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: MAY 30 2012 Office: NEBRASKA 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:

[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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference 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 dismissed.

The petitioner is a car wash. It seeks to employ the beneficiary permanently in the United States as a maintenance mechanic. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). 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 and 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 March 25, 2009 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)(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 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, Application for Permanent Employment Certification, 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 that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the ETA Form 9089 was accepted on April 30, 2001.[1] The proffered wage as stated on the ETA Form 9089 is $21.08 per hour ($43,846.40 per year). The ETA Form 9089 states that the position requires two years of experience in the job offered.

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]

On appeal, counsel submits a brief but no supporting documentary evidence.

The evidence in the record of proceeding seems to suggest that during 2001 and 2002 the petitioner was structured as a general partnership but from 2003 onwards has been structured as a sole proprietorship.[3] For 2001 and 2002, the petitioner supplied Form 1065 to demonstrate its ability to pay for those years but supplied Form 1040 with Schedule C for 2003, 2004, 2005 and 2006. Form 1065 for 2002 indicates that it is final return. The petitioner's name appears as Pacific Car Wash on both Forms 1065 and Schedule C.

It should also be noted that the labor certification was filed in 2001 by [redacted] Based upon the evidence in the record of proceeding, it would seem that [redacted] was a general partnership when it filed for labor certification. The labor certification was approved on July 13,

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[1] The petitioner would have initially filed Form ETA 750. The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. New United States Department of Labor (DOL) regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by DOL by the acronym PERM. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. In this case, the PERM regulations apply because the petitioner filed a labor certification application on ETA Form 9089 seeking to convert the previously submitted ETA Form 750 to an ETA 9089 under the special conversion guidelines set forth in PERM. 20 C.F.R. § 656.17(d) sets forth the requirements necessary for the converted labor certification application to retain the priority date set forth on the former ETA 750.

[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). 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).

[3] The change in business structure and ownership requires an assessment of whether the petitioner has demonstrated that it is a successor-in-interest to the entity which filed Form ETA 9089. No evidence was supplied to demonstrate that a bona fide successor-in-interest transaction occurred and the director did not address this issue in either his February 2, 2009 request for evidence or his March 25, 2009 denial.

2006. According to the evidence in the record of proceeding, it would seem that the petitioner was a sole proprietorship at that time. However, the petitioner provided no evidence demonstrating that it informed the DOL of any changes in its ownership or structure. Therefore, though the labor certification is certified in the name of , the petitioner has not demonstrated whether the labor certification was certified for , the general partnership, or , the sole proprietorship.

On the petition, the petitioner claimed to have been established in 1988 and currently to employ 11 workers. On the ETA Form 9089, signed by the beneficiary on July 18, 2006, the beneficiary claimed to have worked for the petitioner since December 15, 1988.

On appeal, counsel asserts that the director erred by failing to consider the sole proprietor's complete financial situation, including gross receipts, gross profit and total wages paid. Further, counsel asserts that the director should have considered the totality of the petitioner's circumstances.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA 9089, 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'l Comm'r 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'l Comm'r 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, even though the petitioner claims to have employed the beneficiary since 1988, he only provided copies of IRS Form W-2 which it issued to the beneficiary in 2005, 2006 and 2007. The beneficiary's IRS Forms W-2 for 2005, 2006 and 2007 show compensation received from the petitioner, as shown in the table below.

- In 2005, the Form W-2 stated compensation of $12,733.00.
- In 2006, the Form W-2 stated compensation of $13,849.00.
- In 2007, the Form W-2 stated compensation of $14,559.47.

The beneficiary's W-2 statements for 2005 and 2006 reflect a social security number which cannot be verified. The beneficiary's W-2 statement for 2007, however, contains a social security number which is registered to an individual other than the beneficiary and which has been used by four

different individuals including the beneficiary.[4] Therefore, USCIS will not consider evidence of wages paid under a stolen social security number.

In the instant case, the petitioner has not demonstrated that it paid the beneficiary any wages in 2001, 2002, 2003, 2004 or 2007. The petitioner has demonstrated that it paid a portion of the proffered wage in 2005 and 2006. Since the petitioner has not paid the beneficiary in 2001, 2002, 2003 or 2004, and has not provided objective, bona fide evidence of having paid the beneficiary in 2007, it must still demonstrate the ability to pay the full proffered wage for these years. However, since the petitioner paid the beneficiary a portion of the proffered wage in 2005 and 2006, it must demonstrate the ability to pay the difference between the wages already paid and the full proffered wage for these years which is $31,113.40 and $29,997.40 respectively.

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[4] Misuse of another individual's SSN is a violation of Federal law and may lead to fines and/or imprisonment and disregarding the work authorization provisions printed on your Social Security card may be a violation of Federal immigration law. Violations of applicable law regarding Social Security Number fraud and misuse are serious crimes and will be subject to prosecution.

The following provisions of law deal directly with Social Security number fraud and misuse:

• **Social Security Act:** In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Act made it a felony to *...willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.*

Violators of this provision, Section 208(a)(6) of the Social Security Act, shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both. *See* the website at http://www.ssa.gov/OP_Home/ssact/title02/0208.htm (accessed on April 26, 2011).

• **Identity Theft and Assumption Deterrence Act:** In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act (Public Law 105-318) to address the problem of identity theft. Specifically, the Act made it a Federal crime when anyone *...knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.*

Violations of the Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

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*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). 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).

For 2001 and 2002, the petitioner provided tax documentation for a general partnership bearing the name [redacted]. For 2003 and onwards, the petitioner provided tax documentation for a sole proprietorship which uses the name [redacted]. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioner could support himself, his spouse and five dependents on a gross income of slightly more than $20,000 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

The record before the director closed on March 11, 2009 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 2008 federal income tax return was not yet due. Therefore, the 2007 federal income return would have been the most recent return available.[5] However, the most recent return submitted by the petitioner was Form 1040 for 2006.

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[5] The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although the director requested that the petitioner submit additional evidence to establish that the petitioner had the ability to pay the proffered wage as of the priority date and continuing until 2008, the petitioner neglected to provide copies of its 2007 tax returns. The 2007 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's failure to submit these

In the instant case, as a general partnership, the petitioner's federal income tax returns reflect the following information for the following years:

- In 2001, the Form 1065 stated net income of $11,728.00.[6]
- In 2002, the Form 1065 stated a net loss of $4,780.00.

In the instant case, the sole proprietor supports a family of two. The proprietor's tax returns reflect the following information for the following years:

- In 2003, the proprietor's IRS Form 1040, line 34, stated adjusted gross income (loss) of ($632.00).
- In 2004, the proprietor's IRS Form 1040, line 36, stated adjusted gross income of $14,613.00.
- In 2005, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of $24,781.00.
- In 2006, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of $12,862.00.
- The petitioner did not supply IRS Form 1040 for 2007.

In 2001 and 2002, the petitioner did not report sufficient net income to be able to pay the beneficiary the full proffered wage. In 2003, 2004 and 2007, the sole proprietor did not report sufficient adjusted gross income to be able to pay the beneficiary the full proffered wage. In 2005 and 2006, the petitioner did not report sufficient adjusted gross income to be able to pay the beneficiary the difference between the wages already paid and the full proffered wage.

Further, it must be noted that as a sole proprietor, the petitioner must demonstrate not only the ability to pay the beneficiary from his adjusted gross income but also the ability to support his household. To that end, the director requested evidence of the sole proprietor's monthly, recurring, household expenses, including but not limited to mortgage or rent payments, automobile payments, installment loans, credit card payments, and household expenses. Additionally, the director requested that the

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documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

[6] For a partnership, where a partnership's income is exclusively from a trade or business, USCIS considers net income to be the figure shown on Line 22 of the Form 1065, U.S. Partnership Income Tax Return. However, where a partnership has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income or additional credits, deductions or other adjustments, net income is found on page 4 of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K. In the instant case, the petitioner's Schedule K has relevant entries for additional income and, therefore, its net income is found on line 1 of the Analysis of Net Income (Loss) of Schedule K.

sole proprietor submit copies of checking and savings account statements. In his response, the petitioner failed to submit the requested evidence.[7]

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. Net current assets are the difference between the petitioner's current assets and current liabilities.[8] A partnership's year-end current assets are shown on Schedule L, lines 1(d) through 6(d) and include cash-on-hand, inventories, and receivables expected to be converted to cash within one year. Its year-end current liabilities are shown on lines 15(d) through 17(d). If the total of a partnership'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 Form 1065, Schedule L reflects the following information for the following years:

- In 2001, the IRS Form 1065, Schedule L, stated end-of-year net current liabilities of $3,823.00
- In 2002, the IRS Form 1065, Schedule L, stated end-of-year net current liabilities of $16,356.00

Therefore, for the years 2001 and 2002, the petitioner did not demonstrate that it had sufficient net current assets to pay the beneficiary the full proffered wage.

For sole proprietors USCIS will also consider the sole proprietor's unencumbered and liquefiable assets that could reasonably be applied towards paying employee wages. However, the petitioner provided no evidence of such personal assets.

On appeal, counsel asserts that the director should have considered the sole proprietor's complete financial situation. For example, counsel states, "In 2006 the Schedule C shows gross receipts in the amount of $236,614.00 and a net total income of $217,436.00[9] with wages paid in the amount of 119,771.00."[10]

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[7] The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

[8] 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.

[9] While counsel refers to this figure as "net total income," the figure to which counsel refers on Schedule C is actually the gross profit/gross income which appears on line 5 and 7.

[10] Counsel's first reference, in the course of this argument, is to the petitioner's Schedule C for 2007. This document was not submitted as evidence. Counsel also makes reference to the petitioner's Schedule C for 2002, a year in which the petitioner was structured as a general partnership and did

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*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

In the instant circumstance, for example, while the petitioner reported $236,614 in gross receipts in 2006, he was responsible for paying $19,178 in costs for goods which he sold and $228,574 in expenses leaving him with a net loss of $11,138 for his business. The same pattern obtains for all of the other years in which the evidence suggests that petitioner was structured as a sole proprietorship.

On appeal, counsel asserts that the director should have considered the totality of the petitioner's circumstances.

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 (Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. 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.

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not file a Schedule C. These erroneous assertions detract from counsel's argument on appeal.

In the instant case, it must be noted that the petitioner did not demonstrate the ability to pay the beneficiary the proffered wage for any year out the seven years under consideration. Though the petitioner claims to have been in business for approximately 19 years at the time the instant petition was filed, the record of proceeding contains the petitioner's financial documentation for only six of those years. During the time period between 2001 and 2006, the petitioner demonstrated modest sales and payroll. The petitioner has not established the historical growth of his business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, his reputation within his industry or whether the beneficiary is replacing a former employee or an outsourced service. 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.

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*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Beyond the decision of the director, the petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. The petitioner appears to be a different entity from the employer listed on the labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

With respect to corporations, a successor is generally created when one corporation is vested with the rights and obligations of an earlier corporation through amalgamation, consolidation, or other assumption of interests.[11] *Id.* at 1569 (defining "successor"). When considering other business organizations, such as partnerships or sole proprietorships, even a partial change in ownership may require the petitioner to establish that it is a true successor-in-interest to the employer identified in the labor certification application.[12]

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[11] Merger and acquisition transactions, in which the interests of two or more corporations become unified, may be arranged into four general groups. The first group includes "consolidations" that occur when two or more corporations are united to create one new corporation. The second group includes "mergers," consisting of a transaction in which one of the constituent companies remains in being, absorbing the other constituent corporation. The third type of combination includes "reorganizations" that occur when the new corporation is the reincarnation or reorganization of one previously existing. The fourth group includes transactions in which a corporation, although continuing to exist as a "shell" legal entity, is in fact merged into another through the acquisition of its assets and business operations. 19 Am. Jur. 2d *Corporations* § 2165 (2010).

[12] For example, unlike a corporation with its own distinct legal identity, if a general partnership adds a partner after the filing of a labor certification application, a Form I-140 filed by what is essentially a new partnership must contain evidence that this partnership is a successor-in-interest to

In the instant circumstance, the labor certification was filed by a company identifying itself as on April 30, 2001. The labor certification was ultimately approved on July 13, 2006 for . However, because is the name which appears on Form 1065 for 2001 and 2002; Schedule C for 2003, 2004, 2005 and 2006; the labor certification and Form I-140; the petitioner has not demonstrated whether the labor certification was approved for , the general partnership, or , the sole proprietor.

The petitioner provided Form 1065 for as evidence of its ability to pay for 2001. According to Form 1065, was organized as a general partnership with two general partners: 1) owning 40% and 2) owning 60%. The instant petition was filed, on July 27, 2007, by and the sole owner is identified as the minority owner of the former general partnership.

The evidence suggests that a change in ownership and business structure occurred between 2002 and 2003 because Form 1065 for 2002 indicates that it was a final return. Further, for the year 2003, 2004, 2005 and 2006, as evidence of the ability to pay, the petitioner supplied Form 1040 for with an accompanying Schedule C for However, the petitioner provided no documentary evidence demonstrating how or precisely when ownership was transferred from , the general partnership, to the minority owner, who operates as a sole proprietor. Further, the petitioner provided no documentary evidence demonstrating that it notified the DOL of any change in ownership or business structure prior to the certification of the labor certification. Thus, if the petitioner failed to notify the DOL of any change in ownership and business structure prior to the approval of the labor certification, the labor certification would have been certified for the general partnership. Under such circumstances, the petitioner would be required to provide evidence of a successor-in-interest relationship to USCIS. The petitioner has provided neither type of evidence.

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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

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the filer of the labor certification application. *See Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). Similarly, if the employer identified in a labor certification application is a sole proprietorship, and the petitioner identified in the Form I-140 is a business organization, such as a corporation which happens to be solely owned by the individual who filed the labor certification application, the petitioner must nevertheless establish that it is a bona fide successor-in-interest.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

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.