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

[redacted]

B6

FILE: WAC-05-260-50188 Office: CALIFORNIA SERVICE CENTER Date: SEP 11 2008

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The petitioner is a software consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750,[2] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a four-year U.S. bachelor's degree in the required field as required on the Form ETA 750. The director denied the petition accordingly.

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.

As set forth in the director's August 10, 2006 decision, the primary issue in the current petition is whether the beneficiary possessed the requisite bachelor's degree for the proffered position.

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. Section 203(b)(3)(A)(ii) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

On appeal the petitioner requests consideration of the beneficiary's experience, classroom training and the education evaluation report in determining whether the beneficiary meets the minimum educational requirement for the proffered position and asserts that the beneficiary has a bachelor of science degree and qualifies for the proffered position under the professional prong of the third preference category.

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).

---

[1] While the instant appeal was pending with the AAO, the petitioner filed another I-140 immigrant petition (SRC-07-039-53308) on behalf of the instant beneficiary on November 28, 2006. The petition was approved by the Texas Service Center on January 22, 2007 under the professional category with a priority date of May 12, 2004. The beneficiary's I-485 application for adjustment of status is currently pending with the Texas Service Center.

[2] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

The instant petition is for a substituted beneficiary.[3] The original Form ETA 750 was accepted on January 27, 2003. The original Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of software engineers. Item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	
	High School	
	College	
	College Degree Required	Bachelor's degree or equiv.
	Major Field of Study	CS/Sc/EE/Engg/Math or related

The applicant must also have three years of experience in the job offered. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and need not be recited in this decision. Item 15 of Form ETA 750A does not reflect any other special requirements.

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.[4] On appeal, the petitioner submitted experience letters from Birlasoft, GE Power Systems, and Artech India, and certificates from Sun Microsystems, Brainbench and Siebel. Other relevant evidence in the record includes the beneficiary's bachelor of science degree in zoology and transcripts from [redacted] University, a certificate from Hertz Computers in Madurai, India, experience letters from Birlasoft Limited, Bhilwara Infotech Ltd, InfoGain and Raaga Software Consulting Services, and a credential evaluation report from [redacted] Director of International Credential Evaluators, Inc. (ICE). The record does not contain any further evidence concerning the beneficiary's educational qualifications. Because the record does not contain any evidence that the beneficiary obtained a four-year bachelor's degree or a foreign equivalent degree in one of the field required other than a three-year bachelor's degree in Zoology from the [redacted] University in India, the AAO issued a request for evidence (RFE) on September 7, 2007 granting 12 weeks to respond. However, to date, more than eleven months, no response from the petitioner has been received. This office will adjudicate the appeal based on evidence in the record.

The original Form ETA 750 was certified on August 1, 2005. The ETA 750 in the instant case was filed and certified for the position of software engineer. DOL assigned the occupational code of [redacted] computer software engineer, to the proffered position. DOL's occupational codes are assigned based on normalized

---

[3] An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from [redacted], Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).

[4] 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).

occupational standards. According to DOL's public online database at http://online.onetcenter.org/find/result?s=15-1031.00&g=Go (accessed on August 25, 2008) and its extensive description of the position and requirements for the position most analogous to a software engineer position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to a software engineer position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* http://online.onetcenter.org/link/summary/15-1031.00#JobZone (accessed on August 25, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

> A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Therefore, a software engineer position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience.[5] In this case, the employer requires a bachelor's degree or equivalent plus three years of experience in the job offered on the Form ETA 750A, and the Form ETA 750 does not indicate that the employer would accept any alternate requirements in lieu of the bachelor's degree requirement. The petitioner checked box d in Part 2 of the I-140 form, which is for a member of the professions holding an advanced degree or an alien of exceptional ability. The director analyzed and denied the instant petition under the professional category. On appeal, the petitioner does not object to the category the petition was analyzed under and does not seek any other category and asserts that the beneficiary is qualified under the professional category. Therefore, the AAO finds that this petition must be properly analyzed under the professional category only.

For the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must

---

[5] A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." It is noted that software engineer positions are not included in this section.

produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The beneficiary possesses a three-year bachelor of science degree in zoology from the Madurai Kamaraj University in India. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's three-year bachelor of science degree in zoology from the Madurai Kamaraj University in India alone cannot be considered a foreign equivalent degree.

The beneficiary also holds certificates from Hertz Computers, Sun Microsystems, Brainbench and Siebel. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. In the instant case, the record does not contain any evidence that any of the organizations who issued the beneficiary the certificates is a college or university and any of the beneficiary's certificates alone is a single degree equivalent to a four-year U.S. bachelor's degree. Therefore, the petitioner failed to demonstrate that the beneficiary possessed a single U.S. bachelor's degree or a foreign equivalent degree as required by the Form ETA 750 in the instant case.

The petitioner asserts that the beneficiary possessed the equivalent to a U.S. bachelor's degree according to the private credential evaluation from ICE. The evaluation report from ICE used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" in the required field, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for "skilled workers," states the following:

> 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.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification." And for the "professional category," the beneficiary must also show evidence of a "United States baccalaureate degree or a foreign equivalent degree." Thus, regardless of the category sought, the beneficiary must have a four-year bachelor's degree or its foreign equivalent in computer science, science, electrical or electronic engineering, engineering, mathematics or related, and three years of work experience in the job offered. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and counsel's assertions on appeal cannot overcome the grounds of denial in the director's August 10, 2006 decision. Therefore, the director's ground for denying the petition under the professional category must be affirmed.

Beyond the director's decision and the petitioner'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 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 either 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. *See* 8 C.F.R. § 204.5(d). The priority date in the instant case is January 27, 2003. The proffered wage as stated on the Form ETA 750 is $97,864 per year. The petitioner claimed to have been established in 1998, to have a gross annual income of $2,630,575, to have a net annual income of $98,982, and to currently employ 45 workers. The petitioner submitted a Form ETA 750B with information pertaining to the qualifications of the new beneficiary. On the Form ETA 750B signed by the beneficiary on May 31, 2006, the beneficiary claimed to have worked for the petitioner since June 2003.

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).

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 or 1099 forms as evidence that it paid the beneficiary in the relevant years. However, the petitioner submitted the beneficiary's paystubs for the months of April, May, June and August of 2005 and August of 2006. The paystubs for 2005 show that the petitioner paid the beneficiary $6,666.67 in April, and $7,083.33 in May, June and August. As of August 31, 2005, the year-to-date earnings were $55,000. The paystub for August 2006 shows that the petitioner paid the beneficiary $8,333,33 in August and $52,821.05 year-to-date as of August 30, 2006. The proffered wage is $97,864 per year, and the prorated proffered wage for the portion of year until the end of August would be $65,242.67. Therefore, the petitioner did not establish its ability to pay the proffered wage in 2005 and 2006 through the examination of wages actually paid to the beneficiary. The petitioner is obligated to demonstrate that it could pay the full proffered wage of $97,864 in 2003 and 2004, and the difference between wages actually paid to the beneficiary and the proffered wage in 2005 and 2006 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 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* 719 F. Supp. 537.

The petitioner submitted its Form 1120S U.S. Income Tax Return for an S Corporation for 2002 and 2003 as evidence of the petitioner's ability to pay the proffered wage. According to the tax returns in the record, the petitioner is structured as an S corporation, and its fiscal year is based on a calendar year. However, the priority date in the instant case is January 27, 2003, and therefore, the tax return for 2002 is not necessarily dispositive. The tax return for 2003 demonstrates the following financial information concerning the petitioner's ability to pay the proffered wage of $97,864 per year from the priority date:

- In 2003, the Form 1120S stated a net income[6] of $98,795.

Therefore, for the year 2003, the petitioner did have sufficient net income to pay a single proffered wage, and thus established its ability to pay the instant beneficiary alone the proffered wage with its net income. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). CIS records show that the petitioner has filed a total of 345 immigrant and nonimmigrant petitions. Considering the multiple immigrant and nonimmigrant petitions filed by the petitioner, the ability to pay the multiple proffered wages cannot be established with an amount just sufficient for a single proffered wage. Therefore, the petitioner failed to establish its ability to pay the proffered wages in 2003.

As an alternate, 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

---

[6] Where an S corporation's income is exclusively from a trade or business, CIS considers net income to 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 23 or line 17e 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.

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.[7] 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 2003 were $944,862.

Therefore, for the year 2003, the petitioner had sufficient net current assets to pay the proffered wage to the instant beneficiary, and also to the multiple beneficiaries, and thus, the petitioner established its ability to pay the proffered wage with its net current assets in 2003.

The record before the director closed on June 5, 2006 with the receipt by the director of the petitioner's submissions in response to the RFE issued on March 13, 2006. As of that date the petitioner's federal tax returns for 2004 and 2005 should have been available. However, the petitioner did not submit its 2004 and 2005 tax returns, nor did it explain why the tax returns were not submitted. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The tax returns would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. The petitioner did not submit its annual reports or audited financial statements for 2004 and 2005. Without the regulatory-prescribed evidence, the AAO cannot determine whether the petitioner had sufficient net income or net current assets to pay the instant beneficiary the difference between wages actually paid to the beneficiary and the proffered wage and proffered wages to the beneficiaries for whom the petitioner was responsible in 2004 and 2005.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had continuing ability to pay the beneficiary the proffered wage and multiple beneficiaries the proffered wages in 2004 and 2005 through an examination of wages paid to the beneficiary, its net income or net current assets.

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.

---

[7] 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 as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.