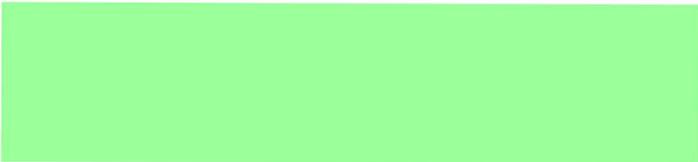


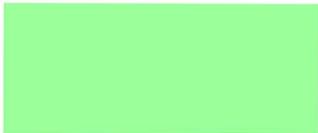


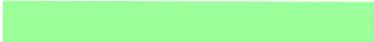
U.S. Citizenship  
and Immigration  
Services

(b)(6)



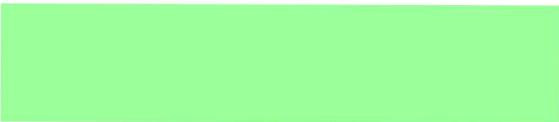
DATE: FEB 11 2014      OFFICE: NEBRASKA SERVICE CENTER



IN RE:      Petitioner:   
             Beneficiary: 

Petition:      Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director in accordance with the following.

The petitioner describes itself as an “electric equipment service” business. It seeks to employ the beneficiary permanently in the United States as an “LED Engineer” pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor 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 petition. The director denied the petition accordingly.

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

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States.

To be eligible for approval, the petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date onward. See 8 C.F.R. § 204.5(g)(2). The ETA Form 9089 was accepted on August 28, 2012, the priority date. The proffered wage as stated on the ETA Form 9089 is \$113,381.00 per year.

The petitioner is a sole proprietorship, 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 (7<sup>th</sup> Cir. 1983).

On appeal the petitioner has established that its sole proprietor had sufficient assets for 2012 to pay the beneficiary’s proffered wage. However, the petitioner has not established that a *bona fide* job offer exists for the reasons discussed below. Therefore, the petition will be remanded to the director in accordance with the following.

Under 20 C.F.R. § 656.20(c)(8), which is currently found in 20 C.F.R. § 656.10(c)(8), and 20 C.F.R. § 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). This regulation at 20 C.F.R. § 656.10(c)(8) states that the petitioner must certify that “the job opportunity has been and is clearly open to any U.S. worker.” The regulation at 20 C.F.R. § 656.3 defines a ‘job opportunity’ as “a job opening for employment at a place in the United States to which U.S. workers can be referred.” In this case, the petitioner stated on the Form I-140 that it employs four workers, but its 2011 and 2012 IRS Forms 1040, Schedule C, do not state any wages paid or any costs of labor. This calls into question whether the position offered is a *bona fide* job opportunity by being “clearly open to any U.S. worker” and “a job opening for employment at a place in which U.S. workers may be referred.”

Additionally, the petitioner’s website states that it “rents, sells and installs full color digital display systems throughout the world.” It is unclear how the petitioner is able to rent or install digital display systems throughout the world with only four employees. The record reflects that the beneficiary has been employed by [REDACTED] which is also owned by the petitioner’s owner. This calls into question which entity will be the beneficiary’s actual employer. Therefore, for the foregoing reasons, the instant petition will be remanded to the director for consideration of whether a *bona fide* job offer exists. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

**ORDER:** The director’s decision of March 12, 2013, is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision.