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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

JAN 29 2007

FILE: WAC 05 048 51717 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner indicated it was a professional health care provider.[1] The petitioner does not indicate when it was established, or how many employees it has. It does indicate a gross annual income of $2,301,386, and a net annual income of $327,849 on its visa petition. It seeks to sponsor the beneficiary in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director denied the petition after determining that at the time of the petition's filing, the petitioner failed to establish that it had posted the notice of the filing of an Application for Alien Employment Certification properly and that the beneficiary would be employed in a permanent, fulltime position. In addition, the director determined that the petitioner did not have the ability to pay the proffered wage for all beneficiaries for whom it had submitted I-140 petitions.

On appeal, counsel submits a brief and a copy of the petitioner's 2004 federal income tax return. Counsel also submits a letter from the petitioner, as well as additional evidence with regard to posting notices.

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.

Section 203(b)(3) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner filed an Immigrant Petition for Alien Worker (Form I-140) for classification of the beneficiary under section 203(b)(3)(A)(i) of the Act as a registered nurse. Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which for visa petitions filed under section 203(b)(3)(A)(i) of the Act, is the date the Form I-140 Immigrant Petition for Alien Worker is filed with Citizenship and Immigration Services (CIS). 8 C.F.R. § 204.5(d). Here, the petition's priority date is December 8, 2004. Aliens who will be permanently employed as professional nurses are listed on Schedule

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[1] The record is somewhat confused as to the petitioner's business operations. In the I-140 petition, the petitioner stated tha[redacted]owns and manages seventeen hospitals. In response to the director's request for further evidence, counsel stated the petitioner owned and operated fourteen care facilities, and that [redacted], was one of the facilities and that it was responsible for meeting contractual employment terms. On appeal, the petitioner's officer states that "eighteen hospitals and skilled nursing facilities are contracted under [redacted], and these facilities generate the petitioner's revenue through the practice of rehabilitation services, including speech and therapeutic treatments for patients. The website provided by the petitioner on appeal, [redacted], identifies other business operations of mortgage banking, freight forwarding, and nurse recruitment. The petitioner on appeal also submits a letter from the Chief Financial Officer, [redacted] with the same office address as the petitioner's corporate office. This letter states that [redacted] is a professional nurse agency with 123 employees, and that it has sufficient resources to pay the beneficiary's wages. Finally on appeal counsel states that the petitioner owns and operates 13 skilled nursing facilities.

A as occupations set forth at 20 C.F.R. § 656.10 for which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed. Also, according to 20 C.F.R. § 656.10, aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment.

An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA-750 at Part A) in duplicate with the appropriate Citizenship and Immigration Services (CIS) office. The Application for Alien Employment Certification shall include:

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.

2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

The first issue addressed in the director's decision is whether the petitioner complied with the regulatory requirements governing the posting notice.

The record does not contain evidence that the petitioner fully complied with regulatory requirements governing the posting notice. *See Spencer Enterprises, Inc. v. United States*, 299 F.Supp. 2d at 1043, *aff'd*. 345 F.3d 683; *see also Dor v. INS*, 891 F.2d at 1002 n. 9. As the director noted in his decision,

Under 20 C.F.R. § 656.20, the regulations require the following:

> In applications filed under 656.21 (Basic Process), 656.21a (Special Handling) and 656.22 (Schedule A), the employer shall document that notice of the filing of the Application for Alien Employment Certification was provided:
>
> (i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment.
>
> (ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice shall be posted for at least 10 consecutive days. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

The record contains a deficient posting notice that was filed with the initial petition. This notice does not identify where the nursing position is available, but notes the petitioner's corporate office address at the bottom of the notice. The director in a request for further evidence provided the petitioner with opportunity to submit new

evidence of posting that conformed with 20 C.F.R. § 656.22 and 20 C.F.R. § 656.20(g) as of the date of the response to the director's request for further evidence. Counsel responded to the director's request by stating that the job opening notice was properly posted both in the corporate office and the facility, but provided only the corporate office's address when listing the places were the notice was posted. Counsel states that the notice was reposted in accordance with the director's instructions.

It is noted that the initial posting notice does not clearly specify where it was posted, although the petitioner's corporate office address is noted at the bottom of the notice. If this posting notice was reposted, it is still deficient. Under 20 C.F.R. § 656.20, the notice must be posted at the facility or location of the beneficiary's employment. On the Form ETA 750, Part A, the petitioner has indicated that the beneficiary will work a [redacted] The petitioner provided no further documentation that any posting notice was posted at this address, or provide any greater specificity as to what exactly exists at this address and why the beneficiary would work there. On appeal, the petitioner provides cover letters for posting notices at five different care facilities and also for one notice posted at the petitioner's corporate office. These cover letters are for particular beneficiaries, only one of which the petitioner identified as a beneficiary of a 2004 I-140 petition. These letters are undated, although they refer to postings for unspecified positions ranging from 2003 to 2004.

The petitioner needs to prove it posted the notice where the beneficiary would work, and make it clear where that location will actually be. Because it is not clear that the posting notice was posted at the actual "facility or location of the employment," the petitioner cannot establish that it has complied with the notice requirements at 20 C.F.R. § 656.20(g)(1). If the petitioner merely posted the notice at its administrative office, the petitioner has not complied with this requirement. It is noted that the cover letters submitted to the record on appeal do not meaningfully provide any further substantiation of the petitioner's assertion that the posting notice for the beneficiary was posted at the place where she will be employed. In addition the one specific notification of job opening document submitted on appeal is for the position of a physical therapist, rather than a registered nurse. The purpose of requiring the employer to post notice of the job opportunity is to provide U.S. workers with a meaningful opportunity to compete for the job and to assure that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. Thus, the director's decision that the petitioner failed to follow the regulatory criteria for posting the notice is correct, and will be affirmed.

In a related issue, the director in his denial also stated that the petitioner had failed to establish that the beneficiary would be employed in a permanent, full-time position. In his request for further evidence, the director requested evidence of a copy of its contract or an addendum between the petitioner and the prospective employee. In response counsel stated that the petitioner was not a consulting business or a professional staffing entity, and that [redacted]extended the offer of employment to the beneficiary and would be responsible for meeting contractual employment terms. As previously stated, the identity of the petitioner's actual business operations is unclear based on the record. While counsel asserts that the petitioner is the actual employer, on appeal, the petitioner's officer appears to suggest that the petitioner contracts out services to various hospitals and skilled care facilities. In addition, the petitioner on appeal submits a letter from [redacted]ocated at the same address as the petitioner in Los Angeles that states it has sufficient funds to pay the proffered wage. To date, there is no evidence of any contract between the petitioner and the beneficiary, or the petitioner and one of the facilities listed on the petitioner's website. It is noted that the workplace address identified on the petitioner's Form ETA 750, namely [redacted], is not identified as one of the petitioner's claimed health care facilities. It is also noted that although the petitioner's website identifies some of the facilities affiliated with the petitioner, it does not identify whether these facilities are long term care facilities or hospitals, as inferred by correspondence found in the record. Without more persuasive evidence as to the beneficiary's actual workplace, the petitioner has

not established that it has arranged for permanent full time employment for the beneficiary, in accordance with the terms of the Form ETA 750.

The third issue to be discussed in this case is whether or not the petitioner has the ability to pay the proffered wage to the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states the following in 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.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which for visa petitions filed under section 203(b)(3)(A)(i) of the Act, is the date the Form I-140 Immigrant Petition for Alien Worker is filed with CIS. 8 C.F.R. § 204.5(d). Here, the petition's priority date is December 8, 2004. The beneficiary's salary as stated on the labor certification is $25.00 per hour for a 36 hour week, or $46,800 per annum.

In support of the petition, the petitioner submitted its Form 1120, U.S. Corporation Income Tax Return for 2003[2]. On the petition, it specifically noted five additional beneficiaries for whom it had filed I-140 petitions. The other beneficiaries are identified as [redacted] and [redacted] The Form 1120S indicated the petitioner has $327,849 in net income for tax year 2003.

In its response to the director's request for further evidence, counsel identified these same five individuals along with the beneficiary and a seventh beneficiary [redacted] Counsel identified the proffered wages for all seven beneficiaries as $46,800, and estimated a total of $327,600 would be needed to pay all seven salaries as of the 2004 priority year. Furthermore the petitioner submitted evidence as to an existing line of credit available to the petitioner. On appeal, the petitioner submitted a copy of its Form 1120, U.S. Corporation Income Tax Return for 2004. This document indicates that the petitioner has net income of $327,238 for tax year 2004.

On appeal, counsel states that the petitioner filed eleven other petitions, on which the petitioner withdrew one and that only one had been approved. Counsel notes that the director stated the petitioner had filed numerous petitions and that the petitioner's cumulative total of prospective wages exceeded the petitioner's available net income. Counsel then states that the petitioner, analyzing its net income for 2004 most conservatively, could support five petitions. Counsel appears to state that in tax year 2003, an additional five petitions could have been supported by the petitioner's net income, and that if the petitioner's line of credit were properly considered by CIS, an additional twelve beneficiaries' wages could be supported.[3] Counsel states that the petitioner has the ability to pay the proffered wage of all eleven beneficiaries, but that if the CIS fails to

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[2] Financial information preceding the priority date in 2004 is not necessarily dispositive of the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

[3] In his brief, counsel also stated that the petitioner had filed seven I-140 petitions on December 8, 2004, inclulidng the beneficiary's petition, and states that the petitoiner's net income from 2003 and 2004 is sufficient to pay the wages of all pending I-140 petitions.

consider counsel's arguments persuasive, it should still approve those beneficiaries where the petitioner's net income exceeds the cumulative prevailing wage.

Counsel also questions why CIS failed to take into consideration the petitioner's line of credit when calculating the petitioner's ability to pay. Counsel states that many companies much larger than the petitioner use lines of credit; however, in the present proceedings the CIS turns a credit into a debit. Counsel also states that CIS has consistently held in memoranda and public pronouncements that lines of credit are considered cash unless the principal is due within one year. Counsel states that the petitioner's $600,000 line of credit is undiluted and unused, and thus available for use. Counsel refers to an exchange dated Mary 13, 2003 ostensibly between a Service center and presumably an attorney or accredited representative in which the Service Center allegedly states that a line of credit may in some instances be favorably considered when determining an organization's ability to pay the proffered wage.

Counsel states that the petitioner's response to the director's request for further evidence included detailed documentation of the terms of the line of credit. Counsel again asserts that published CIS policy is that a line of credit may be used to determine an organization's ability to pay, and no authority contradicts this CIS policy. Counsel notes that when the director in his decision stated that a line of credit cannot be used to support a petitioner's ability to pay, he cited no relevant authority, but rather cited *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983), which refers to a sole proprietor and other precedent decisions. Counsel states that these cases are irrelevant to the instant petition, as the petitioner is not a sole proprietor, and also is not using the assets of its stockholders to determine its ability to pay. Counsel states that the petitioner relies principally on its net income to document its ability to pay the proffered wages, and that it submitted its line of credit to supplement the filing because its 2004 tax returns were not yet available.

The AAO acknowledges that the petitioner is not a sole proprietor and that the director's reference to *Matter of Ubeda* was unfounded. This part of the director's decision is withdrawn.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. The petitioner submitted no evidence to the record that the beneficiary was its employee in 2004. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 2004.

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. 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). Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that 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 the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that 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 the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. 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 tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $46,800 per year from the priority date. As noted previously, the petitioner's tax return for 2003 is not dispositive in these proceedings as the I-140 petition was accepted by CIS on December 8, 2004. Therefore the AAO will only consider the petitioner's 2004 tax return. As documented by the petitioner's 2004 tax return, the petitioner's Form 1120S stated net income of $ 327, 238.

Therefore, for the year 2004, the petitioner did have sufficient net income to pay the beneficiary's proffered wage. However, as noted by the petitioner in its petition and counsel, the petitioner submitted six other I-140 petitions during tax year 2004, and thus the petitioner has to establish its ability to pay the proffered wage for all seven beneficiaries. If all seven beneficiaries were paid the annual wage described by counsel, their total proffered wages would total $327,600 which is more than the petitioner's net income for tax year 2004.[4] Thus, the petitioner cannot establish its ability to pay the seven proffered wages based on its 2004 net income.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the

[4] The petitioner's net income in tax year 2003 would have been sufficient to pay the wages of the seven beneficiaries; however, as stated previously, the petitioner's 2003 net income is not dispositive in these proceedings. Furthermore, if the petitioner had filed for multiple beneficiaries in tax year 2003, the petitioner's net income would have been analyzed to see if the petitioner had sufficient net income to pay the wages for petitions filed in that priority year.

proffered wage. Rather, CIS will 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.[5] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. 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.

- The petitioner's net current assets during 2004 were -$787,539.

For the year 2004, the petitioner did not have sufficient net current assets to pay the proffered wage of the instant beneficiary, or the remaining six beneficiaries for whom the petitioner claimed to have filed I-140 petitions in tax year 2004.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

Counsel asserts in his brief accompanying the appeal that there is another way to determine the petitioner's continuing ability to pay the proffered wage from the priority date. Counsel states that the petitioner should be allowed to use its line of credit to establish its ability to pay the proffered wages of all beneficiaries for whom it submitted I-140 petitions in tax year 2004. Counsel refers to an unpublished question and answer exchange as proof of the petitioner's ability to use its line of credit in this manner, and provides no further explanation of the genesis of this commentary. As such, counsel's reference does not constitute evidentiary documentation of this issue, or provide any regulatory or statutory guidance for allowing the use of lines of credit to augment a petitioner's ability to pay proffered wages. If a Service Center had implemented such a policy with regard to lines of credit, the AAO is not obligated to follow the guidance outlined in policy memos, ex parte correspondence and/or other unpublished unprecedential decisions. 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). Similarly, while 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

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 corporation'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

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[5] 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.

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).

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 corporation'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).

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the Department of Labor. The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

Furthermore, beyond the decision of the director, the petitioner has not specified the intended geographic location of the proffered position, and therefore the petitioner failed to provide evidence that it is offering a wage that complies with the prevailing wage rate. 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 20 C.F.R. § 656.20(c) requires the prospective employer in Schedule A labor certification cases to make certain certifications in the application for labor certification. The director did not mention this issue in his decision so the AAO is not confident that it was analyzed. CIS has the authority to review the petitioner's proffered wage for compliance with 20 C.F.R. § 656.20 and, thus, with DOL's prevailing wage rates. *See* 20 C.F.R. § 656.22(e). DOL maintains a website at www.ows.doleta.gov which provides access to an Online Wage Library (OWL), www.flcdatacenter.com. OWL provides prevailing wage rates for occupations based on the location of where the occupation is being performed geographically.[6] The prevailing wage rates are broken down into two skill levels. According to General Administration Letter (GAL) 2-98 (DOL), "DOL Issues Guidance on Determining OES Wage Levels" and Training and Employment Guidance Letter (TEGL) No. 5-02 (DOL) provide guidance on appropriate skill level categorization. The occupation and corresponding job description in this case indicate that it is a Level 1 position because the proffered position of nurse will be under supervision and performing nursing duties delineated by the DOL's *Occupational Outlook Handbook* at page 269. OWL reports that for 2004, the year of the petition's priority date, the prevailing wage rate for a Level 1 nursing position in Los Angeles, Los Angeles Metropolitan Statistical Area (MSA) was $22.33 per hour, which is lower than the proffered wage of $25.00 per hour. Thus, the proffered wage from the petitioner meets the prevailing wage rate if the beneficiary were to work in Los Angeles MSA. The petitioner did not identify a

[6] The city, state, and county of the employment location must be known in order to identify the prevailing wage rate.

specific location for the proffered position, except for the Stradella address that the petitioner has not described any further as a nursing or skilled care facility. It is not clear that the proffered position's work site would be in the Los Angeles MSA. The petitioner must identify all worksites and counties included in the proffered position so CIS may analyze and make a determination as to whether or not it is offering the prevailing wage rate. For this additional reason, the petition may not 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. The petition is denied.