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]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 22 2007

WAC-00-146-52721

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 S. Poulos for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with results of the beneficiary's application to adjust status to lawful permanent resident (Form I-485), the director consequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

The petitioner is an accounting firm. It seeks to employ the beneficiary permanently in the United States as an office manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary qualifies for the classification sought. The director revoked the approval of the petition accordingly.

The record shows that the appeal is properly filed and 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.

As set forth in the director's September 23, 2005 revocation, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is eligible for the classification sought. The director noted that the owner of the petitioning company and the beneficiary are first cousins and the petitioner had employed the beneficiary solely to gain lawful permanent residence (LPR) in the United States for the beneficiary. The director also noted that petitioner did not adequately test the job labor market in order to fill the proffered position prior to hiring the alien.

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.

A petitioner must establish the elements for the approval of the petition at the time of filing. The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. §

103.2(b)(1), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). The priority date is the date the Form ETA 750 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 priority date in the instant petition is January 12, 1998.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See 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 AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal[1]. The relevant evidence in the record includes letters from the petitioner regarding the job offered and the beneficiary's employment with the petitioner, the beneficiary's tax returns, an experience letter from Halaseh & Abu Al-Rouse, the beneficiary's degree of Bachelor of Science in Mathematics and transcripts from Mutah University in Al Kerak, Jordan and a letter dated December 22, 1999 from the California Employment Development Department (EDD). The record does not contain any other evidence relevant to the beneficiary's eligibility for the classification sought.

On appeal, counsel submits a letter from EDD and asserts that the relationship between the petitioner and the beneficiary is not the only factor to be considered, and that the submitted letter from EDD and the DOL's final determination on the labor certification application certified that the employer has undertaken recruitment in good faith.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The AAO finds that the director had good and sufficient cause to revoke the approval of this petition. The petitioner's evidentiary submissions and counsel's assertions are non-responsive to the critical issue and material fact of this case: the beneficiary's qualifications for the proffered position.

The record of proceeding shows that the adjustment of status interview revealed that the owner of the petitioner and the beneficiary are first cousins. The petitioner did not deny this relationship with the beneficiary. Counsel argues that the relationship is not the only factor to be considered. Under 20 C.F.R. 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). The fact that the 100 %

[1] 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).

owner of the petitioner is the beneficiary's first cousin raises the possibility of invalidating a *bona fide* job offer by "blood". The record does not contain any evidence to show that the petitioner informed the DOL with the filing of its Form ETA 750 that he and the beneficiary were related. Counsel did not explain how the petitioner tested the labor market in good faith without disclosure of such a factor which invalidates a *bona fide* job offer. The petitioner failed to meet the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers.

In addition, the petitioner submitted a letter dated December 22, 1999 from EDD as the only evidence to rebut the director's determination that the petitioner did not adequately test the job labor market. The letter is a final documentation notice requiring the employer to submit statement of the results of all recruitment efforts. The letter mentioned that the recruitment period has ended and that the total referral is 0. However, this letter did not provide the results of all recruitment efforts, such as internal posting, since referrals from EDD were not the results of all recruitment efforts. Further, the letter itself did not and could not establish that the petitioner did adequately test the job labor market, and moreover did not establish that the recruitment efforts were conducted in good faith with the DOL knowing the relationship between the owner of the petitioner and the beneficiary.

Counsel's assertions on appeal cannot overcome grounds of the director's revocation. The AAO concurs with the director's decision and determines that the director had good and sufficient cause to revoke the petition based on the insufficient evidence in factual assertions presented by the petitioner concerning its adequate test of job labor market for the proffered position prior to the filing of the labor certification application.

Beyond the director's decision and counsel's assertions on appeal, the AAO notes other ineligibility issues. 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)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Mandany v. Smith*, 696 F.2d 1008,

(D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of office manager. Item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	Blank
	High School	Blank
	College	Blank
	College Degree Required	AA
	Major Field of Study	**Busines**s or Science

The applicant must also have two years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A requires that the applicant must communicate in Arabic and English as other special requirements.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), she indicated that she attended Mutah University in Al-Karak, Jordan in the field of "Mathematics" from October 1989 through January 1993, culminating in the receipt of a "B.S." degree. She provides no further information concerning his educational background on this form. In corroboration of the Form ETA-750B, the petitioner provided the beneficiary's Degree of Bachelor of Science in Mathematics and transcripts from Mutah University in Al Kerak, Jordan, which show that the beneficiary completed four years of studies in mathematics and was awarded a Degree of Bachelor of Science in Mathematics by Mutah University on March 14, 1993. The documents establish that the beneficiary possessed the requisite education prior to the priority date since her bachelor degree in mathematics meets the AA degree in business or science requirements on the Form ETA 750.

On Part 15, eliciting information of her work experience, the beneficiary represented that she was unemployed since October 1995 to the present (the form was signed on January 10, 1998). Prior to that, she represented that she worked 40 hours per week as an "Office Manager" for Sahel Halaseh CPA in Amman, Jordan from February 1993 to August 1995.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) ***General.*** Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or

> employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
>
> (B) *Skilled workers.* 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.

The record of proceeding contains one experience letter for the beneficiary from Sahel Halaseh CPA (Halaseh's letter) in corroboration of the above quoted regulations. This letter states in pertinent parts that:

> This is to certify that [the beneficiary] has worked in our office from February 1993 to August 1995, as an office manager she contacted new clients to generate new business, and interviewed new employee, trained and supervised clerical staff.
>
> [The beneficiary] has handled the budget & reviewed monthly and quarterly financial statements. She contacted clients to resolve any account problems for smooth processing of work. Her duties included co-ordinating[sic] & organizing the daily work in the office. She took care of the bookkeeping, payroll, including payroll checks, payroll filings and handling all the new update in the clients[sic] files.

This letter is from the beneficiary's former employer, includes name and address of the writer, and a description of job duties, therefore, it appears to meet the requirements of the regulations. However, the record contains a photocopy of the letter, and the petitioner did not submit the original copy of the letter. The petitioner did not submit any objective evidence to support the contents of the letter and to establish the existence of the business, its ongoing operations and location or street address of the office. The letter was not dated and provided inconsistent information. The beneficiary claimed on the Form ETA 750B that she worked for [redacted] while the [redacted] letter is on letterhead of Halaseh & Abu Al-Rouse. The letter verifies that the beneficiary worked for Halaseh & Abu Al-Rouse as an office manager from February 1993 to August 1995. This employment would be the last employment abroad for the beneficiary if it were true. However, the beneficiary did not provide this employment information on the Form G-325, signed on November 15, 2000, accompanying the subsequently filed adjustment of status application. These defects cast doubt on the origin and reliability of the [redacted]'s letter. Therefore, without independent evidence to support the letter, the [redacted] letter cannot be considered as primary evidence to establish the beneficiary's requisite two years of experience as an office manager.

The record also shows that there are inconsistencies among the documents other than the letter. On the Form ETA 750B the beneficiary claimed that she was unemployed from October 1995 at least to the time when she signed the form on January 10, 1998. However, [redacted]), the owner of the petitioner, submitted a letter dated November 2, 2000 certifying that the

beneficiary "has worked for our company since January of 1997." The labor certification application was filed and approved for a position of office manager, and Mr. Elrawashdeh claimed in an undated letter submitted with the initial filing of the instant petition that the beneficiary worked for the company in 1998 and 1999 and was paid commissions of $38,244 and $39,245 respectively while the petitioner's corporate tax returns show that the total salaries and officer's compensation paid were $24,523 and $19,217 in 1998 and 1999 respectively. In a letter dated February 17, 2003, the petitioner certifies that the beneficiary "is an office manager" and "a full-time employee". However, the record does not contain any evidence explaining why an accounting firm with four employees needs to hire a full time office manager at the salary of $62,000 per year to supervise three employees, why the beneficiary filed her tax returns at least since 1997 as an accountant as her occupation instead of office manager, and what kind of services an office manager can provide to an employer in order for the employer to pay the office manager a commission. If the beneficiary worked and was paid as an accountant, the record does not contain any documentary evidence showing that the position of office manager is an existing one and the job offer to the beneficiary is a *bona fide* one. The petitioner's Form DE-6 Quarterly Wage Report for all four quarters of 2002 show that the petitioner paid the beneficiary almost one third of the total salaries paid to its employees while the other five to seven employees including the president were paid the remaining two thirds. The other employees include the beneficiary's husband. These facts cast doubt that the petitioner had adequately tested the job labor market with a *bona fide* job offer in good faith, that the petitioner did not abuse the labor certification application processing system, and that the petitioner did not proceed with the labor certification process for sole purpose of obtaining LPR status for his relative. Counsel's assertions did not and could not resolve the inconsistencies.

The record of proceeding also raises questions concerning the issue of whether the job offer was realistic as of the priority date and remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the first year of the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

The regulation 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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

As previously noted, the Form ETA 750 was accepted on January 12, 1998. The proffered wage as stated on the Form ETA 750 is $29.80 per hour ($61,984 per year).

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. The petitioner claimed to have been established in 1991[2], to have a gross annual income of $219,406, to have a net annual income of $47,485, and to currently employ 4 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B signed on January 10, 1998, the beneficiary did not claim to have worked for the petitioner. However, the petitioner claimed that the beneficiary worked for the petitioner since January 1997.

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. In the instant case, the petitioner asserted that the beneficiary worked for the petitioner and paid the beneficiary commissions of $38,244 in 1998 and $39,245 in 1999 which were reflected in the statement 1 attached to line 19 of Form 1120. However, the petitioner did not submit any objective evidence to support its assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record contains copies of the beneficiary's W-2 forms for 2001 and 2002, 1099 forms for 2000 through 2002, and the petitioner's DE-6 forms for four quarters of 2002. These documents show that the petitioner paid the beneficiary $40,135 as nonemployee compensation with the Form 1099 in 2000; that the petitioner paid the beneficiary $10,000 as employee compensation with the Form W-2 and $47,578.54 as nonemployee compensation with the Form 1099, total of $57,578.54 in 2001; and that the petitioner paid the beneficiary $49,900 as employee compensation with the Form W-2 (also supported by the petitioner's DE-6 forms) and $12,275 as nonemployee compensation with the Form 1099, total of $62,175 in 2002. Therefore, the petitioner established its ability to pay the proffered wage in 2002 through the examination of wages actually paid to the beneficiary, however, the petitioner failed to demonstrate that it paid the beneficiary the full proffered wage in 1998, the year of the priority date in the instant case, to

[2] However, the petitioner's federal income tax returns indicate that it was incorporated on 10/11/1996.

2001. The petitioner is obligated to demonstrate that it could pay the full proffered wage of $61,984 in 1998 and 1999, and the difference of $21,849 in 2000 and $4,405.46 in 2001 between wages actually paid to the beneficiary and the proffered wage with its net income or its net current assets.

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). Reliance on its gross income and gross profit is misplaced. Showing that the petitioner's total income 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. Reliance on the petitioner's depreciation in determining its ability to pay the proffered wage is misplaced. The court in *K.C.P. Food Co., Inc. v. Sava* 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 record contains copies of the petitioner's Form 1120S U.S. Income Tax Return for an S Corporation for 1998 through 2001. The petitioner's tax returns for 1998 through 2001 demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $61,984 per year in 1998 and 1999 and to pay the difference of $21,849 in 2000 and $4,405.46 in 2001 between wages actually paid to the beneficiary and the proffered wage:

- In 1998, the Form 1120S stated a net income[3] of $13,531.

[3] Where an S corporation's income is exclusively from a trade or business, CIS considers net income to

- In 1999, the Form 1120S stated a net income of $30,972.
- In 2000, the Form 1120S stated a net income of $50,396.
- In 2001, the Form 1120S stated a net income of $44,527.

Therefore, the petitioner had sufficient net income to pay the difference between wages actually paid to the beneficiary and proffered wage in 2000 and 2001, however, the petitioner did not have sufficient net income to pay the full proffered wage of $61,984 in 1998 and 1999.

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 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.[4] 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 the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 1998 were $(8,344).
- The petitioner's net current assets during 1999 were $20,934.

Therefore, for the years 1998 and 1999, the petitioner did not have sufficient net current assets to pay the proffered wage in these years.

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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."
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 1-6 or line 23 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.

[4] 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.

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 continuing ability to pay the beneficiary the proffered wage as of the priority date in 1998 to 1999 through an examination of wages paid to the beneficiary and its net income or net current assets. The evidence submitted does not establish that the petitioner provided a realistic job offer at the time of the filing labor certification application and continuing to the present.[5]

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's approval remains revoked.

[5] This office notes that the petitioner's corporate status has been suspended in the State of California. *See* http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C1991906&printer=yes (accessed on April 24, 2007).