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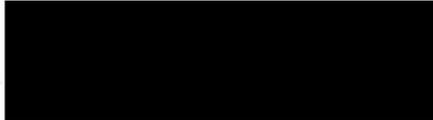
Date:

DEC 05 2006

EAC 03 249 52127

IN RE:

Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

cc:



DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based preference visa petition. The director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a supervisor of restaurant personnel. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. When he revoked the petition, 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 and denied the petition accordingly.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

Section 205 of the Act, 8 U.S.C. 1155, states that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on December 20, 2001. The proffered wage as stated on the Form ETA 750 is \$16.50 per hour, which amounts to \$660¹ weekly, or \$34,320 annually. The beneficiary indicated on the Form ETA 750 that she has worked for Primo's Restaurant since November 2001.

On May 6, 2005, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that the I-140 petition was approved in error. The director further stated that the petitioner did not appear to have the ability to pay the beneficiary the proffered salary of \$34,320 as of the December 20, 2001 priority date, through the filing date of September 2, 2003 and the adjudication of the I-140 petition by the service center on August 13, 2004.

The director examined the petitioner's federal income tax returns for 2001 and 2002, and determined that in both years the petitioner had incurred negative net income. The director stated that in tax year 2001, the petitioner had -\$20,491 in net income and that the 2001 tax return's Schedule L indicated \$6,117 in current assets and \$2,949 in current liabilities. The director then stated that in 2002 the petitioner had a net income of -\$4,301, and that the 2002 Schedule L balance sheet indicated \$6,299 in current assets and \$5,299 in current liabilities.

The director then stated that in both years, the petitioner did not have sufficient net income to pay the proffered wage, and that the petitioner's current assets did not exceed its current liabilities in an amount adequate to pay the proffered wage, in either the priority year of 2001, or in the following year of 2002.

The director also noted that upon a review of Citizenship and Immigration Services (CIS) records, the petitioner in 2003 filed two additional I-140 petitions for different beneficiaries. The director stated that the petitioner had to establish its ability to pay all three prospective workers, and that wages for the three beneficiaries ranged from \$29,081 to \$34,320, totaling more than \$88,482. Accordingly the director determined that the petitioner had not established its ability to pay the proffered salary of the beneficiary, namely \$34,320, or the wages of the other two beneficiaries.

In response to this notice, counsel stated that neither the petitioner's insufficient net income nor the multiple beneficiaries should preclude the approval of the instant petition. Counsel cited *Matter of Sonogawa*, 12 I & N Dec. 612, 615 (BIA 1967). Counsel stated that this decision held that a finding of an employer's ability to pay a proffered wage is not precluded because the wage exceeds employer's net income "when there are reasonable expectations of increase in business and increasing profits." Counsel asserted that the petitioner in the instant petition had demonstrated similar reasonable expectations of increased business and profits. Counsel stated that the petitioner's gross receipts totaled \$173,163 in 2001, \$212,371 in 2002, and in 2003, gross receipts of \$249,798. Counsel also noted that the petitioner's business was located immediately adjacent to Suffolk University and to the Massachusetts State House, and that the restaurant had been in its present location for over twenty years. Counsel asserted that the petitioner could reasonably continue to expect increased business and profits. Counsel submitted copies of federal income tax returns for a business named Jugdhamba, Inc. for the years 2001, 2002, and 2003, and indicated that these were the petitioner's federal income tax returns.² Counsel

¹ The petitioner indicated on the I-140 petition a weekly salary of \$652. The AAO calculated the weekly salary noted above by multiplying the hourly salary of \$16.50 by 40 hours.

² Counsel submitted the same tax return documents originally submitted either with the initial I-140 or in response to the director's request for further evidence. In response to the director's request for further evidence, the petitioner submitted a document entitled Massachusetts Corporation Annual Report, as evidence that Primo's

also submitted copies of the beneficiary's 2004 pay stubs from August to September 2002 in which she earned a weekly pay of \$420, and from February 2004 to May 22, 2004 in which she earned a weekly salary of \$630.³ The pay stubs indicated that the beneficiary had earned \$9,870 as of May 22, 2004.

Counsel also cited to *Matter of Ranchito Coletero*, 2002-INA-104 (2004), a Bureau of Alien Labor Certification Appeals (BALCA) decision. Counsel states that this decision as well as another BALCA decision, *Matter of Ohsawa America*, 1988-INA-240 (BALCA 1988), indicate that the personal assets of a funding source should be considered when assessing a petitioner's ability to pay the proffered wage. Counsel also submitted a letter dated June 1, 2005, from the petitioner's owner, who is identified on the tax returns submitted as a 100 percent shareholder. In this letter, [REDACTED] stated that he intended to continue to fund the petitioner. Counsel also submitted [REDACTED] bank records. These records included a one-page document from Mr. [REDACTED] savings account with East Boston Savings Bank, that indicated transactions from May 2001 to February 2002. The beginning savings account balance in March 2001 was \$24,139.94, and the ending balance was \$55,298.29. Counsel also submitted computer printouts of archival bank records from Citizens Bank of Massachusetts. According to these documents, two of the petitioner's owner's bank accounts were closed in October 2002 and December 2001. Finally counsel submitted documentation on the real estate value of a building in East Boston owned by the petitioner's owner, and also on the discharge of mortgages with regard to the same property.

On August 10, 2005, the director revoked the petition. In his revocation decision, the director reexamined the petitioner's federal income tax returns for 2001 and 2002, and again stated that the petitioner had insufficient financial resources to pay the proffered wage, based on both its net income and current assets and liabilities for the years in question. The director did not examine the petitioner's 2003 federal income tax return.

In addition, the director stated that the beneficiary's pay stubs submitted to the record did not establish the petitioner's ability to pay the proffered wage as of the December 20, 2001 priority date. With regard to the documentation submitted as to the petitioner's owner's financial assets, the director stated that neither the sole shareholder's personal assets nor the shareholder's ownership of another corporation might be considered as evidence of the petitioner's ability to pay the proffered wage. The director stated that the petitioner is a separate legal entity from the petitioner's shareholder, and that the shareholder is not personally liable for the debts of the corporation.

The director pointed out again that the petitioner had submitted additional I-140 petitions for two other beneficiaries, and stated that the petitioner had to establish its ability to pay not only the proffered wage to the beneficiary, but also the proffered wage of the other two beneficiaries. The director stated that these salaries ranged from \$27,081 to \$34,320, with total proffered wages of \$88,482. In sum, the director stated that the petitioner had not established that it had the financial ability to pay the proffered wages of all three beneficiaries.

On appeal, counsel states that the petitioner was established over 20 years ago, and is a thriving, popular eatery located immediately adjacent to the Massachusetts State House and to Suffolk University. Counsel further states that the petitioner's tax returns show substantial and increasing gross profits from 2001 to 2003: \$110,874 in

Restaurant and Jugdhamba, Inc. were one and the same business. The AAO will comment on these tax returns and the petitioner's identity further in these proceedings.

³ The pay stubs submitted to the record identified the beneficiary's highest year to date salary in 2002 as \$4,620 and in 2004 as \$9,870.

2001, \$133,000 in 2002, and \$167,547 in 2003. Counsel resubmits the petitioner's claimed federal income tax returns for the years 2001, 2002, and 2003. Counsel also stated that in 2004, the petitioner paid the beneficiary the actual proffered wage. Counsel submits six pay stubs for weeks in August and September 2002, again that indicate a weekly pay of \$420, and pay stubs for weeks from February 2004 to May 2004 that indicate a weekly pay of \$630.

Counsel states that the owner of the petitioner [REDACTED] has substantial personal assets and reviews Mr. [REDACTED] bank accounts in May 2001 to February 2002, as well as the value of the property Mr. Saini owns in East Boston. Counsel states that an appraiser estimated that the three units together could produce \$2,500 in monthly rent.

Counsel refers to *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) and states that the petitioner has been in business more than two decades, twice as long as the petitioner in *Sonogawa*. Counsel also states that the petitioner in the instant petition has shown substantial and increasing profits from 2001 to 2003. Counsel asserts that taking into account the overall financial situation of the petitioner, CIS should find that the petitioner has established its ability to pay the proffered wage.

With regard to the petitioner's owner's assets, counsel states that according to Massachusetts law, which controls the petitioner, the proprietor of a corporation would be liable for the beneficiary's wages. Counsel states that under the Massachusetts Wage Act, "(t)he president and treasurer of a corporation and any officers or agents having management of such corporation shall be deemed employers" and therefore be held responsible for employees wages. G. L.c. 149, § 148. Counsel further states that in a recent Massachusetts Superior Court decision, *O'Leary v. Henn et al.* (Norfolk Superior Court) (Civil Action No. 04-01653)(June 10, 2005), the court held that, under the Wage Act, G..C. § 149, an outside investor individually is liable for a worker's unpaid wages if the investor's actions were those of an employer. Counsel states that in the instant petition, [REDACTED] the proprietor, is the petitioner's president and controls the daily operations of Primo's Restaurant. Counsel states that [REDACTED] has also stated his willingness to be held liable for the beneficiary's wages. Counsel states, that under Massachusetts General Law, [REDACTED] is therefore personally liable for the beneficiary's wages, and that the duty or responsibility to pay wages is largely controlled by state law. Counsel states that since according to state law, [REDACTED] personal assets are a stake for the payment of salaries, these assets must also be considered by CIS when it examines a corporation's ability to pay the proffered wage. Counsel concludes that the petitioner's owner's financial circumstances establish an ability to pay both the beneficiary's wages as of April 2001, even taking into account the wages offered to the petitioner's three beneficiaries total \$88,482.

In the response to the director' notice of intent to revoke the instant petition, and on appeal, counsel states that the petitioner's owner's assets can be considered when examining sources of additional funds with which to pay the proffered wage. In response to the director's notice to revoke, counsel cited two Department of Labor's (DOL) Bureau of Alien Labor Certification Appeals (BALCA) cases are applicable to the instant petition before the Department of Homeland Security's AAO. Counsel cited to *Ohsawa America*, 1988-INA-240 (BALCA 1988). Counsel does not state how DOL precedent is binding in these proceedings. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, BALCA decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions.

⁴ Counsel identifies Mr. Saini as the proprietor of the petitioner

8 C.F.R. § 103.9(a). Counsel also cited to *Ranchito Coletero*, 2002-INA-104 (2004 BALCA), for the premise that a business that fail to show profits can upon individual shareholder assets. Again, counsel does not state how the Department of Labor's (DOL) BALCA precedent decision is binding on the AAO. Moreover, *Ranchito Coletero* deals with a sole proprietorship and is not directly applicable to the instant petition, which deals with a corporation. While the examination of a sole proprietor's ability to pay the proffered wage does include an examination of the sole proprietor's personal assets and expenses, this is not the case in petitioners structured as corporations.

Contrary to counsel's assertion, CIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

On appeal, counsel cites a recent state of Massachusetts Superior Court decision with regard to the obligation of employers to pay wages, and states that state law controls the payment of wages, and thus the petitioner's owner's assets can be used to pay obligatory payment of wages. Counsel's assertions are not viewed as persuasive. The decision cited by counsel concerns who could be liable under Massachusetts law for unpaid wages, whereas the regulations requires CIS, within the context of an employment based I-140 petition, to evaluate a business's viability. While it may be that in Massachusetts, the beneficiary might have a claim against a corporation's owner under the payment of wages statute, this is a different determination than the petitioner's ability to pay the proffered wage. Precedent (above cited) holds that a corporation is a distinct entity than the corporation's owner. The fact that the beneficiary might be able to seek judicial redress against individuals does not alter the fact that the individual owner's or shareholder's assets are generally shielded by the corporation, barring malfeasance.

The record, as presently constituted, is confused with regard to the corporate identity of the petitioner. In its initial petition and in its response to the director's request for further evidence, counsel submitted federal income tax returns for 2001, 2002, and 2003, for a business identified as Jugdhamba, Inc, located at 28 Myrtle Street, Boston, Massachusetts. Counsel also submitted a document that indicated Jugdhamba, Inc. is a registered corporation in the state of Massachusetts. This document, however, did not provide any further identification of Primo's Restaurant as being the same corporate entity as Jugdhamba, Inc. This evidence is not viewed as sufficient to establish that Primo's Restaurant and Jugdhamba, Inc., are one and the same business.

In fact, the only connection between these two businesses found in the record are the beneficiary's pay slips that state at the top of each pay slip "Primo's Restaurant dbf Jugdhamba, Inc." This evidence is not sufficient to establish that the petitioner identified on the I-140 petition is also the business identified in the Forms 1120 in the record. More probative evidence would be documentation of fictitious names, or similar documentation. In the alternative, if there is a successor in interest issue to be addressed, wherein one business entity merged or bought out the other, documentation would have to be submitted to establish this alternate relationship. Therefore, the AAO does not view the petitioner's corporate identity as sufficiently established in the record.

Nevertheless, the AAO will examine the federal income tax returns submitted to the record as well as the beneficiary's pay slips to illustrate how a petitioner would establish its ability to pay the proffered wage, based on the beneficiary's actual wages as of the priority date and continuing, or a petitioner's net income or net current assets.

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. Although the beneficiary indicated on ETA Form 750 that she had worked fulltime for the petitioner from November 2001, to the present, the petitioner only established the beneficiary's employment in 2002 and 2004, based on weekly pay stubs. Based on the weekly salary of \$420 in tax year 2002 and the weekly salary of \$630 in 2004, the petitioner did not pay the beneficiary the proffered weekly salary of \$660.⁵ Thus, in 2002 or 2004, based on the beneficiary's weekly pay stubs, the petitioner was not paying the beneficiary the proffered weekly wage. Furthermore, the petitioner did not establish that it either employed the beneficiary or paid her the proffered wage as of the December 2001 priority date. Thus, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 2001 and onward.

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). Contrary to former counsel's assertions, 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 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, now CIS, should have considered income before expenses were paid rather than net income.

The business identified on the federal income tax returns submitted by previous counsel is structured as a corporation. While the director identified the petitioner's profits for the year as net income, the term by the AAO and identified on the Form 1120 is taxable income. Taxable income is the sum shown on line 28, taxable income before NOL deduction and special deductions. With regard to the federal income tax returns in the record, the taxable incomes are identified as -\$20,491 in 2001, -\$4,301 in 2002, and \$5,593 in 2003. None of these figures are sufficient to pay a proffered wage of \$34,320.

Nevertheless, a 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.⁶

⁵ As stated previously, the beneficiary's weekly salary, based on the hourly wage of \$16.50, is \$660.

⁶ In his revocation of the petition, the director used the terms current assets and current liabilities, without describing the resulting figure as the petitioner's net current assets. The AAO uses the term net current assets in its examination of Schedule L balance sheets.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ 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 in the record reflect the following information for the following years:

	2001	2002	2003
Taxable income ⁸	\$ -20,491	\$ -4,301	\$ 5,503
Current Assets	\$ 6,117	\$ 6,299	\$ 7,280
Current Liabilities	\$ 2,949	\$ 5,299	\$ 2,856
Net current assets	\$ 3,168	\$ 1,000	\$ 4,424

In 2001, as previously illustrated, the federal income tax return submitted to the record shows a taxable income of -\$20,491 and net current assets of \$3,168, and does not, therefore, demonstrate the ability to pay a proffered wage of \$34,320. In 2002, the tax return submitted to the record shows a taxable income of -\$4,401 and net current assets of \$1,000. In 2003, the tax return submitted to the record indicates taxable income of \$5,503, and net current assets of \$4,424. In neither 2002 nor 2003 is there sufficient taxable income or net current assets to pay a proffered wage of \$34,320. Thus, even if the federal income tax returns submitted by previous counsel were viewed as probative evidence of the petitioner's ability to pay the proffered wage, these documents do not establish the ability to pay a proffered wage of \$34,320 based on either taxable income or net current assets.

In the response to the director's notice of intent to revoke the instant petition, counsel cited to *Matter of Sonegawa*, 12 I&N Dec. 612 (BIA 1967). On appeal, counsel also cites *Sonegawa*. This decision relates to petitions filed during uncharacteristically unprofitable or difficult years but only in a framework of profitable or successful years. 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.

⁷ 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.

⁸ 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.

The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. However, as stated previously, the petitioner has not resolved issues of its identity, and therefore, the record does not reflect whether the petitioner is a long standing restaurant institution in the Suffolk University/Boston area, or is a business incorporated in 2000. Furthermore, the record does not contain any documentation as to the petitioner's business operations prior to 2001 to ascertain whether 2001 was an uncharacteristically unprofitable year. No unusual circumstances have been shown to exist in this case to parallel those in *Sonegawa*, nor has it been established that 2001 was an uncharacteristically unprofitable year for the petitioner.

Finally, on appeal, counsel addresses the second issue identified the director's notice of revocation, namely, the petitioner's submission of additional I-140 petitions for two other beneficiaries. As the director correctly stated, the petitioner has to establish its ability to pay the proffered wage of all three prospective beneficiaries, which as stated by the director, totaled \$88,482. Counsel states that based on the financial circumstances of the petitioner's owner, the petitioner can establish its ability to pay all three proffered wages. However, as previously stated, It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. The petitioner has not provided any further evidence or documentation to establish its ability to pay all three proffered wages.

As stated previously, Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). In the instant petition, the petitioner has not overcome the issues identified in the director's decision to revoke the petition, and the director revoked the petition for good and sufficient cause. Therefore, the director's decision shall stand, and the petition shall be denied.

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.

ORDER: The appeal is dismissed. The director's decision to revoke the petition is affirmed.