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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

[redacted]

B6

DATE: AUG 2 2 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

John Vaughan

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit religious organization which seeks to employ the beneficiary permanently in the United States as a religious food supervisor and to classify her as a skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the Form I-140, Immigrant Petition for Alien Worker, is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (USDOL).

In a decision dated February 19, 2009, the director determined that the petitioner failed to establish its continuing ability to pay the beneficiary the proffered wage beginning on the priority date. The director also determined that the petitioner had not submitted evidence to establish that the beneficiary had acquired the minimum educational requirements listed on the ETA Form 9089 before the priority date. The petitioner filed a timely appeal, along with additional documentation.

The director's finding that the beneficiary had not acquired the minimum educational requirements listed on the ETA Form 9089 is withdrawn because that application listed the educational requirement for the position as "None."

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 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 ETA Form 9089 was accepted for processing by any office within the employment system of the USDOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 as certified by the USDOL and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the ETA Form 9089 that was accepted for processing on May 6, 2008 shows the proffered wage as $15.74 per hour, which equates to $32,739.20 per year based on a 40-hour workweek, and that the position requires 2 years experience in the job offered.

The petitioner claims to have been established in 1965 and to employ 20 workers at the time the petition was filed. On the ETA Form 9089, signed by the beneficiary on August 27, 2008, she did not state she had been employed by the petitioner.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A certified labor certification establishes a priority date for any immigrant petition later based on the ETA Form 9089. Therefore, 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 a beneficiary obtains lawful permanent resident status. 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).

USCIS first examines whether the petitioner employed and paid the beneficiary from the priority date onwards. A finding that the petitioner employed the beneficiary at a salary equal to or greater than the proffered wage is considered *prima facie* proof of the petitioner's ability to pay the wage. In this matter, the record contains IRS Form W-2, Wage and Tax Statements, as evidence of wages paid to the beneficiary by the petitioner in 2004 and 2005, along with pay stubs for wages paid to her for pay periods ending July 14, 2006 and July 21, 2006. However, the information contained in these IRS Forms W-2 is inconsistent with claims made by the petitioner in the Form I-140 under penalty of perjury. The Forms W-2 state that the wages were paid to a person having social security number [redacted] The petitioner responded "none" to the query in the Form I-140 asking for the beneficiary's social security number, even though this information was clearly available 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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).

In this case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date of May 6, 2008 onwards. In fact, there is no evidence in the record that the petitioner paid anything to the beneficiary from the priority date up to the present.

If, as in this case, the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during the requisite period, USCIS would normally examine the net income figures, or the net current assets figures, on the petitioner's federal income tax return. However, the record reflects that because the petitioner is a tax exempt religious organization, it is not required to file, and does not file, income tax returns with the federal government. Consequently, there are no federal tax returns available to the USCIS for analysis.

The record contains the following financial information provided by the petitioner pertaining to its ability to pay the beneficiary the proffered wage in 2008 and onwards.

1. A letter dated March 12, 2009 from [redacted] CPA, with Roth & Company LLP in Brooklyn, New York, who states: "In our opinion the organization has the financial stability and strength to hire an additional worker for $629.60 per week, and such hiring should not affect the financial stability of the organization."

2. Two partial bank statements for a commercial checking account ending in 9765 of "Committee for the Advancement of Torah DBA OK Labs; Org Kashrus Lab; Org Kashru" showing an ending balance on page 3 (of 14) of $308,723.79 for June 2008 and an ending balance on page 3 (of 16) of $510,376.25 for January 2009.

As noted *supra,* evidence of financial ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2). The letter from Mr. [redacted] (Item # 1 above) is an uncorroborated claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The bank statements (Item # 2) provided are incomplete, do not show the name of the financial institution and were issued to an organization with a different name than the petitioning entity. Moreover, while bank statements show the amount in an account at a given time, they do not show the sustainable ability of the account holder to pay a proffered wage over time.

Therefore, the AAO determines that the evidence submitted does not establish the petitioner's continuing ability to pay the proffered wage from the priority date up to the present.

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

ORDER: The appeal is dismissed.