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U.S. Citizenship
and Immigration
Services

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B/C

FILE: LIN 05 270 52467 Office: NEBRASKA SERVICE CENTER Date: **AUG 18 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant petition for Alien Worker as an Other Worker pursuant to section 203(b)(3)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(iii)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a general construction company. It seeks to employ the beneficiary permanently in the United States as a remodeling lead man. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the petitioner failed to provide sufficient evidence that the beneficiary is qualified for the proffered position. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner contends that it is filing the appeal because the occupational title category given to the ETA 750 Certification of Labor is incorrect, and because of the filing status information requested by the Social Security Administration and the state of Utah Department of Workforce Services. The petitioner submits further documentation.

The petitioner filed the I-140 petition in the "other worker" visa category. Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii) 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 unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3) also provides

(ii) Other documentation--

(D) *Other Worker.* If the petitioner is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is April 30, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of programmer/analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School --
 - High School --
 - College --
 - College Degree Required --
 - Major Field of Study --
 - Training --

Experience

3 years in related occupation of remodeler

The petitioner also appeared to have initially required two years of work experience in the job offered, and then to have amended this period of work experience to 1 year of work experience.¹ Under Item 15, the petitioner also set forth additional special requirements as follows: “Must have good driving record. Must be able to operate and maintain construction vehicles and all company equipment. Must be able to show solid work history through past employers. Must have dependable transportation. Must be dependable and have good work ethic.”

The job offered lists the following duties on Item 13: “Construction processes ranging from concrete work, carpentry, finish carpentry, door and window remodeling. Tree pruning and removal, landscaping, sprinkler install and maintenance, wall cover installation, sisal, sheetrock, plywood, wallpaper, excavation, demolition and plumbing. Able to maintain company equipment: Truck, trailer and carpentry tools.”

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated no educational experience; however, in section 12, Additional Qualifications and Skills Alien Possesses and Proficiency in the Use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9,² the petitioner wrote the following “ “Has the unique ability to understand the building processes as a whole. Amount of remodeling experience is unsurpassed by majority of workforce available. Good driving record. Very dependable. Has excellent work ethic and dependable transportation.”

On Part 15, eliciting information concerning the beneficiary’s past employment experience, the beneficiary indicated the following in reverse chronology:

1. The petitioner, Bountiful, Utah. Remodeler, February 2001 to present, for which he did equipment repair and maintenance landscaping sprinkler installation and maintenance, tree removal and pruning remodeling of carpentry projects including doors and windows, excavation and installation of concrete.
2. Giant Beaver Tree Service, Santa Barbara, California, Tree Trimmer/Estimator, January 1999 to February 2001, for which he led crew in tree removal and assisted employer with estimates on projects. The beneficiary also used stump grinder and large chipper trucks. Also maintained all company equipment.
3. Quality Tree Care, Goleta, California. Tree Consultant/Estimator. From December 1996 to December 1998. Maintained all chain saws to ensure safety. Lead crews in tree and trimming projects. Full planting of landscapes and maintenance of these landscape projects.

¹ The Form ETA 750 shows changes made by the petitioner as of August 10; however there is no accompanying correspondence in the record to clarify the exact change made on the section, Experience in the Job Offered. As corrected, the section could require 1 year of experience in the job offered or no experience in the job offered. For purposes of these proceedings, the AAO will consider that the petitioner required one year of experience in the job offered and three years of related work experience.

² Item nine identified the occupation in which the alien is seeking work initially as “remodeler”. This title was amended to “remodeler, head man” on August 10.

Because the evidence was insufficient, the director requested additional evidence on November 14, 2005, specifically stating that the petitioner submit evidence that the beneficiary obtained the requisite three years of relevant work experience in the related occupation before the priority date of April 30, 2001. The director stated that evidence of work experience must be in the form of letters from current or former employers, giving the name, address, and title of the employer and a description of the experience of the alien, including specific dates of the employment and specific duties.

In response to the director's request for evidence, the petitioner submitted three letters to verify the beneficiary's previous work experience. [REDACTED] the owner of [REDACTED] Goleta, California, verified that the beneficiary worked as foreman and driver of a tree trimming crew from 1997 to 2000, and that his duties included driving the dump truck, and chipper, supervising two ground men, communicating with the customers, trimming trees, tree removal, stump grinding, and brush chipping. A second letter was written [REDACTED] Giant Beaver Tree Service, Santa Barbara, California. [REDACTED] that the beneficiary worked him as a tree climber and ground man for one to two years. [REDACTED] stated that the beneficiary also worked as a mechanic on his chippers and trucks and was an assistant supervisor of four men and was responsible for the maintenance of chain saws and other small machines. [REDACTED] the petitioner's president, wrote the third letter, and stated that the beneficiary has held the position of project supervisor since January 1, 2001. [REDACTED] described the beneficiary's duties as layout of foundation walls with supervision of foundation forming crew. [REDACTED] further stated that the beneficiary also supervises projects pertaining to all wood carpentry; finish work, drywall, and painting. [REDACTED] stated that the beneficiary had responsibility for company trucks, tools and equipment maintenance, and overseeing and ensuring accurate and timely completion of projects. [REDACTED] also stated that the beneficiary is in charge of all potential projects with the Spanish speaking community.

The director denied the petition on March 2, 2006, December 1, 2003, citing 8 C.F.R. § 204.5(1)(3)(D) for the premise that the petitioner for an unskilled worker, must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification. The director stated that the petitioner wanted to employ the beneficiary as a house builder, and that the letters submitted to establish the beneficiary's requisite three years of experience established that the beneficiary had approximately four years of experience; however his experience was in the fields of mechanics, tree trimming, and tree removal. The director further noted that the petitioner's letter with regard to the beneficiary's present work responsibilities only demonstrated three months of experience as a remodeler.

On appeal, the petitioner states that he is filing the appeal due to the incorrect occupational title category, and because the Social Security Administration and the state of Utah Department of Workforce Services has requested the beneficiary's filing status. The petitioner submits evidence that includes a copy of Part A of the ETA 750 with notations by the petitioner. The petitioner states that the beneficiary's occupational title is not house builder, as noted on the bottom of the document, and that the director's denial on the grounds that the beneficiary is qualified as a mechanic is incorrect. The petitioner asks for help in getting the beneficiary's occupational title recategorized. The petitioner also submits the paperwork done to apply for the labor certification with the State of Utah Department of Workforce Services in August 16, 2004. This paperwork includes the description of Lead Remodeler that accompanied the petitioner's labor certification application, newspaper job vacancy announcements for the proffered position, and job interview applications and notes of job candidates who responded to the advertisement.

³ This first name is partially illegible.

The petitioner also submitted correspondence received from the U.S. Social Security Administration (SSA), Wilkes-Barre, Pennsylvania, that questioned the non-match of the beneficiary's social security number with SSA records.. This document indicates that the beneficiary earned \$22,241.14 in tax year 2004.

With regard to its actual business activities, the petitioner submits one estimate and three invoices for either prospective or earlier jobs done by the petitioner in the area of tree trimming or removal. The three invoices involved work done by the petitioner on two different golf courses. Two other estimates submitted by the petitioner were for two jobs at the Salt Lake Sugarhouse FM Group that involved removing and replacing various concrete areas around the meetinghouse. In addition, the petitioner submitted a contractor bid proposal and maintenance project signed by both the buyer of services and the petitioner on March 2006 for concrete work to be done in a location identified as Nibley Park. Finally the petitioner submits its brochure. This brochure identifies the petitioner as a tree services and general contractor. The types of jobs done by the petitioner are listed as "tree & shrub trimming, hedge and brush trimming, tree removal & stump grinding, planting of trees, landscape cleaning, planting of other landscape plants, mulch delivery and placement, Ask us about Zeroscaping."

As previously stated, the regulation at 8 C.F.R. § 204.5(1)(3) also provides

(ii) Other documentation--

(D) *Other Worker*. If the petitioner is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

In the instant petition, based on the requisite one year of experience in the job offered or three years of related work experience noted on the ETA 750, the petitioner must show that the beneficiary has that required work experience in the category listed on the form. Contrary to petitioner's assertion, while the general occupational category noted at the bottom of Part A of Form ETA 750 states "house builder", the actual job title identified in item 9, is remodeler lead man. The petitioner also identifies itself as a remodeler on the ETA 750. Therefore the AAO will review the sufficiency of the beneficiary's work experience to the job duties outlined on the ETA 750 for a remodeler, lead man.

It is noted that the petitioner, while identifying itself as a remodeler, presents evidence of its work in both tree trimming and some general contracting concrete work. Furthermore, the petitioner's brochure exclusively identifies the petitioner's tree services projects. To the extent that the ETA 750 job description contains mention of landscaping, tree pruning and removal, sprinkler installation and maintenance, and equipment maintenance, the beneficiary's four years of work experience appears directly related to the job duties described in the ETA 750. However, the job as aptly described by the job title of remodeler, lead man, contain job duties that are not directly related to tree services. These duties involve job areas such as concrete work, plumbing, wallpaper, carpentry, and door and window remodeling. The two employers prior to the petitioner for whom the beneficiary worked are clearly tree services companies and the letters establish that the beneficiary only engaged in tree services job duties, which included the maintenance of machinery and trucks.

The only evidence of prior experience in the areas more specifically related to remodeling projects is the beneficiary's employment with the petitioner. As indicated on the Form ETA 750, Part B, this work experience began in February 2001, only three months prior to the receipt of the Form ETA 750 by the Department of Labor. Therefore the beneficiary cannot have the requisite one year of work experience in the job offered or three years of related work experience prior to the April 30, 2001 priority date, as stipulated by the Form ETA 750. It is

noted that the petitioner in the letter submitted to the director in response to the director's request for further evidence states that the beneficiary held the position of project supervisor since January 1, 2001. Thus, the record contains a discrepancy as to when in 2001 the beneficiary began his employment with the petitioner. The petitioner has to clarify this discrepancy before the claimed extra month of work experience can be evaluated. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." It is noted that if this extra month were added to the beneficiary's relevant work experience as remodeler, head man, the beneficiary would still only have four months of related work experience.

In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 that, in this case, includes 1 year of experience in the job offered or three years in the related occupation of remodeler. While the AAO acknowledges that the job offer portion of the labor certification clearly contains duties in which the beneficiary is qualified, the AAO has to look at all the job duties contained in the job offer portion of the labor certification. It may not ignore the remodeler duties, indicated by terms such as carpentry, plumbing, and remodeling of windows and doors.

The AAO concurs with the director's decision that the petitioner has not established that the beneficiary is qualified for the proffered position, under the unskilled worker visa category, since it has not proven that the beneficiary has 1 year of work experience in the job offered or three years of relevant work experience in the stated job duties on the ETA 750. While the petitioner has established that the beneficiary had at least three years working as a tree trimmer and removal supervisor, and equipment maintenance person, it has not established that the beneficiary has three years of work experience related to the other duties outlined in the ETA 750, namely, remodeling of construction projects. The record only reflects two months (February 2001 to April 2001) of work in areas such as plumbing, carpentry, and similar tasks.⁴ Thus, the petitioner has not established that the beneficiary is qualified for the proffered position.

The AAO affirms the portion of the director's decision that determined that the beneficiary is not qualified for the proffered position for failure to prove that he has three years of relevant work experience as a remodeler.

Beyond the decision of the director, there is insufficient evidence that the petitioner has established its continuing ability to pay the proffered wage beginning on the priority date. 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*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

⁴ As stated previously, the petitioner's owner stated the beneficiary began working in January 2001; however, this statement is at variance with the ETA 750, and would have to be clarified prior to establishing a third month of related work experience.

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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 CFR § 204.5(d). As noted above, the Form ETA 750 was accepted for processing on April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$18 an hour, or an annual salary of \$37,440.

On the petition, the petitioner indicated it was established in April 2000, has six employees and a gross annual income of \$320,000 and an annual income of \$48,000. With the petition, the petitioner submitted its IRS Form 1120S, U.S. Tax Return for an S Corporation, for tax years 2001, 2002, 2003, and 2004. These tax returns indicated the petitioner had ordinary income of \$12,013 in tax year 2001; \$7,288 in tax year 2002; \$13,085 in tax year 2003; and -\$11,843 in tax year 2004. The petitioner also submitted Form 3H, Employer's Quarterly Wage List for the last quarter of tax year 2003, and for the first, second, and third quarters of tax year 2004. On all these forms, the beneficiary is listed as an employee and received \$17,180 for the first three quarters of tax year 2004. Finally the petitioner also submitted other documentation entitled Payroll Item Detail that shows the beneficiary's wages from January through August 2003, and also January through August 2005.

The director did not examine the issue of the petitioner's ability to pay the proffered wage in his request for further evidence, or ask for further evidence. Since the instant petition is denied based on the beneficiary's qualifications, the AAO will only briefly examine this additional issue.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS 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. The beneficiary indicated on the ETA 750 that he has worked for the petitioner since February 2001, and the petitioner has provided some evidence that it paid wages to the beneficiary in 2003, and 2005. However, the petitioner has not presented a complete picture of the beneficiary's actual wages through the submission of evidence such as W-2 Forms or Forms 1099-MISC. Thus, the petitioner cannot establish that it paid the beneficiary a salary equal to or greater than the proffered wage of \$37,440 as of April 30, 2001 and to the present.

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, CIS will next examine the net income figure reflected on the petitioner's 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). 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 CIS, 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 the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. See *Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

The petitioner is structured as a corporation. The petitioner's net income is the ordinary income shown on line 21, on its IRS Form 1120S. As previously stated, the petitioner had ordinary income of \$12,013 in tax year 2001; \$7,288 in tax year 2002; \$13,085 in tax year 2003; and -\$11,843 in tax year 2004. These figures are not sufficient to pay the entire proffered wage of \$37,440.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. 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, CIS will review the petitioner's assets. In addition, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁵ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The tax returns reflect the following information for the tax years 2001, 2002, 2003, and 2004:

2001	2002	2003	2004
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⁵ 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.

Taxable income ⁶	\$ 12,013	\$ 7,288	\$ 13,085	\$ -11,843
Current Assets	\$ 4,157	\$ 4,954	\$ 4,415	\$ 18,559
Current Liabilities	\$ 4,927	\$ 3,195	\$ 9,455	\$ 41,291
Net current assets	\$ 770	\$ 1,759	\$ 5,040	\$ -22,732

As previously stated, the petitioner has to establish its ability to pay the entire proffered wage as of the priority date year of 2001 and to the present.⁷ Although the petitioner submitted some of the its payroll item details for 2003 and 2005 and/or its employer's quarterly payroll reports for other years that indicate the petitioner paid the beneficiary during these years, this documentation appears incomplete. Other more probative evidence such as W-2 Forms or Form 1099-MISC were not submitted by the petitioner. If the issue of the petitioner's ability to pay the proffered wage is examined in further proceedings, the petitioner should be given the opportunity to clarify the documentation already submitted and/or submit additional documentation. For purposes of this proceeding, the petitioner has to establish its ability to pay the entire proffered wage.

The petitioner has not demonstrated that it paid any wages to the beneficiary as of April 2001 to the present. In 2001, as previously illustrated, the petitioner shows a taxable income of \$12,013, and net current assets of \$770, and has not, therefore, demonstrated the ability to pay the proffered wage. In 2002, as previously illustrated, the petitioner shows a taxable income of \$7,288, and net current assets of \$1,759, and has not, therefore, demonstrated the ability to pay the proffered wage. In 2003, as previously illustrated, the petitioner shows a taxable income of \$13,085, and net current assets of \$5,040, and has not, therefore, demonstrated the ability to pay the proffered wage. In 2004, the petitioner shows a taxable income of -\$11,843, and net current assets of \$22,732, and has not, therefore, demonstrated the ability to pay the proffered wage. Therefore, the petitioner has not established that it had the ability to pay the proffered wage from 2001 priority date to the present.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden with regard to the beneficiary's qualifications or with regard to its ability to pay the proffered wage.

ORDER: The appeal is dismissed.

⁶ As previously stated, taxable income is the sum shown on line 28, taxable income before NOL deduction and special deductions, IRS Form 1120, U.S. Corporation Income Tax Return.

⁷ Although the petitioner submitted some payroll item details documentation for 2003 and 2005 and/or its employer's quarterly payroll reports for other years that indicate the petitioner paid the beneficiary during these years, this documentation is incomplete with regard to annual wages paid. Other more probative evidence such as W-2 Forms or Form 1099-MISC was not submitted by the petitioner. Furthermore if the issue of the petitioner's ability to pay the proffered wage is examined in further proceedings, the petitioner should be given the opportunity to clarify the documentation already submitted and/or submit additional documentation. For purposes of this proceeding, the petitioner has to establish its ability to pay the entire proffered wage.