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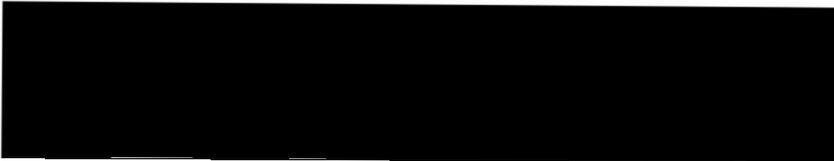
Petitioner:

Beneficiary:



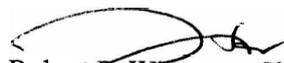
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center. The director certified its decision to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter for further review by the service center, where the matter was reopened and a new denial ultimately issued. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is an Oregon corporation engaged in exporting commodity items to the Russian Far East. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director's latest denial is based on three independent grounds of ineligibility: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; 2) the petitioner failed to establish that the beneficiary was employed abroad during the requisite time period in a managerial or executive capacity within the foreign employer; and 3) the petitioner failed to establish its ability to pay the beneficiary's proffered wage.

On appeal, counsel disputes the director's decision and submits a brief addressing each ground of ineligibility.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first two issues in this proceeding call for an analysis of the beneficiary's job duties during his employment abroad as well as during his prospective employment with the U.S. petitioner.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the Form I-140, the petitioner submitted a letter dated June 30, 2005 in which the beneficiary's foreign and proposed employment were described as follows:

As [i]mport [m]anager/[v]ice [p]resident, he was responsible for directing foreign sales and interacting with sales personnel and distributors in Russia and in the U.S. He negotiated sales contracts with Russian customers, and coordinated and arranged import sales of commodity items with U.S. suppliers to customers in the Russian Far East. [The beneficiary] directed and oversaw the shipping activities, such as import licenses, customs declarations and

routing. He also represented the company in negotiations and communicated with Russian customers to handle their problems and arrive at mutual agreements. [He] was also responsible for sales forecasting, analysis of market and price control over imported goods, preparing and examining invoices, sales confirmations and shipping documents for import orders to Russia. He has complete discretionary authority of the day-to-day operations of the [i]mport [d]epartment. He oversaw training and seminars for personnel with regard to import, and independently directed the development of the training programs, presentation materials and promotional brochures.

* * *

[The beneficiary]'s duties are executive in nature [The beneficiary] directs not only one but several major components of the organization. [He] will plan, develop, and establish policies and objectives for the [c]ompany. For example, he has developed new strategies and sources for meat products. Exports are now generated not only from the U.S. but from Europe and South America thanks to the alliances with major meat packers He will confer with [c]ompany officials to plan business objectives, to develop organizational policies to coordinate functions and operations between division[s], and to establish responsibilities and procedures for attaining objectives. Through [the beneficiary]'s leadership the [c]ompany has recently become a member of the U.S. Meat Federation and has participated in major food expos in the U.S. and abroad. He will review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plan in accordance with current conditions, direct and coordinate formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity.

[The beneficiary] will be interacting with sales personnel and distributors in Russia and in the U.S. He will be representing the [c]ompany in contract negotiations and handling Russian customers' problems by arriving at mutual agreement with major national food distributors [He] has developed accounts with major distributors covering the entire Russian territory and ultimately hundreds of outlets for meat products. He will utilize his knowledge for both the English and Russian languages to negotiate sales contracts with Russian customers. He will represent the [c]ompany in contract negotiations, in resolving problems and in arriving at mutual agreements, if required. . . . Lastly, and further evidence of his executive status[,] [the beneficiary] supervises five professional employees

On February 8, 2006, the director denied the petition and certified the decision to the AAO for review. The AAO withdrew the director's decision and cited three different grounds for ineligibility.

On November 22, 2006, the director issued a notice of intent to deny (NOID) citing the same three grounds of ineligibility as those discussed herein. The director also instructed the petitioner to provide complete and signed copies of its tax returns, all of the Forms W-2 and Forms 1099 issued to the petitioner's employees during each year a tax return was filed, and the foreign entity's tax returns from 1993 through 2006.

In response, the petitioner provided a letter from counsel dated December 20, 2006 in which she stated that the beneficiary would direct foreign sales, negotiate contracts, and oversee export activities. Counsel stated that the beneficiary's responsibilities would include sales forecasting, managing the preparation of invoices,

sales confirmations and shipping documents for export orders to Russia. Counsel restated each of the four prongs that comprise the definition of executive capacity as cited in section 101(a)(44)(B) of the Act, and discussed the beneficiary's responsibilities with respect to each prong. With regard to section 101(a)(44)(B)(i) of the Act, counsel stated that the beneficiary is responsible for management of the U.S. petitioner and its staff, which is comprised of six employees. Counsel stated that the beneficiary sets company goals and offered documentation, which identified the beneficiary as one of the petitioner's two signatories, in an effort to establish the beneficiary's direct management of the organization. Counsel also offered a list of the beneficiary's claimed subordinates, including the company's vice president as well as the five individuals that are illustrated as the vice president's direct subordinates. Counsel discussed each individual's professional and educational background, asserting that even those individuals who did not have baccalaureate degrees were professionals by virtue of their employment experience. However, managing professional subordinates is not a requirement that applies to a multinational executive. Rather it is incorporated into section 101(a)(44)(A)(ii) of the Act, which is one of the prongs used to define managerial capacity. Furthermore, counsel's own determination of who is classified as a professional is not consistent with the relevant portions of 8 C.F.R. § 204.5(k)(2) or section 101(a)(32) of the Act. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term 'profession' shall include, but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Additionally, as provided in 8 C.F.R. § 204.5(k)(2), the term "profession" includes not only the occupations listed in section 101(a)(32) of the Act but also any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Therefore, even if the petitioner were to have attempted to classify the beneficiary as a multinational manager under section 101(a)(44)(A) of the Act, the evidence provided does not establish that the beneficiary's subordinates would, in fact, be deemed professional employees.

With regard to section 101(a)(44)(B)(ii) of the Act, counsel stated that the beneficiary is charged with "strategic planning and sales forecasting" neither of which was specifically defined in terms of actual duties performed in the context of the petitioner's business and organizational structure. Counsel again discussed the beneficiary's discretionary authority in setting goals and policies, but offered no examples of any actual goals and policies he has set or the tasks performed in the process of setting the goals and policies.

In addressing section 101(a)(44)(B)(iii) of the Act, counsel stated that the beneficiary's discretionary authority includes negotiating dispute resolutions between foreign and domestic shippers and foreign and domestic customers and hiring and firing staff members. Again, counsel brought up the beneficiary's authority in setting the goals and policies of the petitioning organization, claiming that the beneficiary receives general supervision from the board of directors and stockholders.

Lastly, counsel restated section 101(a)(44)(B)(iv) of the Act and reasserted the claim that the beneficiary works independently with little supervision. Counsel introduced several unpublished AAO decisions in which the respective beneficiaries were deemed managers or executives. However, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel also repeated the position titles of the beneficiary's subordinates, claiming that these individuals relieve the beneficiary from having to perform non-qualifying operational tasks on a daily basis.

With regard to the beneficiary's foreign employment, counsel stated that the beneficiary managed the wholesale trade and import departments, which included supervising six employees two of whom counsel

suggested were professionals because of their respective levels of education. Counsel went on to paraphrase the definition of executive capacity claiming that the beneficiary had hiring and firing authority, complete discretion over the daily operation of the departments he managed, oversight responsibility regarding communications with foreign companies, authority to negotiate contracts, supervision of staff recruitment and staff training, responsibility for sales forecasting, and authority to supervise the preparation and examination of invoices, sales confirmations and shipping documents. It is noted that this information is similar to that which was provided initially in support of the Form I-140. The petitioner failed to provide additional information to overcome the concerns articulated in the AAO's June 28, 2006 decision in which the AAO concluded that the beneficiary's foreign job description suggests that the beneficiary primarily performed non-qualifying tasks on a daily basis.

On January 11, 2007, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying capacity in the United States. The director reviewed the comments and observations made by the AAO in its initial decision as well as some of the evidence and statements provided by counsel in her rebuttal to the NOID. The director rejected the petitioner's prior offer of bank signature cards, which gave the beneficiary signatory power over the petitioner's bank account, as a means of establishing direct management of the petitioning entity and noted that the beneficiary was identified as the petitioner's vice president rather than its president in the March 2, 1995 signature cards. The director also discussed the petitioner's organizational chart and concluded that the chart fails to establish that the beneficiary would be relieved from having to primarily perform non-qualifying tasks.

With regard to the beneficiary's foreign employment, the director similarly found that the petitioner failed to establish that the beneficiary primarily performed duties of a qualifying nature. The director again reviewed the comments made in the AAO's decision and concluded that the petitioner failed to provide evidence of the beneficiary's employment abroad in light of the evidence clearly showing the beneficiary's extended stays in the United States during the time period in question. The director further faults the petitioner for failing to comply with the prior request for the foreign entity's income tax returns. The director rejected counsel's explanation that the returns are not necessary because the foreign entity did not report any income from its ownership of the petitioning entity.

On appeal, counsel restates portions of the statements initially provided in support of the Form I-140 and argues that the submission of W-2 wage and tax statements showing the petitioner's payment of wages to subordinate employees is sufficient to establish that the beneficiary is relieved from having to perform non-qualifying tasks. Counsel further asserts that the beneficiary's supervisory duties include overseeing the work of professional-level employees. However, as discussed above, at least two of the employees the beneficiary is claimed to be supervising, do not have the education necessary to be considered professionals. Additionally, as previously discussed, the purported support staff is primarily comprised of employees who work on a limited part-time basis. This gives rise to a valid concern as to whether the petitioner is adequately staffed to relieve the beneficiary from having to perform non-qualifying tasks.

Counsel also refers to the petitioner's submission of the expert opinion of [REDACTED] who sides with the petitioner in concluding that the beneficiary's prospective employment would be within a qualifying managerial or executive capacity. However, there is no evidence that [REDACTED] expertise concerns the statute, regulation, or case law that address the petitioner's eligibility for the immigration benefits sought in the instant matter. Moreover, [REDACTED] statements cannot be viewed as anything more than mere extensions of the petitioner's own claim and must be accompanied by corroborating

documentary evidence. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The fact that a third party deems the beneficiary's prospective duties to be within a managerial capacity is not in itself corroborating evidence, particularly when those very duties have already been deemed as non-qualifying.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). In the present matter, the AAO stated in its prior decision that the beneficiary's job description lacks the necessary details that reveal the beneficiary's actual day-to-day tasks. As reiterated continuously throughout the adjudication of this Form I-140, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). However, instead of addressing the AAO's concerns by providing a more detailed description of job duties, the petitioner continued to describe the beneficiary's proposed employment in vague terms that are apparently meant to convey a heightened degree of discretionary authority, but fail to identify the specific tasks the beneficiary would perform. Merely stating that the beneficiary is responsible for setting company goals and policies and forecasting sales is insufficient and provides no insight as to the beneficiary's typical daily activities. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. While the petitioner generally indicates that the beneficiary's discretionary authority fits the definition of managerial or executive capacity, these statutory definitions are meant to serve only as guidelines to be applied to a specific list of duties. Where, as in the instant case, the petitioner fails to provide CIS with a specific list of duties, a determination cannot be affirmatively made that the beneficiary primarily performs qualifying tasks.

Additionally, the only documentary evidence offered in support of the petitioner's organizational chart is in the form of W-2 statements for 2004. However, the petitioner did not file its Form I-140 until 2005. As such, the relevant documentation must establish whom the petitioner employed as of July 2005 when the Form I-140 was filed. Case law has established that a petitioner must establish eligibility at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Submitting documentation that accounts for employees who worked for the petitioner during the year prior to the filing of the Form I-140 is insufficient to support the claim that the petitioner was adequately staffed as of July 2005 to relieve the beneficiary from having to primarily perform non-qualifying tasks.

Furthermore, in reviewing the petitioner's 2004 financial documents, the AAO notes significant discrepancies between the 2004 tax return and the W-2 forms issued by the petitioner for 2004. Specifically, while the petitioner purportedly issued four W-2 statements in 2004, i.e., two statements for each of the two company officers and two additional W-2 statements for two other company employees, the petitioner's 2004 tax return does not show any salaries paid from June 1, 2004 through May 31, 2005. Thus, according to the petitioner's tax return for 2004, the only paid employees the petitioner had approximately one month prior to filing the Form I-140 were the beneficiary as the company president, and Igor Surits, the company vice president. It is unclear who, if anyone, was available to perform the petitioner's daily operational tasks at the time the Form I-140 was filed. Additionally, Schedule E of the petitioner's 2004 tax return shows that the beneficiary received \$34,900 as officer compensation. However, the beneficiary's W-2 statement for the same tax year shows that he was compensated a total of \$40,000, which is \$5,100 more than what is shown in the petitioner's tax return. This discrepancy is even more suspect when taking into account that the social security number that appears on the beneficiary's W-2 statement does not match the social security number that

appears after his name in Schedule E of the petitioner's 2004 tax return. 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). In the present matter, seemingly inconsistent information has been submitted in the form of tax documents without any explanation, clarification, or documentary reconciliation of the considerable discrepancies described above.

With regard to the beneficiary's foreign employment, the AAO previously questioned the beneficiary's ability to work abroad while simultaneously being present in the United States. On appeal, counsel addresses this issue, claiming that during the beneficiary's B1/B2 stay in the United States, he was "laying groundwork for setting up the petitioning company" even though he was technically still employed by the foreign entity. However, the fact that the beneficiary was setting up the petitioning company is an admission that the work he was doing during his stay in the United States was not for the benefit of the foreign entity. This statement is particularly true since, based on the petitioner's 1997 and 1998 tax returns, the beneficiary and Igor Surits, the petitioner's vice president, were identified as the two owners of the petitioning entity. It is unclear how the beneficiary's efforts to set up a company, which he and one other person privately owned, could be considered as work that was being done for the foreign entity, which at the time was not affiliated with the petitioning company.

Regardless, even if the AAO were to consider only the beneficiary's employment abroad prior to his B1/B2 entry to the United States, the petitioner's Form I-140 still would not merit approval, as the record lacks sufficient evidence to establish that the beneficiary was relieved from having to primarily perform such non-qualifying tasks as placing purchase orders, shipping goods and performing other warehousing activities, negotiating contracts, and preparing shipping documents. Despite counsel's claims that the beneficiary supervised six employees who carried out these various non-qualifying tasks, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While the AAO acknowledges the petitioner's submission of the foreign entity's organizational chart, the chart is yet another of the petitioner's claims that must be supported with documentation, including payroll or tax records, neither of which has been submitted to corroborate the staffing illustrated in the relevant chart. Furthermore, as previously stated, the petitioner has used general terms in describing the beneficiary's overseas employment and, therefore, has failed to identify the actual tasks performed on a daily basis.

Accordingly, in considering all of the evidence and information provided, the AAO cannot conclude that either the beneficiary's proposed employment in the United States or his prior employment overseas would be or has been primarily comprised of qualifying managerial or executive job duties.

The third issue in this proceeding is whether the petitioner has established its ability to pay the beneficiary's proffered wage. 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did establish that it had previously employed the beneficiary. However, the 2005 W-2 statement issued by the petitioner to the beneficiary indicated that the beneficiary was compensated \$46,099.62. As this amount falls short of the proffered wage of \$47,320, as indicated in Part 6, item 9 of the petitioner's Form I-140, the petitioner has not provided *prima facie* proof of its ability to pay.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the 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). In *K.C.P. Food Co., Inc. v. Sava*, the court held 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 on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on July 5, 2005, the AAO would need to examine the petitioner's tax return for 2005. However, the most recent tax return the petitioner submitted accounts for June 1, 2004 through May 31, 2005 and therefore does not take into account the time period during which the Form I-140 was filed. Although counsel refers to the petitioner's 2005 tax return and claims that the net earnings purportedly derived by the petitioner during that tax year were more than enough to compensate the beneficiary his proffered wage, the actual 2005 tax return has not been provided for the AAO's review. As previously stated, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534. Thus, even though the petitioner may have had the ability to pay the beneficiary's proffered wage through May 2005, the same may not be true of the petitioner's financial situation as of July 2005.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. As discussed above, however, since the petitioner has not provided the relevant year's tax return, the AAO has no basis upon

which to make any conclusions regarding the petitioner's ability to pay the beneficiary's proffered wage during the relevant time period. As such, the petitioner has failed to establish its ability to pay the proffered wage, and the petition must be denied for this additional reason.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.