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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B6

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 09 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and affirmed that decision after reviewing a subsequent motion to reopen/reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction and real estate management business. It seeks to employ the beneficiary[1] permanently in the United States as a cleaner/housekeeper. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (the DOL) with a Form ETA 750B for the substituted beneficiary. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. 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 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

The regulation at 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, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate

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

that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL 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 27, 2001. The proffered wage as stated on the Form ETA 750 is $9.01 per hour ($18,740.80 per year).

Accompanying the petition and labor certification, counsel submitted a cover letter dated July 11, 2007; an explanatory letter dated July 31, 2007; and the petitioner's federal income tax return (Form 1120) for its fiscal year 2001.

On March 14, 2008, the director issued a request for evidence and instructed the petitioner to submit its federal income tax returns (Forms 1120) for its fiscal years 2002 through 2006 (and 2007 if available), or its annual reports or audited financial statements. Further, the director stated that the petitioner may also submit evidence such as profit/loss statements and bank account records.

In response, the petitioner submitted its federal income tax returns (Forms 1120) for its fiscal years 2002 through 2006, as well as a Wage and Tax Statement (W-2) for 2007 issued by the petitioner to the beneficiary in the amount of $23,523.75. Additionally, the petitioner submitted three pages of its 2006 depreciation deductions projections; its unaudited "profit & loss" statement for 2007; an "Account Quick/Report;" a time sheet dated March 26, 2008, stating year-to-date wages paid to the beneficiary of $6,542.50 as of July 4, 2007; corporate registration documents; an article from the Washington Post, dated April 21, 2007; informational articles; and information concerning a limited liability company.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1989, to have a gross annual income of $1,050,000.00, and to currently employ nine workers. According to the tax returns in the record, the petitioner's fiscal year commences on June 1st, and ends on May 31st of the succeeding year. On the Form ETA 750B, signed by the beneficiary on July 12, 2007, the beneficiary did claim to have worked for the petitioner commencing February 2007, to present (i.e. July 12, 2007).

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations 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).

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, United States Citizenship and Immigration Services (USCIS) 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, USCIS 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 allegedly paid the beneficiary the $23,523.75 in 2007.

In support of the petition, the petitioner submitted, *inter alia*, a W-2 statement purportedly representing wages paid to the beneficiary in 2007. However, the record contains inconsistencies pertaining to the identity of the beneficiary. The W-2 statement states that the wages were paid to a person having social security number [redacted] The petitioner did not respond to the query in the Form I-140 asking for the beneficiary's social security number, even though this information was clearly available to it if, in fact, [redacted] is the beneficiary's social security number. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Absent clarification of these inconsistencies in the record, the AAO will not accept the W-2 statements as persuasive evidence of wages paid to the beneficiary in 2007. Although this is not the basis for the AAO's decision in the instant case, it is noted that certain unlawful uses of social security numbers are criminal offenses involving moral turpitude and can lead in certain circumstances to removal from the United States. *See Lateef v. Dept. of Homeland Security*, 592 F.3d 926 (8th Cir. 2010).

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, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, --- F. Supp. 2d. ---, 2010 WL 956001, at *6 (E.D. Mich. 2010). 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 gross receipts and wage

expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, --- F. Supp. 2d. at *6 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

> The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.
>
> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. "[USCIS] 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." *Chi-Feng Chang* at 537 (emphasis added).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on April 15, 2008, with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2006 is the most recent return available. The petitioner's tax returns[3] demonstrate its net income as shown in the table below.

[3] The petitioner's fiscal year for 2001 is from June 1, 2001, to May 31, 2002, which fails to address the petitioner's ability to pay the proffered wage from the priority date, i.e. April 27, 2001, to May

- From April 27, 2001, to May 31, 2001, the petitioner did not submit required evidence of its ability to pay the proffered wage.
- In 2001, the Form 1120 stated net income of $93,014.00.
- In 2002, the Form 1120 stated net income of $38,476.00.
- In 2003, the Form 1120 stated net income of $2,537.00.
- In 2004, the Form 1120 stated net income of $15,507.00.
- In 2005, the Form 1120 stated net income of <$160,572.00>.
- In 2006, the Form 1120 stated net income of $8,798.00.

Therefore, for the period April 27, 2001, to May 31, 2001, and for the years 2003, 2004, 2005, and 2006, the petitioner did not have sufficient net income to pay the proffered wage.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS 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, USCIS 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 and include cash-on-hand. 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 tax returns demonstrate its end-of-year net current assets as shown in the table below.

- No evidence was submitted for the period April 27, 2001, to May 31, 2001.[5]
- In 2003, the Form 1120 stated net current assets of $16,107.00.
- In 2004, the Form 1120 stated net current assets of $43,571.00.

31, 2001.

[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.

[5] It is noted that "beginning of year" figures on the 2001 Schedule L shows negative net current assets.

- In 2005, the Form 1120 stated net current assets of <$141,001.00>.
- In 2006, the Form 1120 stated net current assets of <$85,166.00>.

Therefore, for the period April 27, 2001, to May 31, 2001, and for the years 2003, 2005, and 2006, the petitioner did not have sufficient net current assets to pay the proffered wage.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets in 2003, 2005, and 2006, as well as from the time period of April 27, 2001, to May 31, 2001..

On appeal, counsel asserts the director's denial was based on the erroneous legal and factual conclusion that the petitioner did not have sufficient resources to pay the proffered wage. Counsel contends that the evidence submitted demonstrates that "liquid assets" were available to the petitioner each year from 2001 to 2008 to pay the proffered wage.

Accompanying the appeal, counsel submitted a legal brief February 2, 2009; an explanatory letter from [redacted] vice president of the petitioner; an explanatory letter dated February 1, 2009, from [redacted]; and an e-mail message dated February 2, 2009, from a licensed insurance agent, [redacted], together with a page from the website http://signaturefinancialpartners.com/ ... accessed February 2, 2009. Also, in the record, is a motion dated July 3, 2008, together with a table, listing principally statements 7 and 8 from the petitioner's 2004 through 2006 tax returns; an explanatory letter from the petitioner dated July 3, 2008; and an explanatory letter dated July 3, 2008, from [redacted].

Counsel, the petitioner, [redacted] assert that the cash value of whole life insurance policies represent a source of funds that demonstrate the petitioner's ability to pay the proffered wage. According to these individuals, whole life insurance coverage offers cash value that policy holders can borrow against during the life of the coverage, in this instance to pay the proffered wage. The life insurance policies were not submitted, and no life insurance account statements were introduced into evidence. The conditions and interest under which the policy holders may borrow against the whole life insurance policies were not disclosed.

According to [redacted] letter dated February 1, 2009, the cash value "of whole life policies held by business owners, be they shareholders or partners, is an asset of the business." However, he also stated in the letter that the "policy holder[s]" can access the cash value by either terminating the policies, which would eliminate them, or borrow against the policies. It is the latter method which [redacted] asserts would be used, and there are "officer loans" stated on the petitioner's tax returns which may or may not be loans against these policies. Assuming these are loans against the cash value of the whole life policies, it is not clear at what terms these loans were made, but based on the above, money would flow from the whole life policies as borrowings presumably by the officers, and then to the petitioner to be utilized to pay wages.

Therefore, contrary to counsel's assertion, USCIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M,* 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.,* 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel,* 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. Further, there are no declarative statements made by the petitioner's shareholders offering to pay the proffered wage from funds derived from whole life policies, or that this in fact occurred anytime since 1989, or from the priority date. A petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Comm. 1971).

It is not clear that the whole life policies are solely business assets, but rather appear to be deferred compensation awarded to the corporate officers. There is no statement in the record that the whole life insurance policies were over-funded by the petitioner allowing them to be utilized as sources of funds. For a corporation that has been in existence for almost 22 years, the cash surrender value(s) of the whole life insurance policies found in Statements 7 and 8 of the petitioner's tax returns are modest. In any event, the petitioner chose to describe the claimed value of the whole life policy as an "other asset," not as a "current asset." The petitioner's claims about the availability of this purported asset are not consistent with the record.

Additionally, counsel contends, that the petitioner would have "forgone payments into employee benefits to pay the [beneficiary's] wage." Counsel in her brief dated February 2, 2009, explains that these are "discretionary expenditures for contributions to the voluntary employee benefit program." The exhibit included with counsel's motion dated July 3, 2008, references expense items found on the petitioner's Forms 1120, lines 24 and 25, identified as benefits and pension funds. The AAO notes that the petitioner only declares that it has nine current employees, but its tax returns state cost of labor, (presumably contract labor), for 2001 through 2006, of $245,785.00, $245,430.00, $237,734.00, $204,439.00, $246195.00, and $75,659.00 respectively. This expense is approximately twice the declared wage/salary expenses stated in the tax returns for 2001 through 2007. Presumably the outside contractors would not be paid pension or other employee benefits, and account for the bulk of the petitioner's labor expenses. Therefore, it is not clear how the total expense of the benefits and pension funds would affect the petitioner's net income since it is not reasonable that all of it would be eliminated, and employee's wages/pension/benefits only account for a small component of the petitioner's labor cost. Nevertheless, the suggestion that these expenses in those tax returns should be treated as assets available to pay the proffered wage is not persuasive. While counsel characterizes these payments as discretionary expenditures, presumably, these expenses are offered by the petitioner to both attract and retain employees. Benefits and pension payments already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. Counsel is merely speculating upon what could have happened in the past (but did not) and what may or may not happen in the future. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.,* 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc.*

v. Nelson, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Counsel refers to a decision issued by the AAO concerning the ability to pay, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612. The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000.00. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa,* USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

The petitioner has been in business since 1989 and currently employs nine employees and an unspecified number of contract laborers. In the instant case, there is sufficient information concerning the finances of the petitioner to demonstrate that it did not have the ability to pay the proffered wage in 2003, 2005, and 2006. There is insufficient evidence pertaining to the period April 27, 2001, to May 31, 2001.

From 2003 through 2006, the petitioner's net income was negative or nominal in relation to its gross receipts of $951,945.00, $1,112,745.00, $1,647,273, and $615,100.00, respectively. According to the amounts of the gross receipts, the petitioner's business declined in 2006. In 2005 and 2006, its

net current assets were negative. There is not sufficient evidence to establish that the business has met all of its obligations in the past or to show its historical growth. There is no evidence of the occurrence of any uncharacteristic business expenditures or losses. In addition, the petitioner has filed another Immigrant Petition for Alien Worker (Form I-140) for three more workers as found in the electronic records of USCIS.[6] Therefore, the petitioner must show that it had sufficient income to pay all the wages at the priority date.

Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

[redacted]