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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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BE

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 31 2008  
EAC-05-051-51938

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

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 employment-based preference visa petition<sup>1</sup> was initially approved by the Director, Vermont Service Center. Based on a report of interview and investigation conducted by the American Embassy in New Delhi, India determining that fraudulent evidence of the beneficiary's qualifying experience was submitted in connection with the another immigrant petition filed by the petitioner on behalf of the beneficiary, the director subsequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a first-line supervisor/manager of food preparation (food service supervisor). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director found that the record did not include a response to the NOIR, and therefore, the grounds of revocation had not been overcome. The director revoked the approval of 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 the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's February 10, 2006 NOR, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date in the instant case is June 6, 2003.

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<sup>1</sup> The instant petitioner had filed an immigrant petition on the behalf of the same beneficiary on September 14, 2001 with the Vermont Service Center. The previous petition (EAC-01-274-52859) was filed with a request for substitution in the position of Indian cook and approved on December 12, 2001. However, the approval of the petition was revoked upon the recommendation from the American Embassy in New Delhi, India because it was determined that fraudulent evidence of the beneficiary's qualifying experience was submitted.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup>

On appeal, counsel submits an experience letter dated February 8, 2006 from [REDACTED] and two pay stubs for the beneficiary from [REDACTED] to verify the beneficiary's employment with [REDACTED]. Counsel also submits photographs, retail invoices, a telephone bill, menu, an income tax verification and a business certificate for [REDACTED], and a letter dated January 19, 2003 from [REDACTED], Member of Parliament, to [REDACTED] of [REDACTED] to demonstrate that [REDACTED] is currently existing and operating as a restaurant.

However, counsel does not explain the petitioner's failure to respond to the director's NOIR, and why the evidence had not been submitted in response to the director's NOIR.<sup>3</sup> Therefore, it is not clear whether the new evidence submitted on appeal is properly submitted. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

Other relevant evidence in the record includes two experience letters from [REDACTED] (one dated June 31, 1998 [REDACTED] June 31, 1998 letter) and the other dated August 10, 1999 [REDACTED] August 10, 1990 letter). The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel asserts that the beneficiary has been employed as a cook with his current employer, [REDACTED], since June 1, 1999.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion

<sup>2</sup> 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).

<sup>3</sup> The director's NOIR specifically requested additional work experience documentation.

<sup>4</sup> The error is from the original author of the letter.

of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The instant petition is for a substituted beneficiary.<sup>5</sup> Here, the original Form ETA 750 was accepted on June 6, 2003. Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of food service supervisor. Item 14 describes the requirements of the proffered position as follows:

- |     |                    |         |
|-----|--------------------|---------|
| 14. | Experience         |         |
|     | Job Offered        | 2 years |
|     | Related Occupation | Cook    |

The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements. However, Item 17 indicates that the beneficiary will supervise five (5) employees.

With the petition, the petitioner submitted a Form ETA 750B with information pertaining to the qualifications of the new beneficiary. The beneficiary set forth his credentials on Form ETA-750B and signed his name on December 3, 2004 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has been working 35 hours per week as an Indian specialty cook for [REDACTED] since June 1999. Prior to that, he also worked 40 hours per week as an Indian specialty cook for [REDACTED] from May 1996 to June 1998. The beneficiary did not represent his employment for the period from July 1998 to May 1999. He does not provide any additional information concerning his employment background on that form.

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.

The instant I-140 petition was submitted on December 13, 2004 with the [REDACTED] June 31, 1998 letter and the [REDACTED] August 10, 1999 letter as evidence pertinent to the beneficiary's qualifications as required by the above regulation.

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<sup>5</sup> An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memorandum from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *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).

The regulation requires such evidence must be in the form of a letter from a current or former employer or trainer and must 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. Both the experience letters in the record are on [redacted] letterhead and signed by [redacted] as the proprietor. The [redacted] June 31, 1998 letter stated concerning the beneficiary's work experience in pertinent part that:

This is to certify that [the beneficiary] ... had been working as Cook in our hotel since 20.05.1996 to 31.06.1998. He is expert in cooking all sorts of Punjabi and Indian [m]eals. He is punctual, regular, honest and hardworking youngman. His work and conduct during this period was found examplory[sic]. I wish him every success in his future career[sic]. He knows all sorts of Vegetarian and Non Vegetarian cooking.

The [redacted] August 10, 1999 letter stated concerning the beneficiary's work experience in pertinent part that:

This is to certify that [the beneficiary] ... had been working as Cook in our hotel since 1.6.1999 to till date. **He is punctual, regular, honest and hard working man.** He know[sic] all sorts of Vegetarian and Non Vegetarian cooking. His work & conduct during this period was found examplory[sic]. I wish him every success in his life.

These two letters were from the beneficiary's current employer and verified that the beneficiary was employed as a cook for at least two years. However, the two letters provided inconsistent information about the period of the beneficiary's employment. The [redacted] June 31, 1998 letter verified that the beneficiary started his employment on May 20, 1996, however, the [redacted] August 10, 1999 letter indicated June 1, 1999 as the beneficiary's stating date of the employment. Further, the [redacted] June 31, 1998 letter was dated June 31, 1998 and also certified that the beneficiary had been working since May 20, 1996 to June 31, 1998. However, there is no 31<sup>st</sup> day in June. It is impossible for anyone to work or date a letter on June 31. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition."

In addition, both letters did not verify the beneficiary's full-time employment, and thus neither of the letters could establish the beneficiary's qualifying experience for the proffered position. The two letters did not include a specific description of the duties the beneficiary performed as required by the regulation. Therefore, these two experience letters cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case. In addition, without a specific description of the duties the AAO cannot determine whether the beneficiary's more than two years of experience with [redacted] qualifies him to perform the duties of the proffered position set forth in Item 13 of the Form ETA 750A. The record of proceeding does not contain any evidence to support the beneficiary's qualifications. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered for the proffered position as required by the ETA 750 with these [redacted] letters.

The director's September 9, 2005 NOIR stated that:

It has now come to the attention of this office that a previous Immigrant Petition for Alien Worker (Form I-140 – EAC 01-274-52859) petition filed by the same employer (and subsequently approved on December 12, 2001) on behalf of the beneficiary was recently returned to this office because it was determined that fraudulent evidence of the beneficiary's work experience was submitted. The petitioner requested a labor substitution of the beneficiary for the original alien listed on the labor certification.

During the beneficiary's visa interview on July 16, 2002, the beneficiary was unable to answer rudimentary questions about the preparation of India cuisine. The beneficiary was requested to provide additional work experience documentation and re-interviewed on October 18, 2002. The beneficiary provided a job experience letter dated August 10, 1999, from his purported current employer, [REDACTED]. The beneficiary stated that he was still employed by the hotel and provided current telephone numbers. [CIS] attempted to contact the hotel. The telephone numbers were for a private residence and hardware shop. [CIS] was unable to verify the beneficiary's worker experience based on the information he provided. It appears that the beneficiary has made false claims to work experience. Had [CIS] been aware of the questionable nature of the evidence provided, the instant petition would have not been approved.

As previously noted, the record shows that the petitioner filed the immigrant petition EAC 01-274-52859 (the previous petition) on behalf of the beneficiary on September 14, 2001 and the previous petition was approved on December 12, 2001. With the previous petition, the petitioner submitted the same [REDACTED] June 31, 1998 and August 10, 1999 letters to establish the beneficiary's qualifying experience. In addition to the defects in the letters as discussed above, the interviews and investigation conducted by the United States Embassy in New Delhi, India demonstrate that the beneficiary failed to establish his claimed experience as an Indian cook because he was unable to answer rudimentary questions about the preparation of India cuisine at the interview. The fact that the numbers the investigator tried appeared to be for a private residence and hardware shop is not necessarily sufficient to conclude that the business of Shivalik does not exist. However, the AAO does not find that the record contains sufficient evidence to overcome the conclusion that the beneficiary has made false claims to work experience. The petitioner did not respond the director's NOIR, nor did counsel explain why the beneficiary was unable to answer rudimentary questions about the preparation of India cuisine at the interview.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). The AAO finds that the petitioner failed to establish the beneficiary's qualifying experience in the previous petition and instant petition and the director erred in approving both petitions. The director had good and sufficient cause to revoke the approval of this petition.

On appeal, counsel submits a new experience letter dated February 8, 2006 from [REDACTED] (February 8, 2006 letter). Although as previously discussed, under the circumstances of the instant case, the AAO need not, and will not, consider the sufficiency of any evidence submitted on appeal, the AAO also notes that the [REDACTED] February 8, 2006 letter would not be accepted as primary evidence to establish the beneficiary's qualifications in the instant case. The [REDACTED] February 8, 2006 letter states in pertinent part that:

This is to certify that [the beneficiary] has been working with us as a Cook since 1<sup>st</sup> June 1999. His working is entirely satisfactory and he knows his job very well. He is honest and hard working young man.

This letter is on [REDACTED] letterhead and signed by [REDACTED] as the proprietor. It appears to be a letter from the beneficiary's current employer and verifies that the beneficiary has been working as a cook for more than two years. However, similar with the two previous letters, the [REDACTED] February 8, 2006 letter provides inconsistent information about the starting date of the beneficiary's employment. The [REDACTED] February 8, 2006 letter indicates the beneficiary started his employment in the position of cook on June 1, 1999 while the [REDACTED] June 31, 1998 letter verified that the beneficiary started his employment on May 20, 1996. The record does not contain any independent solid evidence to resolve the inconsistencies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

In addition, the [REDACTED] February 8, 2006 letter does not verify the beneficiary's full-time employment, and does not include a specific description of the duties the beneficiary performed as required by the regulation. Therefore, this experience letter cannot be accepted as primary regulatory-prescribed evidence to establish the beneficiary's qualifications in the instant case even if the AAO had considered this letter as properly submitted evidence.

Counsel's assertions on appeal cannot overcome the grounds of the director's revocation. The AAO concurs with the director's decision and determines that the director had good and sufficient cause to revoke the petition's approval based on the insufficient evidence to support factual assertions presented by the beneficiary concerning his qualifications for the proffered position.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified additional grounds of ineligibility and will discuss these issues. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

In the instant case, the Form ETA-750A requires eight years of grade school as the minimum educational requirement. However, the record of proceeding does not contain any evidence to demonstrate that the beneficiary meets the eight years of grade school requirement. Therefore, the petitioner also failed to establish the beneficiary's qualifications because it failed to demonstrate that the beneficiary had at least eight years of grade school education before filing the labor certification application as required by the Form ETA 750.

The Form ETA-750A describes the job opportunity in details. The job offer consists of the name of job title "food service supervisor" set forth at Item 9, the duties of "under direction of management, assist with supervision of workers serving food to customers & in cleanliness of kitchen & dining areas. Assist with training workers and scheduling" set forth at Item 13 and that the beneficiary will supervise five employees set forth at Item 17.

The petitioner did not provide information about the number of employees currently employed on the petition. The record of proceeding does not contain any documents showing the number of the petitioner's current employees. Therefore, it is not clear whether the petitioner had at least five employees for the beneficiary to supervise. In fact, the petitioner claimed on the previous petition that it employed four employees. The number of employees the beneficiary will supervise is a material part of the terms and condition of the job opportunity. Without five employees to be supervised by the beneficiary, the labor certification application might not have been certified because a supervisory position cannot exist without enough number of employees to be supervised. If the petitioner had only four employees when it filed the labor certification application in 2003, it is likely that the petition contained a misrepresentation and that the job offer was not a fide bona one when it was offered to the beneficiary or the original alien for whom the labor certification application was initially filed. In either circumstance, the petitioner failed to demonstrate the petition is approvable. Section 212(a)(6)(C)(i) of the Act provides that "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured ) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."

Additionally, the petitioner has not demonstrated its continuing ability to pay the proffered wage beginning on the priority date. The regulation 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 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 beneficiary's proffered 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).

The priority date in the instant case is June 6, 2003. The proffered wage as stated on the Form ETA 750 is \$9.85 per hour (\$17,927 per year<sup>6</sup>). On the Form ETA 750B signed by the beneficiary on April 27, 2003, he did not claim to have worked for the petitioner.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner did not submit W-2 forms, 1099 forms or any other documents showing that the petitioner paid the beneficiary any compensation during the relevant years, and thus, the petitioner has not established that it employed and paid the beneficiary the proffered wage from the priority date in 2003 onwards.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's total income and wage expense is misplaced. Showing that the petitioner's total income exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. Reliance on the petitioner's depreciation in determining its ability to pay the proffered wage is misplaced. The court in *K.C.P. Food Co., Inc. v. Sava* specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

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<sup>6</sup> Based on working 35 hours per week as set forth on the Form ETA 750A.

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 Chang* at 537.

The record contains a copy of the petitioner's Form 1120, U.S. Corporation Income Tax Return, for its fiscal year of 2003. According to the tax return, the petitioner is structured as a C corporation and its fiscal year runs from May 1 to April 30. The petitioner's tax returns for the fiscal year of 2003 (May 1, 2003 to April 30, 2004) covers the priority date of June 6, 2003 in the instant case, therefore, it is the tax return for the year of the priority date. The petitioner's tax return for 2003 demonstrates that the petitioner had net income<sup>7</sup> of \$14,815 in its fiscal year of 2003, and therefore, the petitioner did not have sufficient net income to pay the proffered wage of \$17,927 annually that year.

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.<sup>8</sup> 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 the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The tax return shows that the petitioner's net current assets during its fiscal year of 2003 were \$(44,253). Therefore, the petitioner did not have sufficient net current assets to pay the proffered wage in 2003.

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<sup>7</sup> Taxable income before net operating loss deduction and special deductions as reported on Line 28 of the Form 1120.

<sup>8</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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 as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

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 approved or 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 approved and pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (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 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). CIS records show that the instant petitioner had four other immigrant petitions either filed or approved in 2003.<sup>9</sup> Therefore, the petitioner must establish its ability to pay the five proffered wages, including the instant one, in 2003. The record does not contain any evidence showing that the petitioner had established its ability to pay for a single beneficiary in 2003.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, its net income or its net current assets.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The director's decision on February 10, 2006 is affirmed. The approval of the petition remains revoked.

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<sup>9</sup> These four petitions are as follows: EAC-02-206-51217, EAC-02-218-52299, EAC-03-094-50723 and EAC-03-158-51273.