



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



BU

FILE: EAC 03 187 52072 Office: VERMONT SERVICE CENTER Date: DEC 21 2006

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:



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 Director, Vermont Service Center, denied the preference visa petition that is now before the Administrative Appeals Office 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 cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor accompanied 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.

On appeal counsel submitted a brief.

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 granting 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.

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 19, 1996. The proffered wage as stated on the Form ETA 750 is \$504.80 per week, which equals \$26,249.60 per year.

\_\_\_\_\_ submitted the Form I-140 petition in this matter on June 9, 2003. On the petition, the petitioner stated that it was established during 1995 and that it employs 15 workers. In the spaces reserved for the petitioner to state its gross and net annual income counsel entered, "N/A."

\_\_\_\_\_ submitted the Form ETA 750 in this matter to the Department of Labor. On the Form ETA 750, Part B, signed by the beneficiary on December 7, 1996, the beneficiary claimed to have worked for \_\_\_\_\_ of Point Pleasant Beach, New Jersey, since March of 1992. Both the petition and the Form ETA 750 indicate that the petitioner would employ the beneficiary in Point Pleasant Beach, New Jersey.

In support of the petition, counsel submitted the 1996 Form 1120, U.S. Corporation Income Tax Return of \_\_\_\_\_. That tax return of \_\_\_\_\_ shows that it

is a corporation, that it incorporated on January 27, 1987, and that it reports taxes pursuant to accrual convention accounting and the calendar year. That return purports to cover the entire 1996 calendar year. During 1996 that company declared a loss of \$114,482 as its taxable income before net operating loss deductions and special deductions. The corresponding Schedule L shows that at the end of that year the petitioner's current liabilities exceeded its current assets.

Counsel also submitted a letter dated January 8, 2003 from the president of [REDACTED] and [REDACTED] Incorporated, who is also the owner of [REDACTED]. The body of that letter states,

[REDACTED] is a name change for a non used [sic] previous corporate name, SMB Associates Inc. As per the tax return (1996 dates) [REDACTED] was purchased and the corporate name changed to [REDACTED]. The loss in 1996 (paper loss) is amortization, initial stocking of supplies, payoff of former owner debt, and other start up expenses that were taken as write offs in the initial year

Because the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the Vermont Service Center, on May 4, 2004, requested, *inter alia*, additional evidence pertinent to that ability. The service center also specifically requested that if the petitioner employed the beneficiary it provide Form W-2 Wage and Tax Statements showing amounts it paid to him.

In response, counsel submitted, (1) a copy of the 2001 Form 1120, U.S. Corporation Income Tax Return of [REDACTED] (2) a copy of the first page of the 2002 Form 1120, U.S. Corporation Income Tax Return of [REDACTED] (3) 1996, 1997, 1998, 1999, 2000, 2001, and 2002 W-2 forms, and (4) counsel's own letter dated July 29, 2004.

The 2001 tax return submitted shows that [REDACTED] reported taxable income before net operating loss deductions and special deductions of \$3,665 during that year. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of \$228,789 and current liabilities of \$101,742, which yields net current assets of \$127,047.

The first page of the 2002 tax return submitted shows that [REDACTED] reported taxable income before net operating loss deductions and special deductions of \$14,265. Counsel did not provide the balance of that return. Counsel did not provide copies of annual reports, federal tax returns, or audited financial statements for 1997, 1998, 1999, or 2000. Further, counsel did not provide any evidence pertinent to the petitioner's ability to pay the proffered wage during 2003.

The 1996 W-2 form submitted shows that [REDACTED] paid the beneficiary \$4,594.24 during that year.

Counsel submitted two 1997 W-2 forms. One of those W-2 forms was issued by [REDACTED] to the beneficiary and is in the amount of \$5,590.27. The other was issued to the beneficiary by [REDACTED] and is in the amount of \$5,332.59.

The 1998 and 1999 W-2 forms show that [REDACTED] paid the beneficiary \$7,898.81 and \$10,681.11 during those years, respectively.

The 2000, 2001, and 2002 W-2 forms show that [REDACTED] paid the beneficiary \$9,320.21, \$7,898.81, and \$10,681.11 during those years, respectively.

In his July 29, 2004 letter counsel stated that the petitioner's declared loss during 1996 was due to amortization, which counsel characterized as a paper loss. Counsel also urged that the annual amount of the proffered wage during 1996 should be pro-rated to reflect that only approximately two weeks of 1996 remained on the priority date. Counsel indicated that the Form 1120, U.S. Corporation Income Tax Return for 2001 and 2002 considered together with the beneficiary's W-2 forms showed an ability to pay the proffered wage. Counsel also specifically noted the amount of the petitioner's depreciation deductions, its inventories, its salary and wage expense, and its compensation of officers for various years.

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date and, on January 21, 2005, denied the petition.

On appeal, counsel submitted a brief in which he stated that the petitioner had employed a manager during 1996 but that she had left the petitioner's employ. Counsel states that the wages previously used to pay her became available to pay the wage proffered in this case. Counsel also listed other former employees whose wages counsel stated are now available to pay the proffered wage. Counsel further stated, "It is not an usual or unsound business practice to shift the compensation of business officers or employees within the business."

If the wages of another employee can be shown to have been available to pay the proffered wage during a given year then the petitioner has shown that it was able to pay the proffered wage or some portion of the proffered wage. In this case, however, counsel asserted that the wages paid to various named former employees are now available to pay the wage proffered to the instant beneficiary. Reliance on this assertion is misplaced. If the petitioner had paid wages during a given year to an employee that it proposed to replace with the beneficiary as soon as the beneficiary became available, then those wages could be shown to have been available, during that specific year, to pay the proffered wage.<sup>1</sup> That is, at any point the petitioner would have replaced the incumbent with the beneficiary and paid the incumbent's wages to the beneficiary.

In the instant case the petitioner did not assert that it would have replaced the former employees, or any one of them, with the beneficiary. Rather, the petitioner appeared to assert that because it was previously paying wages to those employees and then stopped, those wages are now at its disposal.

If the petitioner now has funds at its disposal to pay the proffered wage, or had such funds during any salient year, they should be reflected on its tax returns or whatever other regulatory-prescribed document it uses to show its continuing ability to pay the proffered wage beginning on the priority date. Wages paid to former employees during 1996, for instance, cannot show the ability to pay additional wages during subsequent

---

<sup>1</sup> For this approach to succeed the petitioner shall document the incumbent employee's wages with, for example, the Form W-2; and the petitioner shall provide a notarized, sworn statement that attests to its claim that the incumbent performs the proffered position, and that the petitioner will not be using the beneficiary merely to replace another qualified worker who is already available for employment with the petitioner in the United States.

years. The petitioner has not demonstrated that the wages paid to any of its past or present employees are or were available to pay the wage proffered in this case. Those employees' wages will not be considered in the determination of the petitioner's ability to pay the proffered wage.

Counsel's assertion that the petitioner's depreciation and amortization deductions should be included in the calculation of its ability to pay the proffered wage is unconvincing. This office is aware that depreciation and amortization deductions do not require or represent a specific cash expenditure during the year claimed. They are the systematic allocation of the cost of long-term assets. A depreciation deduction may be taken to represent the diminution in value of buildings and equipment, or to represent the accumulation of funds necessary to replace perishable equipment and buildings. But the cost or other basis of assets and the value lost as they deteriorate is an actual expense of doing business, whether it is spread over more years or concentrated into fewer.

These deductions represent the use of cash during a previous year, which cash the petitioner no longer has to spend. No precedent exists that would allow the petitioner to add these deductions to the amount available to pay the proffered wage. *See Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532 (N.D. Texas 1989). *See also Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049 (S.D.N.Y. 1985). The petitioner's election of accounting and depreciation methods accords a specific amount of depreciation expense to each given year. The petitioner may not now shift that expense to some other year as convenient to its present purpose, nor treat it as a fund available to pay the proffered wage.

The same is true of amortization expense. Amortization is the attribution to given years of the cost or other basis of intangible assets. The allocation of amortization expense, though of intangible assets such as goodwill, is similarly a real expense, however spread or concentrated. No reasonable basis exists for permitting the petitioner to add the amount it claimed as an amortization expense back into its profits or to permit its reallocation to other years as convenient.

Further, amounts spent on long-term tangible and intangible assets are a real expense, however allocated. Although counsel asserts that they should not be charged against income according to their depreciation and amortization schedules, he does not offer any alternative allocation of those costs.<sup>2</sup> Counsel appears to be asserting that the real cost of long-term assets should never be deducted from revenue for the purpose of determining the funds available to the petitioner. Such a scenario is unacceptable.

Counsel asserted that the petitioner's 2002 Form 1120, Line 12, Compensation of Officers shows its ability to pay the proffered wage. Counsel apparently asserted that the compensation need not have been paid to its officers, but could have been retained as necessary to pay the proffered wage. Counsel provided no evidence, however, to support the supposition that the petitioner's officers were able and willing to forego compensation, in whole or in part, to pay the proffered wage. Counsel provided no evidence that the petitioner was not obliged to pay those wages to its officers for some other reason, contractual for instance. The compensation that the petitioner paid to its officers has not, therefore, been shown to have been available to pay wages.

---

<sup>2</sup> Counsel does not urge, for instance, that the petitioner's purchase of long-term assets should be expensed during the year of purchase, rather than depreciated, for the purpose of calculating the petitioner's ability to pay additional wages.

Similarly, counsel asserts that the petitioner's total wage expense somehow demonstrates its ability to pay the proffered wage. However, showing that the petitioner paid wages in excess of the proffered wage, or greatly in excess of the proffered wage, is insufficient. Showing that the petitioner's gross receipts exceeded the proffered wage, or greatly exceeded the proffered wage, is insufficient. Unless the petitioner can show that hiring the beneficiary would somehow have reduced its expenses<sup>3</sup> or otherwise increased its net income,<sup>4</sup> the petitioner is obliged to show the ability to pay the proffered wage **in addition to** the expenses it actually paid during a given year. The petitioner is obliged to show that it had sufficient funds remaining to pay the proffered wage after all expenses were paid. That remainder is the petitioner's net income. 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 CIS should have considered income before expenses were paid rather than net income.

Counsel further asserts that the amount of the proffered wage the petitioner is obliged to show the ability to pay during 1996 should be prorated to reflect that the priority date was during December of that year. We will not, however, consider 12 months of income toward an ability to pay a proffered wage during some shorter period any more than we would consider 24 months of income towards paying the annual amount of the proffered wage. While CIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), the petitioner has not submitted such evidence.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will examine whether the petitioner employed the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

In the instant case counsel submitted financial data for several entities. It is not clear which of these entities is the petitioner, the actual entity that proposes to employ the beneficiary and pay him wages.

The petitioner's owner appears to assert, in his January 8, 2003 letter that [REDACTED] Incorporated owned the petitioning restaurant and sold it to [REDACTED] on some unidentified date during 1996. If this is so, then why [REDACTED] continued to pay wages to the beneficiary during 1997, 1998, and 1999 should have been explained. Further the relationship of [REDACTED] to the petitioner and to this case has never been explained.

For the purpose of analysis this office will assume, *arguendo*, that the petitioner issued all of the submitted W-2 forms to the beneficiary. This office will also assume, *arguendo*, that all of the tax returns submitted pertain to the petitioner. Before this petition could be approved, however, the petitioner would be obliged to explain the relationship of the various corporations to the petitioning restaurant and to each other, to

---

<sup>3</sup> For instance, the petitioner might be able to demonstrate, rather than merely allege, that the beneficiary would replace another named employee, thus obviating that other employee's wages, and that those obviated wages would be sufficient to cover the proffered wage.

<sup>4</sup> The petitioner might be able to demonstrate, rather than merely allege, that employing the beneficiary would contribute more to the petitioner's revenue than the amount of the proffered wage.

demonstrate which of those wage payments were actually made by the petitioner in the instant case, and to demonstrate which, if any, of the tax returns submitted pertain to the instant petitioner.

The W-2 forms submitted show payments to the beneficiary of \$4,594.24 during 1996; \$5,590.27 and \$5,332.59, a total of \$10,922.86 during 1997, \$7,571.79 during 1998, \$10,811.13 during 1999, \$9,320.21 during 2000, \$7,898.81 during 2001, and \$10,691.11 during 2002. The petitioner is also obliged to show the ability to pay the remaining balance of the proffered wage during those years.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during a given period, the AAO will, in addition, examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. CIS may rely on federal income tax returns to assess a petitioner's ability to pay a proffered wage. *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). See also 8 C.F.R. § 204.5(g)(2).

The petitioner's net income is not the only statistic that may be used to show the petitioner's ability to pay the proffered wage. If the petitioner's net income, if any, during a given period, added to the wages paid to the beneficiary during that period, if any, do not equal the amount of the proffered wage or more, the AAO will review the petitioner's assets as an alternative method of demonstrating the ability to pay the proffered wage.

The petitioner's total assets, however, are not available to pay the proffered wage. The petitioner's total assets include those assets the petitioner uses in its business, which will not, in the ordinary course of business, be converted to cash, and will not, therefore, become funds available to pay the proffered wage. Only the petitioner's current assets -- the petitioner's year-end cash and those assets expected to be consumed or converted into cash within a year -- may be considered. Further, the petitioner's current assets cannot be viewed as available to pay wages without reference to the petitioner's current liabilities, those liabilities projected to be paid within a year. CIS will consider the petitioner's net current assets, its current assets minus its current liabilities, in the determination of the petitioner's ability to pay the proffered wage.

Current assets include cash on hand, inventories, and receivables expected to be converted to cash or cash equivalent within one year. Current liabilities are liabilities due to be paid within a year. On a Schedule L the petitioner's current assets are typically found at lines 1(d) through 6(d). Year-end current liabilities are typically<sup>5</sup> shown on lines 16(d) through 18(d). If a corporation's 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 net current assets are expected to be converted to cash as the proffered wage becomes due.

The proffered wage is \$26,249.60<sup>6</sup> per year. The priority date is December 19, 1996.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$4,594.24 during 1996 it is obliged to show the ability to pay the \$21,655.36 balance of the proffered wage during that year. During 1996, however, [REDACTED] declared a loss. The petitioner is unable, therefore, to demonstrate the ability to pay any portion of the proffered wage out of profits of that company during that year. At the end of that year [REDACTED] had negative net current assets. The petitioner is unable, therefore, to demonstrate the ability to pay any portion of the proffered wage out of the

---

<sup>5</sup> The location of the taxpayer's current assets and current liabilities varies slightly from one version of the Schedule L to another.

net current assets shown on that return. The petitioner has provided no reliable evidence of any other funds available to the beneficiary during that year with which it could have paid the proffered wage. The petitioner has not demonstrated the ability to pay the proffered wage during 1996.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$10,922.86 during 1997 it is obliged to show the ability to pay the \$15,326.74 balance of the proffered wage during that year. Counsel, however, submitted no copies of annual reports, federal tax returns, or audited financial statements pertinent to the petitioner's performance, or the performance of any other entity, during that year. Counsel submitted no reliable evidence of any other funds available to the petitioner during that year with which it could have paid the proffered wage. The petitioner has not demonstrated the ability to pay the proffered wage during 1997.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$7,571.79 during 1998, it is obliged to show the ability to pay the \$18,677.81 balance of the proffered wage during that year. Counsel, however, submitted no copies of annual reports, federal tax returns, or audited financial statements pertinent to the petitioner's performance, or the performance of any other entity, during that year. Counsel submitted no reliable evidence of any other funds available to the petitioner during that year with which it could have paid the proffered wage. The petitioner has not demonstrated the ability to pay the proffered wage during 1998.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$10,811.13 during 1999, it is obliged to show the ability to pay the \$15,438.47 balance of the proffered wage during that year. Counsel, however, submitted no copies of annual reports, federal tax returns, or audited financial statements pertinent to the petitioner's performance, or the performance of any other entity, during that year. Counsel submitted no reliable evidence of any other funds available to the petitioner during that year with which it could have paid the proffered wage. The petitioner has not demonstrated the ability to pay the proffered wage during 1999.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$9,320.21 during 2000, it is obliged to show the ability to pay the \$16,929.39 balance of the proffered wage during that year. Counsel, however, submitted no copies of annual reports, federal tax returns, or audited financial statements pertinent to the petitioner's performance, or the performance of any other entity, during that year. Counsel submitted no reliable evidence of any other funds available to the petitioner during that year with which it could have paid the proffered wage. The petitioner has not demonstrated the ability to pay the proffered wage during 2000.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$7,898.81 during 2001 it is obliged to show the ability to pay the \$18,350.79 balance of the proffered wage during that year. During 1996 [REDACTED] declared taxable income before net operating loss deductions and special deductions of \$3,665. That amount is insufficient to pay the balance of the proffered wage. At the end of that year, however, the petitioner had net current assets of \$127,047. That amount is sufficient to pay the balance of the proffered wage. The petitioner has demonstrated its ability to pay the proffered wage during 2001.

Assuming that the petitioner has demonstrated that it paid the beneficiary \$10,681.11 during 2002, it is obliged to show the ability to pay the \$15,568.49 balance of the proffered wage during that year. The first page of the 2002 tax return of [REDACTED] shows that it reported taxable income before net operating loss deductions and special deductions of \$14,265 during that year. That amount is insufficient to pay the balance of the proffered wage. Because the 2002 Schedule L was not provided this office is unable to calculate the petitioner's 2002 end-of-year net current assets. The petitioner has not, therefore, demonstrated the ability to pay any portion of the proffered wage out of its net current assets during that year. The petitioner submitted no reliable evidence of any other funds at its disposal during 2002 with which it could

have paid the proffered wage. The petitioner has not shown the ability to pay the proffered wage during 2002.

The request for evidence in this matter was issued on May 4, 2004 and asked the petitioner to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. On that date the petitioner's 2003 tax return should have been available. The petitioner did not submit that return or give any reason for that omission. The petitioner did not provide any other evidence pertinent to its ability to pay the proffered wage during that year. The petitioner has not demonstrated its ability to pay the proffered wage during 2003.

The petitioner failed to demonstrate that it had the ability to pay the proffered wage during 1996, 1997, 1998, 1999, 2000, 2002, and 2003. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

The record suggests an additional issue that was not addressed in the decision of denial. [REDACTED] submitted the Form ETA 750 in this matter. [REDACTED] filed the Form I-140, on which it stated that it was established during 1995. The tax returns of [REDACTED] Incorporated, submitted in support of the petition, show that it incorporated on January 27, 1987. The record contains W-2 forms issued by [REDACTED], and [REDACTED] yet another apparently separate entity. The use of those various names and the statements pertinent to dates of establishment or incorporation suggest that ownership of the petitioning restaurant may have changed hands since the priority date.

Indeed, when the 1996 Form 1120, U.S. Corporation Income Tax Return<sup>6</sup> is read together with the January 8, 2003 letter from the president of [REDACTED] and [REDACTED] the documents appear to indicate that SMB Associates Incorporated sold the restaurant to [REDACTED]. The letter does not make the date of that transaction clear.

In a case where the petitioner has changed hands during the pendency of the petition the substituted petitioner must demonstrate that it is a true successor within the meaning of *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm. 1981). It must submit proof of the change in ownership and of how the change in ownership occurred. It must also show that it assumed all of the rights, duties, obligations, and assets of the original employer and continues to operate the same type of business as the original employer.

The substituted petitioner is obliged to show that its predecessor had the ability to pay the proffered wage beginning on the priority date and continuing throughout the period during which it owned the petitioning company. The successor-at-interest must also show that it has had the continuing ability to pay the proffered wage beginning on the date it acquired the business. See *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm. 1981). No such evidence was submitted in this case.

This additional basis for denial was not mentioned in the decision of denial and the petitioner has not been accorded an opportunity to address it. This office therefore declines to base today's decision, even in part, on that ground. If the petitioner attempts to overcome today's decision on motion, however, it should provide a

<sup>6</sup> The Form 1120 for 1996 submitted into the record indicates that it was filed on behalf of [REDACTED] formerly [REDACTED]

history of the ownership of the petitioning restaurant since the priority date and evidence pertinent to the requirements of *Dial Auto Repair Shop*, and it should make clear which of the various documents provided actually pertain to wages paid by the petitioner and to the finances of the petitioner, the actual entity which, when those documents were current, proposed to employ the beneficiary and pay him the proffered wage.

The burden of proof in these proceedings rests solely upon the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.