

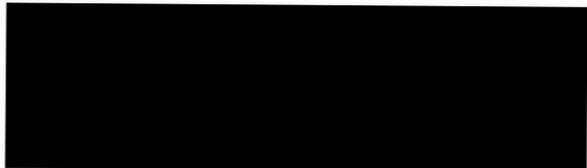


U.S. Citizenship
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Services

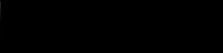
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FILE:



Office: TEXAS SERVICE CENTER

Date: **AUG 23 2007**

SRC 05 048 51927

IN RE:

Petitioner:



Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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, Texas Service Center denied the employment-based immigrant visa petition and a subsequent motion to reopen. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer consultancy business. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies 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.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's March 30, 2005 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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. 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 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 December 12, 2002. The proffered wage as stated on the Form ETA 750 is \$81,000 annually.

The AAO takes a *de novo* look at issues raised in the denial of this petition. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal¹. Relevant evidence submitted on appeal includes counsel's brief, a letter, dated April 25, 2005, from [REDACTED] CPA, copies of the previously submitted 2002 through 2004 Forms W-2, Wage and Tax Statements, issued by the petitioner for the beneficiary, and copies of the petitioner's 2002 through 2004 amended Forms 1120S, U.S. Income Tax Returns for an S Corporation. Other relevant evidence includes copies of the beneficiary's pay stubs showing the year to date earnings as of October 31, 2004 as \$34,615.40, copies of the petitioner's 2002 through 2004 unaudited balance sheets and income statements, copies of the petitioner's original 2002 through 2004 Forms 1120S, a letter, dated March 18, 2005, from [REDACTED] CPA, copies of the petitioner's Forms 941, Employer's Quarterly Federal Tax Returns, for the quarters ended June 30, 2004 and December 31, 2004, and copies of some of the petitioner's invoices. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's unaudited 2002 through 2004 balance sheets and income statements reflect net incomes of \$54,815, \$21,197, and \$35,139, respectively, and the unaudited 2002 through 2004 balance sheets and income statements also reflect net current assets of \$113,143, \$177,848, and \$124,675, respectively. However, counsel's reliance on unaudited financial records is misplaced. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. Therefore, they will not be considered when determining the petitioner's ability to pay the proffered wage of \$81,000.

The petitioner's original 2002 through 2004 Forms 1120S reflect ordinary incomes or net incomes of -\$24,112 (from Schedule K), -\$58,451 (from Schedule K), and \$75,691 (from Schedule K), respectively. The petitioner's original 2002 through 2004 Forms 1120S also reflect net current assets of \$34,216, \$18,954, and \$3,594, respectively.

The petitioner's amended 2002 through 2004 Forms 1120S reflect ordinary incomes or net incomes of -\$24,112 (from Schedule K), -\$58,451 (from Schedule K), and \$75,691 (from Schedule K), respectively. The petitioner's amended 2002 through 2004 Forms 1120S also reflect net current assets of \$123,916, \$32,704, and \$3,594, respectively. It is noted that the net current assets did not change in 2004. However, in 2002, the current assets changed from \$40,090 (original tax return) to \$130,090 (amended tax return), and the current liabilities changed from \$5,874 (original tax return) to \$6,174 (amended tax return). In 2003, the current assets changed from \$40,400 (original tax return) to \$54,400 (amended tax return). The petitioner's CPA claims that the change in current assets was due to a loan receivable, and the change in current liabilities was due to payroll liabilities. The increase of \$75,000 under less allowance for bad debts on the amended tax return was not discussed.

The beneficiary's 2002 through 2004 Forms W-2 reflect earnings by the beneficiary from the petitioner of \$41,538.48 in 2002, \$45,000 in 2003, and \$45,000 in 2004. The petitioner is obligated to show that it has

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

sufficient funds to pay the difference between the proffered wage of \$81,000 and the actual wages paid to the beneficiary in 2002 through 2004. Those differences are \$39,461.52 in 2002, \$36,000 in 2003, and \$36,000 in 2004.

The petitioner's Forms 941 for the quarters ended June 30, 2004 and December 31, 2004, show that the beneficiary was employed with the petitioner in both quarters, earning \$8,653.85 in the quarter ended June 30, 2004 and \$13,846.14 in the quarter ended December 31, 2004. It is noted that the petitioner paid the salaries of four employees² in the quarter ended June 30, 2004 with total gross wages of \$49,230.72 for that quarter. The petitioner paid the salaries of five employees in the quarter ended December 31, 2004 with total gross wages of \$97,392.41 for that quarter. It is also noted that these two quarters represent approximately 71.8% of the wages paid by the petitioner for that year, 2004. The remaining 28.2% or approximately \$57,614.87 of the total yearly salaries would have been divided between the quarters ended March 31, 2004 and September 30, 2004.

The letter from [REDACTED] dated March 18, 2005, states:

Since the petitioner has elected to recognize account receivable on the cash basis, amounts due for services performed are not shown on Schedule L of each year's federal tax return and there is a mismatch between the expenses incurred and the revenue produced from those expenses. The petitioner should not be penalized due to the method they have chosen to recognize revenue and accounts receivables.

Schedule L of the Federal Tax Returns filed by the petitioner does not include accounts receivable due to the accounting method selected for recognizing accounts receivable on a cash basis.

* * *

Since the accounts receivable on Schedule L has been prepared on a cash basis, it does not include amounts billed but uncollected as at [sic] December 31, 2002, 2003, and 2004. The accounts receivable for these three periods is \$78,297 and \$158,894 and \$118,289, respectively. Schedule L does not have any accounts receivable listed for any particular year and these amounts are in addition to the net current assets listed on the federal income tax returns.

The AAO notes that the petitioner's tax returns were prepared pursuant to cash convention, in which revenue is recognized when it is received, and expenses are recognized when they are paid. This office would, in the alternative, have accepted tax returns prepared pursuant to accrual convention, if those were the tax returns the petitioner had actually originally submitted to IRS.

This office is not, however, persuaded by an analysis in which the petitioner, or anyone on its behalf, seeks to rely on tax returns or financial statements prepared pursuant to one method, but then seek to shift revenue or expenses from one year to another as convenient to the petitioner's present purpose. If revenues are not recognized in a given year pursuant to the cash accounting then the petitioner, whose

² CIS notes that the petitioner has submitted approximately 35 petitions for approval since 2000, but appears to actually employ between four and five employees.

³ The website at [REDACTED] visited on August 14, 2007, shows that [REDACTED] status as a certified public accountant expired as of December 31, 2005.

taxes are prepared pursuant to cash rather than accrual, and who relies on its tax returns in order to show its ability to pay the proffered wage, may not use those revenues as evidence of its ability to pay the proffered wage during that year. Similarly, if expenses are recognized in a given year, the petitioner may not shift those expenses to some other year in an effort to show its ability to pay the proffered wage pursuant to some hybrid of accrual and cash accounting. If the accountant wished to persuade this office that accrual accounting supports the petitioners continuing ability to pay the proffered wage beginning on the priority date, then the accountant was obliged to prepare and submit audited financial statements pertinent to the petitioning business prepared according to generally accepted accounting principles.

The letter from [REDACTED] CPA, dated April 25, 2005, references the CIS Interoffice Memorandum of May 4, 2004, entitled *Determination of Ability to Pay under 8 C.F.R. § 204.5(g)(2)*, and states:

Ability to pay is supposed to be shown from priority date (December 12, 2002) until the actual approval of lawful permanent residency. In various decisions USCIS has not allowed information prior to priority date to demonstrate ability to pay the proffered wage. USCIS treats each fiscal year separately for the purposes of ability to pay. If the full amount of proffered wage needs to be demonstrated from 2002-2004 then USCIS is requiring the petitioner to demonstrate that it can pay the wages of (\$81,000 per annum *3 years = \$243,000) when all that is needed to pay the beneficiary is approximately twenty five months worth of salary from the priority date of December 12, 2002 until the end of 2004 ($\$81,000/12*25 = \$168,750$).

[REDACTED] cites several non-precedent decisions in support of his claims. However, 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, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). In addition, while [REDACTED] requests that CIS prorate the proffered wage for the portion of the year that occurred after the priority date, we will not consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual 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), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

On appeal, counsel restates the contents of the letter from [REDACTED] CPA, dated April 25, 2005 and references excerpts from *VSC's Written Answers to AILA's Liaison Questions (3/4/03) Amended 7/10/03 cite as posted on AILA InfoNet at Doc. No. 03051341 (May 13, 2003)*. Counsel also cites *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) and claims that the petitioner has established its ability to pay the proffered wage of \$81,000 from the priority date and continuing to the present.

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 present matter, the petitioner submitted copies of the beneficiary's 2002 through 2004 Forms W-2 showing that the beneficiary earned wages of \$41,538.48, \$45,000, and \$45,000, respectively, in those years. The petitioner is obligated to establish that it has sufficient funds to pay the difference between the proffered wage of \$81,000 and the actual wages paid to the beneficiary. In this case, those differences for the years 2002 through 2004 would be \$39,461.52, \$36,000, and \$36,000, respectively.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the 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). In *K.C.P. Food Co., Inc. v. Sava*, the court held CIS had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that CIS should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054. *Chi-Feng Chang* further noted:

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

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

Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S, U.S. Income Tax Return for an S Corporation, state on page one, "Caution, Include only trade or business income and expenses on lines 1a through 21."

Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120 states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on lines 1 through 6 of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. See Internal Revenue Service, Instructions for Form 1120S, 2003, at <http://www.irs.gov/pub/irs-03/i1120s.pdf>, Instructions for Form 1120S, 2002, at <http://www.irs.gov/pub/irs-02/i1120s.pdf>, (accessed February 15, 2005).

In the instant case, the petitioner's 2002 through 2004 net incomes from Schedule K were -\$24,112, -\$58,451, and \$75,691, respectively.⁴ The petitioner could have paid the difference of \$36,000 between the proffered wage of \$81,000 and the actual wage paid of \$45,000 to the beneficiary in 2004 from its net income, but not the difference of \$39,461.52 and \$36,000 between the proffered wage of \$81,000 and the actual wages paid of \$41,538.48 and \$45,000, respectively, in 2002 and 2003. While it appears that the petitioner has established its ability to pay the proffered wage in 2004, it should be noted that the

⁴ It is noted that the amended tax returns do not increase the petitioner's net income. Rather, the petitioner now relies on net current assets to establish an ability to pay the beneficiary the full proffered wage.

petitioner has submitted additional petitions for approval, and, therefore, it must establish that it had sufficient funds to pay both the beneficiary's salary and the salary of the additional employees listed on the other petitions submitted. The petitioner has not established that it had sufficient funds from its net incomes to pay the salary of the beneficiary and the salary of the other employees of the additional petitions.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁵ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner's 2002 through 2004 original tax returns reflect net current assets of \$34,216, \$18,954, and \$3,594, respectively. The petitioner's 2002 through 2004 amended tax returns reflect net current assets of \$123,916, \$32,704, and \$3,594, respectively. The petitioner could not have paid the difference of \$36,000 between the proffered wage of \$81,000 and the actual wages paid to the beneficiary of \$45,000 from its net current assets (amended tax returns) in 2003 and 2004, but could have paid the difference of \$39,461.52 between the proffered wage of \$81,000 and the actual wages paid to the beneficiary of \$41,538.48 in 2002 from its net current assets (amended tax return). The petitioner could not have paid the difference between the proffered wage of \$81,000 and the actual wages paid to the beneficiary from its net current assets (original tax returns) in any of the years, 2002 through 2004. In addition, as mentioned previously, the petitioner has submitted additional petitions for approval, and, therefore, it must establish that it had sufficient funds to pay both the beneficiary's salary and the salary of the additional employees listed on the other petitions submitted. The petitioner has not established that it has sufficient funds from its net current assets to pay the beneficiary and the other employees listed on the additional petitions.

On appeal, counsel restates the contents of the letter from [REDACTED] CPA, dated April 25, 2005 and references excerpts from *VSC's Written Answers to AILA's Liaison Questions (3/4/03) Amended 7/10/03 cite as posted on AILA InfoNet at Doc. No. 03051341 (May 13, 2003)*. Counsel also cites *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) and claims that the petitioner has established its ability to pay the proffered wage of \$81,000 from the priority date and continuing to the present.

Counsel is mistaken. Counsel does not state how the written answers to *AILA's Liaison Questions* are binding on the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all

⁵ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

its employees in the administration of the Act, written answers to AILA are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

In his letter, dated April 25, 2005, [REDACTED] states that certain items on the petitioner's 2002 through 2004 federal tax returns "were treated incorrectly from an accounting and tax perspective and did not reflect the economic substance of the transactions." [REDACTED] also states that the "amended federal tax returns were prepared and submitted on April 7th at the Jacksonville, FL IRS office." Again, while [REDACTED] requests that CIS prorate the proffered wage for the portion of the year that occurred after the priority date, we will not consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual 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), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

As is clear, the petitioner has altered its total assets and liabilities. The accountant merely states that the total asset change is due to a loan receivable, and the total liability change is due to payroll liabilities. There is no explanation as to where the loan receivable came from or what the payroll liabilities included. 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)). However, as discussed above, even the petitioner's amended tax returns do not demonstrate its continuing ability to pay beginning on the priority date of December 12, 2002.

Finally, if the petitioner does not have sufficient net income or net current assets to pay the proffered salary, CIS may consider the overall magnitude of the entity's business activities. Even when the petitioner shows insufficient net income or net current assets, CIS may consider the totality of the circumstances concerning a petitioner's financial performance. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). In *Matter of Sonogawa*, the Regional Commissioner considered an immigrant visa petition, which had been filed by a small "custom dress and boutique shop" on behalf of a clothes designer. The district director denied the petition after determining that the beneficiary's annual wage of \$6,240 was considerably in excess of the employer's net profit of \$280 for the year of filing. On appeal, the Regional Commissioner considered an array of factors beyond the petitioner's simple net profit, including news articles, financial data, the petitioner's reputation and clientele, the number of employees, future business plans, and explanations of the petitioner's temporary financial difficulties. Despite the petitioner's obviously inadequate net income, the Regional Commissioner looked beyond the petitioner's uncharacteristic business loss and found that the petitioner's expectations of continued business growth and increasing profits were reasonable. *Id.* at 615. Based on an evaluation of the totality of the petitioner's circumstances, the Regional Commissioner determined that the petitioner had established the ability to pay the beneficiary the stipulated wages.

As in *Matter of Sonogawa*, CIS may, at its discretion, consider evidence relevant to a petitioner's financial ability that falls outside of a petitioner's net income and net current assets. CIS may consider such factors as the number of years that the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that CIS deems to be relevant to the petitioner's ability to pay the proffered wage. In this case, however, the petitioner has only provided three tax returns, 2002 through 2004, only one of which establishes the

petitioner's ability to pay the proffered wage of \$81,000, if the additional wages for the other petitions submitted are not included. These returns are also not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. In addition, there is no evidence of the petitioner's reputation throughout the industry.

The petitioner has presented two vastly different pictures of its current assets, with no documentation to show why the second version is more credible than the first.⁶ It is incumbent upon 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, 586 (BIA 1988).

The petitioner has not shown that the amended tax returns are more credible than the original returns. The petitioner has failed to submit credible evidence sufficient to demonstrate that it had the continuing ability to pay the proffered wage beginning on the priority date.

Again, we note that the petitioner has filed additional petitions in behalf of other beneficiaries with similar priority dates. Even accepting the net current assets claimed on appeal, which we do not, the petitioner has not demonstrated an ability to pay all of these beneficiaries with similar priority dates.

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 sustained that burden. Accordingly, the previous decision of the director will be affirmed, and the petition will be denied.

ORDER: The appeal is dismissed.

⁶ CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *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)).