 1,000 shares of the U.S. petitioner. However, the petitioner's Internal Revenue Service (IRS) Form 1120 corporate tax returns for 2005 reveals that it is not a subsidiary and is not affiliated with any other entity, since the petitioner claims on Schedule K that it is not owned in whole or in part by a foreign person or entity. Moreover, the petitioner submitted a copy of a U.S. Income Tax Return for an S Corporation (Form 1120S) for the year 2006. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See* Internal Revenue Code, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a *foreign corporation* owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent corporation, it appears that the U.S. entity is owned by one or more individuals residing within the United States rather than by a foreign entity. Moreover, the AAO notes that the petitioner's July 2006 balance sheet identifies two individual shareholders, namely Claudio Perotti and Eduardo Parra, under the section entitled "Equity." This conflicting information has not been resolved, and for this additional reason, the petition may not be approved.

Finally, petitioner has not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition, which in this case was October 10, 2006. 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 beneficiary's salary. In the present matter, however, the record indicates that the proffered wage for the beneficiary is $50,868 annually. The record, however, indicates that the beneficiary received only $36,000 in wages in the year 2006.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the 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*, the court held 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 on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service 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." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on October 10, 2006, the AAO must examine the petitioner's tax return for 2006. The petitioner's IRS Form 1120-S for calendar year 2006 presents a net taxable income of -$59,896. The petitioner could not pay a proffered wage of $50,868 per year out of this income.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. However, the AAO is unable to determine the petitioner's net current assets from the petitioner's Form 1120-S. Since the record contains insufficient financial evidence that establishes the petitioner's ability to pay the proposed salary during the relevant period, the petition may not be approved.

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*, 229 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused it discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

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.