U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date APR 0 5 2012 Office: NEBRASKA SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims to be a restaurant. On July 5, 2007, the petitioner filed a petition seeking to employ the beneficiary, on a permanent basis, as a specialty cuisine cook. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).[1] As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the Department of Labor (DOL).

With the initial petition submission, the petitioner provided no documentary evidence of its ability to pay the beneficiary the proffered wage or of the beneficiary's qualifications for the proffered position. On January 2, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of its ability to pay the proffered wage starting from the February 27, 2003 priority date. Specifically, the director requested that the petitioner supply evidence such as federal tax returns or audited financial statements for the years 2003 through 2007. Additionally, the director requested evidence of any wages paid to the beneficiary in the form of Forms W-2 or 1099 for the same years. In the request for evidence, the director also requested that the petitioner supply documentary evidence of the beneficiary's work experience in the form of letters "from current or former employers." In response, the petitioner provided a W-2 form for 2008 and tax returns for 2003 through 2007.

The director denied the petition on February 10, 2009. The decision stated that the evidence submitted by the petitioner failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The AAO affirms the director's decision. The petitioner's net income and net current assets were less than the proffered wage for each of the years from 2003 through 2007. The petitioner provided evidence of having paid the beneficiary the proffered wage for only 2008. In considering the overall financial condition of the petitioner's business, the evidence shows modest gross receipts, wages paid to employees and officer compensation from 2003 until 2007. In considering the totality of the circumstances, there are no factors weighing in the petitioner's favor.[2]

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants 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 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

[2] In determining the petitioner's ability to pay the proffered wage, U.S. Citizenship and Immigration Services (USCIS) first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.[2] If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to

The petitioner filed the instant appeal on March 13, 2009. In Part 3 of Form I-290B, Notice of Appeal or Motion, the petitioner states the following as the basis for the appeal:

> I am filing an appeal to the decision dated February 10, 2009 by [U.S. Citizenship and Immigration Services (USCIS)] [Nebraska Service Center (NSC)] Director which denied the I-140 Immigrant Petition for Alien Worker because the submitted federal income tax [sic] for 2003, 04, 05, 06 & 07 did not demonstrate my income sufficient to establish my ability to pay the $21,486.40 per annum proffered wage of the beneficiary. I hereby state that I inadvertently missed to submit [sic] to USCIS copies of my additional business and personal assets and bank accounts which will show my financial ability to pay the proffered wage of $21,486.48 per year.
>
> Attached herewith are copies of documents indicating existence of my other business, bank accounts and personal properties and assets to back my ability to pay the proffered wage.

Even though the petitioner made reference to documents which relate to another business, bank accounts, personal properties and assets, no evidence was supplied with the instant appeal. Further, as of this day, more than 36 months later, no other information has been submitted.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.[3]

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pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

[3]Even if the evidence referenced in the appeal had been submitted and were considered, the appeal would still have been dismissed. The petitioner is a C corporation. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the 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. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." Therefore, USCIS cannot consider any of the petitioner's personal assets, whether such assets are derived from other businesses which the petitioner might own, businesses in which he might have an interest or from personal property or other assets.

With respect to bank statements, the petitioner's reliance on any balances in the petitioner's bank accounts would be 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

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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.

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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 would somehow reflect additional available funds that were not reflected on its tax return(s), such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L which has already been considered in determining the petitioner's net current assets.

If the bank accounts, to which the petitioner makes reference, belong to the petitioning entity in the instant circumstance, any sums reflected in such statements would have already been considered on the tax returns provided. If, however, the bank statements reflect cash flows from another company which the petitioner owns or in which he has an interest, USCIS would not be able to consider them in any event. *See Matter of Aphrodite Investments, Ltd., supra.*