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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

LIN-03-023-52242

Office: NEBRASKA SERVICE CENTER

Date: SEP 12 2006

IN RE:

Petitioner:  
Beneficiary:



PETITION: 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 preference visa petition was initially approved by the Director, Nebraska Service Center, but the approval was later revoked. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary 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).

The petitioner is a health care facility for handicapped children. It seeks to employ the beneficiary permanently in the United States as a developmental disability specialist. 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 the beneficiary had the training required to qualify as a skilled worker in the occupation of disability recreational therapist, and revoked the approval of 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 or seasonal nature, for which qualified workers are not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition’s priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Comm. 1977). The priority date is the date 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). The priority date in the instant petition is October 21, 2002.

The I-140 petition was submitted on April 19, 2002. On the petition, in Part 2, Petition type, the petitioner checked box “e” for “a skilled worker (requiring at least two years of specialized training or experience) or professional.” (I-140 petition, Part 2). In Part 5 of the petition, Additional information about the petitioner, the petitioner claimed to have been established in 1975, to currently have 140 employees, to have a gross annual income of “+\$20 Million,” and to have a net annual income of “+\$889,000.” (I-140 petition, Part 5). With the petition, the petitioner submitted supporting evidence.

In an June 21, 2005 decision, the director determined that the evidence failed to establish that the beneficiary had two years of post-secondary education relevant to the occupation of developmental disability specialist. The director therefore found that the beneficiary did not meet the regulatory definition of skilled worker, and revoked the petition.

On appeal, counsel submits no brief and no additional evidence. Relevant evidence in the record includes copies of educational documents of the beneficiary, a copy of a professional resume of the beneficiary, and a copy of a letter from a director of the petitioner stating the petitioner’s ability to pay the proffered wage.

Counsel states on appeal that the director’s decision to revoke the petition is contrary to the decision of the United States Court of Appeals for the Second Circuit in *Firstland International Inc. v. INS*, 377 F.3d 127 (2d Cir. 2004) which held that an immigrant visa petition may not be revoked unless the beneficiary is given a notice of intent to

revoke prior to beginning his or her journey to the United States. Counsel states that the beneficiary was not afforded such notice prior to her coming to the United States. Counsel also states that policies applicable to non-immigrant visas, as set forth in a memorandum of April 23, 2004 by William R. Yates, Associate Director for Operations, CIS, should also be followed for immigrant visas.

The AAO reviews appeals on a *de novo* basis. See *Dorr v. I.N.S.* 891 F.2d 997, 1002, n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including any new evidence properly submitted on appeal.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, 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, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of developmental disability specialist. On the ETA 750A submitted with the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

14.	Education (number of years)		
	Grade School		8
	High School		4
	College		4
	College Degree Required		Bachelor's**
	Major Field of Study		Any Field
	Training - yrs		n/a
	Experience		
	Job Offered	Yrs	0
	Related Occupation	Yrs	0
	Related Occupation (specify)		None
15.	Other Special Requirements		**Bachelor's / Foreign Equivalent / Credential Evaluation Equivalent

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary states the following:

Schools, Colleges and Universities, etc.	Field of Study	From	To	Degrees or Certificates Received
	History	08/1977	06/1982	Bachelor's in History

[Remaining rows blank]

On the ETA 750B submitted with the instant petition, in block 15, for information on the beneficiary's work experience the beneficiary states the following:

Name and Address of Employer	Name of Job	From	To	Kind of Business
[REDACTED]	Graduate Student	08/2000	present	University
[REDACTED]	Assistant Professor	09/1989	07/2000	University

The regulation at 8 C.F.R. § 204.5(1)(2) states in pertinent part:

*Definitions.* As used in this part:

*Skilled worker* means an alien who is capable, at the time of petitioning for this classification, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

The record contains a copy of a Diploma with a specialization in History awarded to the beneficiary on June 26, 1982 by the I. I. Mechnikov State University of Odessa, with a supporting course transcript.

In the instant I-140 petition, the ETA 750 specifies the following duties for the position of developmental disability specialist:

To develop and implement a continuous active treatment program for each profoundly mentally and physically handicapped resident to enable each individual to function as independently as possible and prevent skill regression. Observe, instruct and play with resident and confer with professionals and parents to obtain information relating to child's mental and physical development. Develop individual teaching plan covering self-help, motor, social, cognitive and language skills development. Revises teaching plan to correspond with child's rate of development. Consults and coordinates plans with other professionals.

(ETA 750, Part A, block 13).

The instant petition was initially approved on November 4, 2002. Upon further review, the director issued a notice dated February 10, 2005 informing the petitioner that the director had determined that the beneficiary's education in the field of special education was not of sufficient duration to meet the regulatory requirement of two years of training. The director also noted that the beneficiary holds a Bachelor's Degree in History from the Odessa State University. The director stated that in view of the above, it appeared that the approval of the petition should be revoked.

In a letter dated March 6, 2005 submitted in response, counsel raised the same legal issues as are now before the AAO on appeal and which are summarized above. The petitioner submitted no additional evidence in response to the director's February 10, 2005 notice of intent to revoke the approval of the petition.

The record contains copies of two decisions dated June 21, 2005, each captioned "Revocation." One decision is signed by [REDACTED] Acting Director, and the other decision is signed by [REDACTED], Acting

Director. The analysis in both decisions is substantially the same, but it appears from the record order and from the content of the decisions that the decision signed by [REDACTED] superceded the decision signed by [REDACTED]. The decision signed by [REDACTED] therefore will be considered as the decision of the director.

In the June 21, 2005 decision signed by [REDACTED] the director found that the beneficiary's education in the field of special education was not of sufficient duration to meet the regulatory requirement of two years training for a position as a skilled worker. The director accordingly revoked the approval of the petition.

Based on the evidence in the record, the director's decision to revoke the approval of the petition was correct.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The regulation at 8 C.F.R. § 204.5(l)(2) states that skilled labor is that which requires two years of training or experience. Only training or experience which is closely related to the duties of the offered position can be considered to satisfy the regulation's language that skilled labor must be of a type "requiring" two years of training or experience. If a person could perform the duties of the offered position having had training or experience only in fields unrelated to the offered position, the position could not be considered to be one for skilled labor. Similarly, the regulation requires that qualifying post-secondary education must be relevant to the offered position to qualify as training for the offered position.

In the instant petition, the job duties for the position of developmental disability specialist indicate that relevant fields of post-secondary education would include medical studies, nursing, developmental psychology and/or similar health-related fields.

The beneficiary's course transcript of his studies toward his Diploma shows only one course directly relevant to the offered position of developmental disability specialist, a course in Psychology. Two other courses could be shown to be at least indirectly relevant to the offered position, a course named Pedagogy and another course named Pedagogic Practice. The beneficiary's total number of courses shown on his transcript is thirty-six. The transcript therefore shows that the beneficiary's studies relevant to the offered position were a minor part of his course load toward his Diploma.

The record contains a copy of an undated professional resume of the beneficiary. In the section of the resume titled "Professional Appointments" the beneficiary lists experience from 1984 to 1989 as an assistant professor with the Odessa State Institute of Commercial Fleet, experience from 1989 to 2000 as an assistant professor with the History Department of Odessa State University, and experience as a part-time archivist with the Odessa State Archive. None of those positions are relevant to the offered position of developmental disability specialist.

Moreover, even if the beneficiary's resume contained information on experience relevant to the offered position, a resume is not an acceptable form of evidence to establish qualifying experience. *See* 8 C.F.R. § 204.5(g)(1).

The record contains no other evidence of relevant education or experience of the beneficiary. Therefore the evidence establishes only three courses taken by the beneficiary which are directly or indirectly relevant to the officer position. The evidence established no relevant experience.

For the foregoing reasons, the evidence in the record fails to establish that beneficiary had two years of relevant education or experience as of the priority date. As noted above, to be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In her decision, the director included some language analyzing the instant petition as one for a professional, though later in the decision the director analyzed the instant petition as one for a skilled worker. In failing to clearly distinguish between those two preference categories, the analysis of the director lacked internal consistency. Nonetheless, the decision of the director to deny the petition was correct, based on the evidence in the record.

Counsel states on appeal that the director's decision to revoke the petition is contrary to the decision of the United States Court of Appeals for the Second Circuit in *Firstland International Inc. v. INS*, 377 F.3d 127 (2d Cir. 2004). The court in *Firstland* interpreted the third and fourth sentences of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland International Inc. v. INS*, 377 F.3d at 130. Counsel asserts that the reasoning of that opinion must be applied to the present matter. Counsel asserts that, accordingly, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since she was already in the United States when the director issued the revocation.

According to the record of proceeding, the petitioner is located in Champaign, Illinois. Therefore this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary 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. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Counsel also states that policies applicable to non-immigrant visas, as set forth in a memorandum of April 23, 2004 by William R. Yates, Associate Director for Operations, CIS, should also be followed for immigrant visas. The April 23, 2004 memorandum advises CIS officers adjudicating petitions for extensions of non-immigrant status to defer to the approval decisions made on the original non-immigrant visa petitions, absent material error

in the previous decisions or a substantial change in the circumstances affecting the alien's non-immigrant status. Nothing in that memorandum pertains to immigrant visas, nor is the reasoning of that memorandum inconsistent with CIS procedures allowing revocations of previous approvals of immigrant visa petitions which were approved in error. Therefore, the April 23, 2004 memorandum by William R. Yates provides no support for the petitioner's position in the instant appeal.

For the foregoing reasons, the assertions of counsel on appeal fail to overcome the decision of the director concerning the education of the beneficiary.

In her revocation decision, the director did not discuss the petitioner's ability to pay the proffered wage.

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

*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 either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the petition's priority date, which is the date 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). The priority date in the instant petition is April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$7.66 per hour, which amounts to \$15,932.80 annually.

It may be noted that it has been approximately four years since the Application for Alien Employment Certification has been accepted and the proffered wage established. The employer certification that is part of the application states, "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work." (ETA Form 750 Part A, Section 23 b).

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). See also 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the annual amount of the beneficiary's wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered prima facie proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on May 2, 2002, the beneficiary did not claim to have worked for the petitioner and no other evidence in the record indicates that the beneficiary has worked for the petitioner.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750). *See also* 8 C.F.R. § 204.5(g)(2).

CIS electronic records show that the petitioner has filed a total of 302 I-140 petitions since 1996. The great majority of those petitions have been filed since 2002. The number of I-140 petitions filed was 4 in 1996, 9 in 1997, 2 in 1998, 5 in 1999, 7 in 2000, 11 in 2001, 56 in 2002, 125 in 2003, 66 in 2004, 5 in 2005, and 12 in 2006, through August 22, 2006.

As noted above, the instant petition was filed on April 19, 2002. During the year 2002 the petitioner filed a total of fifty-six I-140 petitions, including the instant petition.

Even if a petition has been withdrawn by the petitioner, the petitioner has the right to substitute a new beneficiary on an ETA 750 labor certification application by filing a new I-140 petition, supported by a new ETA 750B for the new beneficiary. The ETA 750's underlying any withdrawn petitions remain valid, with the same priority dates. **Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, et al., Immigration and Naturalization Service, *Substitution of Labor Certification Beneficiaries*, at 3, [http://ows.doleta.gov/dmstree/fm/fm96/fm\\_28-96a.pdf](http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf) (March 7, 1996); see Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 4, § 43.04 (Mathew Bender & Company, Inc. 2004) (available at "LexisNexis" Mathew Bender Online).** Therefore the certified ETA 750's underlying any withdrawn petitions retain potential relevance to the petitioner's total proffered wage commitments for a given year. Similarly, for any petitions which have been denied, the underlying approved ETA 750 would remain available for a new I-140 petition for the same beneficiary or for a substituted beneficiary, provided that the reason for the earlier I-140 denial was one which could be cured by a new petition for same beneficiary, or for a substituted beneficiary.

The record in the instant case contains no information about the proffered wages for the beneficiaries of the other petitions submitted by the petitioner. The petitioner has submitted no list of proffered wages for each of the beneficiaries of the other I-140 petitions it has filed. The AAO will therefore use the rate of the beneficiary's proffered wage of \$7.66 per hour as the basis for estimating the petitioner's proffered wage commitments to the beneficiaries of the petitioner's other I-140 petitions. As noted above, an hourly wage of \$7.66 for a 40-hour work week is equivalent to an annual wage of \$15,932.80.

In the year 2002 the petitioner filed fifty-six I-140 petitions, including the instant petition. Therefore, in addition to the instant petition, the petitioner filed fifty-five I-140 petitions that year. At an estimated annual proffered wage level of \$15,184.00 for each beneficiary, fifty-five additional I-140 petitions would result in an additional wage commitment of \$876,304.00 by the petitioner in the year 2002. Adding that amount to the proffered wage of \$15,932.80 for the beneficiary of the instant petition produces a total estimated proffered wage commitment of \$892,236.80 in the year 2002.

The instant I-140 petition states that the petitioner was formed in 1975 and employs "140+" employees. (I-140 petition, Part 5). The regulation at 8 C.F.R. § 204.5(g)(2) states that where a petitioner employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. The language "may accept" in the above regulation indicates that CIS is not required to accept such a statement, but rather may exercise its discretion not to accept such as statement. See 8 C.F.R. § 204.5(g)(2).

The record contains a copy of a letter dated August 6, 2002 from a Director of the petitioner which states as follows:

I, [REDACTED] do hereby certify that I am the director of Resource Development for [REDACTED] a corporation organized and existing under the laws of the State of Illinois.

The corporation is now and will be for the expected future able to pay the wages offered to our employee.

The corporation employs more than 140 people at our Champaign, Illinois facility.

For the fiscal year ended June 30, 2002, [REDACTED] had revenue in excess of \$20,319,662.00 and net income in excess of \$889,974.24. Our 2001 financial statements were audited by [REDACTED]

I hereby certify that the information provided herein, as of this date is true, accurate and complete in every material respect.

(Letter from [REDACTED], Director, August 6, 2002).

The letter from [REDACTED] does not state that Mr. [REDACTED] is a financial officer of the petitioner, as required by the regulation at 8 C.F.R. § 204.5(g)(2). Moreover, the content of that letter is not sufficient to establish the petitioner's ability to pay the proffered wage during the relevant time period. The letter states that the petitioner's net income is in excess of \$889,974.24 per year. That amount of net income is slightly less than the estimated \$892,236.80 in proffered wage commitments which the petitioner has made in fifty-six I-140 petitions which it submitted in 2002, including the instant petition.

Even if the amount of net income asserted by Mr. [REDACTED] might be considered sufficient to pay substantially all of the petitioner's proffered wage commitments in 2002, the letter lacks sufficient detail to permit an evaluation of the credibility of the financial assertions made by Mr. [REDACTED] and no supporting documentation has been submitted for the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N

Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The letter from Mr. [REDACTED] refers to the petitioner as "[REDACTED]" No evidence in the record corroborates Mr. [REDACTED]'s assertion that that is the legal name of the petitioner. On the I-140 petition, the petitioner's name is stated as [REDACTED], with no concluding abbreviation [REDACTED]. Evidence in the records of other petitions submitted by the same petitioner indicates that [REDACTED] is in fact a trade name for a corporation named [REDACTED]. Mr. [REDACTED]'s assertion that the petitioner is [REDACTED] is inconsistent with evidence in other cases submitted by the same petitioner. As noted above, "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." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

As another means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return for a given year, 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 (9<sup>th</sup> Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 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 (7<sup>th</sup> Cir. 1983). In *K.C.P. Food Co., Inc.*, 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. 623 F. Supp. at 1084.

The record in the instant petition, however, contains no evidence of the petitioner's net income, other than the assertion in the August 6, 2002 letter from [REDACTED] discussed above. The record lacks copies of annual reports, audited financial reports, or federal tax returns, which are the three alternative forms of evidence required by the regulation at 8 C.F.R. § 204.5(g)(2).

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are a corporate taxpayer's current assets less its current liabilities. Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. 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. Thus, the difference between current assets and current liabilities is the net current assets figure, which if greater than the proffered wage, evidences the petitioner's ability to pay.

In the instant petition, however, the record contains no financial evidence on which to base any calculations of the petitioner's net current assets.

For the above reasons, the evidence fails to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

In summary, the decision of the director to revoke the approval of the petition was correct, based on the lack of evidence of training and/or experience of the beneficiary relevant to the offered position as of the priority date.

Beyond the decision of the director, the evidence fails to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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.