U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 19 2007

EAC-04-016-51613

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[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 employment-based preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a liquor store. It seeks to employ the beneficiary permanently in the United States as a liquor establishment manger (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 petitioner filed the instant petition on October 17, 2003. Based on the widespread scope of the malfeasance perpetrated by [redacted],[1] Citizenship and Immigration Services (CIS) determined that it should scrutinize all visa petitions for immigrant workers represented by [redacted] On September 14, 2005, the director served the petitioner with notice of intent to deny the petition (NOID) since [redacted] was the recorded attorney for the instant petition. In the decision dated December 19, 2005, the director ultimately denied the Immigrant Petition for Alien Worker (Form I-140) because the record does not persuasively demonstrate that the beneficiary possessed the required two years of experience as a manager at the time the labor certification was filed.

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)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The 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). Here, the Form ETA 750 was accepted on April 26, 2001.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal[2]. On appeal, counsel submits a brief, an experience letter dated June 22, 1990 from New Delite Wine and Liquors (New Delite), affidavits from owners of the petitioner and the beneficiary, and copies of

[1] On April 14, 2005, after a jury trial in the United States District Court for the District of Maryland, Northern Division, [redacted] was convicted in multiple counts of immigration fraud. [redacted] was convicted of various counts regarding the falsifying of Labor Certification applications and conspiracy to submit false Labor Certifications.

[2] 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).

experience letters previously submitted in the record of proceedings. On the Form I-290B, counsel also checked the box indicating that he would need 90 days to submit a brief and/or evidence to the AAO.[3] Other relevant evidence in the record includes an experience letter dated January 24, 1999 from [redacted] Proprietor of New Delite in New Delhi, India and a letter dated September 22, 2005 from [redacted] Chief Manager of Delhi State Industrial Development Corporation Ltd. in New Delhi, India. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel submits an experience letter dated June 22, 1990 from New Delite (New Delite June 22, 1990 letter) and asserts that the former counsel [redacted] failed to provide the director with the New Delite June 22, 1990 letter and that with this letter added to the record, the petitioner has established that the beneficiary possessed the requisite two years of experience for the proffered position.

To determine whether a beneficiary is eligible for an employment based immigrant visa, 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 liquor establishment manger. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Experience	
	Job Offered	2 years
	Related Occupation	Blank

The duties of the proffered job 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 does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 26, 2001 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has been self-employed since February 1999. Prior to that, he represented that he was employed as a full-time manager (working 40

[3] Since the AAO had received nothing further, the AAO sent a fax to counsel on August 27, 2007 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he would send anything else in this matter, and as a courtesy, providing him with five (5) days to respond. On September 5, 2007, counsel submitted copies of documents submitted along with the notice of appeal. The AAO understands that counsel did not submit any additional evidence in support of his appeal as he indicated on Form I-290B.

hours a week) by a liquor store and restaurant named New Delite Wine & Liquors in New Delhi, India from October 1997 to January 1999 and from August 1987 to February 1990 respectively. He did not provide any additional information concerning his employment background on that form.[4]

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) of 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.

The instant I-140 petition was submitted on October 17, 2003 with an experience letter dated January 24, 1999 from New Delite (New Delite June 24, 1999 letter) pertinent to the beneficiary's qualifications as required by the above regulation. This letter is from [redacted] as the proprietor with the company's address and telephone number and contains a description of the duties the beneficiary performed. However, this letter certifies the beneficiary's experience as a manager for 15 months only, and therefore, is not sufficient to establish the beneficiary's requisite two years (24 months) of experience for the proffered position. The AAO notes that the letter verifies that the beneficiary worked as a manager for 15 months, however, it does not confirm the beneficiary's full-time employment. The director issued the NOID dated September 14, 2005 requesting evidence to establish that the beneficiary possesses the experience listed on the From ETA 750. In response to the director's NOID, counsel asserted that:

> Form ETA 750 part B shows that [the beneficiary] worked as manager of New Delite Wine & Liquors from August 1987 to February 1990 as manager as shown in section c and again in October 1997 till January 1999 as shown in section b of ETA 750 part B. This combined experience exceeds the required 2 years experience. Further he worked for a Government Undertaking of New Delhi as sales representatives of government operated liquor stores from April 1979 till December 1982.

Counsel did not submit an experience letter or other regulatory-prescribed evidence to establish the beneficiary's experience as a manager at New Delite from August 1987 to February 1990, nor did he submit any evidence confirming the beneficiary's full-time employment for the period between October 10, 1997 and January 24, 1999. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). However, counsel submitted a faxed copy of the experience letter dated September 22, 2005 from Prabhat Kumar, Chief Manager of Delhi State Industrial Development Corporation Ltd. in New Delhi, India (Kumar's September 22, 2005 letter). [redacted] September 22, 2005 letter states in pertinent part that:

---

[4] The beneficiary did not provide information for the period between February 1990 and October 1997, nor did he list his employment as a manager at Tick Tock Restaurant & Liquor from September 1999 to October 2002. However, he listed his employment with Tick Tock Restaurant & Liquor on his Form G-325A signed on September 25, 2003.

> It is a mater of record that [the beneficiary] worked as Sales Representative on different liquor vends at Delhi State Industrial Corporation Ltd (A Govt. Undertaking, New Delhi), since 1979 till 1982.

The letter verifies that the beneficiary was employed as a sales representative but does not contain a detailed description of the duties he performed. Without a specific description of the duties, the AAO cannot determine whether the beneficiary's experience as sales representative with Delhi State Industrial Development Corporation Ltd qualifies him to perform the duties of the proffered position of liquor store manager set forth in Item 13 of the Form ETA 750A. Therefore, [redacted] cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case.

On appeal, counsel submits another experience letter dated June 22, 1990 from New Delite (New Delite June 22, 1990 letter) and affidavits from owners of the petitioner and the beneficiary. The New Delite June 22, 1990 letter is from [redacted], the same person who wrote the New Delite January 24, 1999 letter; however, his title is listed as the owner in his June 22, 1990 letter, while his title is listed as proprietor in his January 24, 1999 letter. The New Delite June 22, 1990 letter states in pertinent part that:

> This is to certify that [the beneficiary] worked for us as a manager of the store from (08/1987 to 02/1990)[sic]. He was a very hard working employee with good work ethics. His honesty and dedication to the job progressed the business many fold. He is a team player, which helps him, train and motivates his employees well. Businesses like ours always need employees like him.

The letter verifies that the beneficiary worked as a manager for 30 months, however, it does not confirm the beneficiary's full-time employment. As quoted above, the New Delite June 22, 1990 letter does not contain "a specific description of the duties performed by the alien or of the training received" as required by the regulation at 8 C.F.R. § 204.5(g)(1). Without such a specific description of the duties, the AAO cannot determine whether the beneficiary's experience with New Delite from August 1987 to February 1990 qualifies him to perform the duties of the proffered position set forth in Item 13 of the Form ETA 750A. Therefore, the New Delite June 22, 1990 letter cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case.

On appeal counsel claims that the office of Mir Law Associates, due to an oversight, failed to provide [CIS] with the beneficiary's experience letter from New Delite dated June 22, 1990. Counsel also submits affidavits from the owners of the petitioner to support his assertions. However, records show that the director clearly indicated in his NOID dated September 14, 2005 that the record contains the New Delite January 24, 1999 letter only and requested additional documentation for the beneficiary's requisite two years of experience. The pertinent part of the NOID is quoted as follows:

> The record does not establish the beneficiary possesses the required two years experience as a manager. The record includes a letter indicating he was employed as a manager from October 10, 1997 through January 24, 1999, the date of the letter. The record establishes the beneficiary has 15 months of experience.

> Submit additional documentation that the beneficiary qualifies for the job offer specified in your Application for Labor Certification (Form ETA 750A) from the Department of Labor. This documentation should show that the beneficiary has the required experience, training, education and/or special requirements as of the time of filing the Form ETA 750A.

The record of proceeding also shows that the current counsel submitted a letter dated October 12, 2005 and supporting documents in response to the director's September 14, 2005 NOID. Despite the fact that the director expressly requested additional evidence of the beneficiary's qualifications, counsel did not submit the New Delite June 22, 1990 letter with his response to the director's NOID. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's NOID. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Consequently, the AAO will not consider the New Delite June 22, 1990 letter as sufficient evidence in the instant case.

Therefore, the petitioner did not establish with regulatory-prescribed evidence the beneficiary's prior two years of experience as a liquor store manager, and further failed to establish that the beneficiary is qualified for the proffered position. The petitioner's assertions on appeal fail to overcome the ground of denial in the director's decision.

The record of proceeding contains inconsistencies concerning the issue whether the beneficiary possessed the requisite two years of experience to qualify for the proffered position. Although the beneficiary claimed on the Form ETA 750B that he had been self-employed since February 1999, and was employed as a full-time manager at New Delite from October 1997 to January 1999 and from August 1987 to February 1990, the record contains inconsistent information regarding the beneficiary's employment history. In response to the director's NOID, counsel asserted that the beneficiary also worked for Government operated liquor stores from April 1979 till December 1982 and submitted the [redacted] September 22, 2005 letter, but that work experience is not supported by the beneficiary's statements on the Form ETA 750B. The record does not contain any evidence or explanation why the beneficiary returned to New Delite to take the same position he left for seven and a half years earlier and why counsel did not submit the New Delite June 22, 1990 letter in response to the director's NOID despite the director's request. Moreover, while the beneficiary claimed his self-employment since February 1999 on the Form ETA 750B signed on April 26, 2001, on the Form G-325A signed on September 25, 2003 he listed his employment as a manager at Tick Tock Restaurant & Liquor from September 1999 to October 2002. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." The record does not contain any independent objective evidence to resolve these

inconsistencies. 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. *Id.*

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified an additional ground of ineligibility and will discuss whether or not the petitioner has established that it had the continuing ability to pay the proffered wage beginning on the priority date until the beneficiary obtains lawful permanent residence. 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 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 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.

As previously noted, the Form ETA 750 was accepted on April 26, 2001. The proffered wage as stated on the Form ETA 750 is $20.55 per hour ($42,744 per year). On the Form ETA 750B, signed by the beneficiary on April 26, 2001, the beneficiary did not claim to have worked for the petitioner. In response to the director's NOID counsel claimed that the beneficiary has been working for the petitioner since March 2005.

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 did not submit the beneficiary's W-2 forms or 1099

forms for 2001 through 2004, but did submit paystubs in 2005. The beneficiary's paystubs show that the petitioner has been paying the beneficiary $1,644 bi-weekly at the rate of the proffered wage set forth on the Form ETA 750. However, the petitioner failed to demonstrate that it paid the beneficiary any amount of compensation in 2001, the year of the priority date, through 2004. The regulation at 8 C.F.R. § 204.5(g)(2) requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is April 26, 2001. Thus, the petitioner must show its ability to pay the proffered wage not only in 2005, when counsel claims it actually began paying the proffered wage rate, but it must also show its continuing ability to pay the proffered wage in 2001 through 2004. Demonstrating that the petitioner is paying the proffered wage in a specific year may suffice to show the petitioner's ability to pay for that year, but the petitioner must still demonstrate its ability to pay for the rest of the pertinent period of time. Therefore, the petitioner is still obligated to demonstrate that it could pay the proffered wage of $42,774 in 2001 through 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). Reliance on the petitioner's total income and wage expense 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 Chang* at 537

The record contains copies of the petitioner's Form 1120, U.S. Corporation Income Tax Return, for 2001 through 2004. The petitioner's tax returns for 2001 through 2004 demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $42,774 per year from the year of the priority date:

- In 2001, the Form 1120 stated a net income[5] of $(10,173).
- In 2002, the Form 1120 stated a net income of $69,320.
- In 2003, the Form 1120 stated a net income of $22,152.
- In 2004, the Form 1120 stated a net income of $21,183.

Therefore, for the years 2001 through 2004, the petitioner did not have sufficient net income to pay the full proffered wage of $42,774 except for 2002.

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.[6] 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.

For the year 2001, the petitioner submitted its tax return without the schedule L. Without the schedule L, the AAO cannot determine whether the petitioner had sufficient net current assets to pay the proffered wage that year. Therefore, the petitioner failed to demonstrate that it had the ability to pay the proffered wage in 2001, the year of the priority date, because it failed to submit its schedule L to the Form 1120 tax return.

For the year 2003, the petitioner' tax return states that the petitioner had net current assets of $44,098, which was sufficient to pay the beneficiary the proffered wage of $42,774 that year. Therefore, the

---

[5] Taxable income before net operating loss deduction and special deductions as reported on Line 28 of the Form 1120.

[6] 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.

petitioner established its ability to pay the proffered wage through the examination of its net current assets in 2003.

For the year 2004, the petitioner submitted its tax return with the schedule L. However, the petitioner did not report any assets or liabilities on the schedule L[7]. Without the assets and liabilities reported on the schedule L, the AAO cannot determine whether the petitioner had sufficient net current assets to pay the proffered wage that year. Therefore, the petitioner failed to demonstrate that it had the ability to pay the proffered wage in 2004 because it failed to provide its assets and liabilities on its schedule L to the Form 1120 tax return.

Therefore, the petitioner failed to demonstrate that it had sufficient net current assets to pay the proffered wage in 2001 and 2004 while it established that it had sufficient net current assets to pay the beneficiary the proffered wage in 2003.

Counsel submitted bank statements for the petitioner's business checking accounts for January, February, June, July and November of 2003, October through December of 2004 and May, June and September of 2005 and asserted that an average ledger balance was at least $10,000 per month. Counsel's reliance on the balances in the petitioner's bank checking accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner's taxable income (income minus deductions). In addition, it is noted that the petitioner did not submit bank statements for 2001 and submitted only statements for three months in 2004. The petitioner failed to demonstrate its ability to pay the proffered wage in 2001 and 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, its net income or its net current assets.

In addition, the petitioner has filed other Immigrant Petitions for Alien Workers (Form I-140) for additional workers using the same or similar priority dates. CIS records show that at least three petitions were approved[8]. The petitioner must show that it had the ability to pay all the wages at the priority date of each

[7] The petitioner was required to complete Schedule L, as its total receipts and total assets at the end of tax year 2004 were greater than $250,000 according to its 2004 tax return.

[8] These three approved petitions are EAC-04-233-53669 filed on July 29, 2004 with the priority date of April 26, 2001 and approved on November 30, 2005; EAC-03-124-54486 filed on February 14, 2003 with the priority date of April 24, 2001, approved on August 21, 2003 and reaffirmed the approval on May 10, 2007 after issuing a notice of intent to revoke; and EAC-03-151-53193 filed on April 9, 2003 with the priority date of April 24, 2001 and approved October 21, 2004.

petition and continuing until the beneficiary of each petition obtains lawful permanent residence. Since the record in the instant petition failed to establish the petitioner's ability to pay the proffered wage to the single beneficiary of the instant petition, it is not necessary to consider further whether the evidence also establishes the petitioner's ability to pay the proffered wage to the beneficiaries of the other petitions filed by the petitioner, or to other beneficiaries for whom the petitioner might wish to submit I-140 petitions based on the same approved Form ETA 750 labor certifications.

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.