

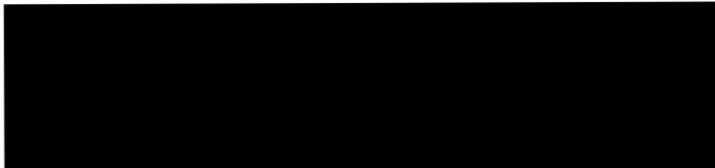


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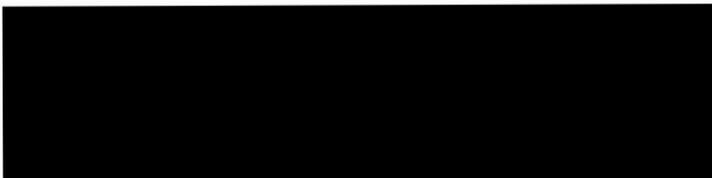


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUL 16 2008
SRC 06 274 52989

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

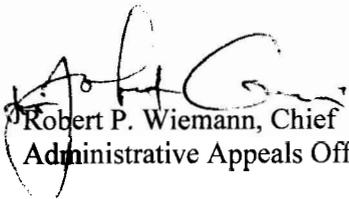
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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 of the Texas Service Center denied the preference visa petition and certified her decision to the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner is an information technology consultant. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).¹ As set forth in the director's November 14, 2006 decision, the director determined that (a) there was no willful misrepresentation or fraud concerning the labor certification process pursuant to 20 C.F.R. § 656.30(d); (b) that a limited liability company may restructure its ownership after filing an application for labor certification and continue to remain the same limited liability company; (c) that a non-member of a limited liability company may not act as a representative of the petitioner by signing the labor certification application. Thus, the director determined that the petitioner failed to demonstrate that a bona fide job offer was made by the petitioner at the time of filing the Form ETA 750 with the DOL. The director denied the petition accordingly.

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

The AAO reviewed the record of proceeding under its *de novo* review authority. 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). Counsel submitted a brief with additional evidence in connection with the director's certification. On certification, counsel asserts that Mr. [REDACTED] was an authorized representative of the petitioner when he signed the Form ETA 750. He cites the instructions to Form ETA 750 which state that "[a]ll copies of this form must bear the original signature of the employer or the employer's duly authorized representative with hiring authority." He also cites 20 C.F.R. § 656.3 which defines authorized representative as "an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters." Counsel further states that in December 2003, Mr. [REDACTED] was "one of the most senior employees" of the petitioner with responsibility for hiring employees, setting pay levels, negotiating benefits and salaries, and overseeing projects, among other duties.

¹ The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary filed prior to July 16, 2007 retains the same priority date as the original ETA 750. Memo. From Donald Neufeld, Acting Associate Director, Domestic Operations, United States Citizenship and Immigration Services (CIS), to Regional Directors, *et al.*, *Interim Guidance Regarding the Impact of the [DOL's] final rule, Labor Certification for Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity, on Determining Labor Certification Validity and the Prohibition of Labor Certification Substitution Requests*, <http://www.uscis.gov/files/pressrelease/DOLPermRule060107.pdf> (accessed February 26, 2008).

He also cites three Board of Alien Labor Certification Appeals (BALCA) cases to support his assertion that Mr. [REDACTED] was an authorized representative of the petitioner when he signed the Form ETA 750. Counsel also provides an undated statement from [REDACTED] indicating that Mr. [REDACTED] was an employee authorized to sign the Form ETA 750. Mr. [REDACTED] states that as the sole owner of the petitioner at the time the Form ETA 750 was signed, he gave authority to Mr. [REDACTED] to sign the Form ETA 750 on behalf of the petitioner.

The first issue to be discussed in this case is whether there was willful misrepresentation or fraud concerning the labor certification process pursuant to 20 C.F.R. § 656.30(d). The director issued a Notice of Intent to Deny (NOID) to the petitioner on October 12, 2006 stating a finding of possible misrepresentation in the labor certification process. The director noted that the facts suggest that the petitioner originally entered into the labor application process with a preconceived intent to discard all qualified U.S. workers in order to reserve the job opportunity for the original beneficiary because of the ownership relationship between the petitioner and the original beneficiary of the labor certification. The NOID included a concurrent intent to invalidate the supporting labor certification upon a finding of willful misrepresentation in its filing. The director requested additional information from the petitioner, including its organizational documents and evidence of its owners and officers, to overcome the grounds for intended denial and subsequent invalidation of the labor certification. In response, the petitioner asserted that the original beneficiary of the labor certification had no ownership interest in the petitioner. The petitioner claims that its 2003 IRS Form 1120 which identified the original beneficiary as owning a 33% membership interest in the petitioner was filed in error, and that the original beneficiary was never a member of the petitioner. The petitioner cited its annual reports filed with the Illinois Secretary of State as support for its assertion that it has been a single-member limited liability company since its organization, and that the original beneficiary was never a member of the petitioner. The petitioner also stated that it plans to file a corrected tax return for 2003.

In her decision, the director stated that the petitioner has asserted no ownership in the petitioner by the original beneficiary of the labor certification and has provided documentation of the petitioning company as a single-member limited liability company. Therefore, the director determined that there was no willful misrepresentation or fraud concerning the labor certification process pursuant to 20 C.F.R. § 656.30(d).

However, the petitioner has submitted no evidence to support its assertion that the original beneficiary of the labor certification had no ownership interest in the petitioner.² The petitioner asserted that [REDACTED] was the sole member and manager of the petitioner from March 28, 2002 through March 19, 2004, and that [REDACTED] was the sole member and manager of the petitioner from March 19, 2004 to the present. With the petition, the petitioner submitted an undated letter indicating that it was founded in 2002 by [REDACTED]. The letter was signed by Mr. [REDACTED] in his capacity as President of the petitioner. The petitioner also submitted its federal income tax returns for 2003, 2004 and 2005 which establish the following: (a) on the petitioner's federal income tax return for 2003 signed by Mr. [REDACTED] in his capacity as manager of the petitioner on April 1, 2004, the petitioner indicated that the original beneficiary of the labor certification was an officer of the petitioner and owned 33% of the petitioner and that Mr. [REDACTED] was an officer of the petitioner and owned 33% of the petitioner;³ (b) on the petitioner's unsigned federal income tax return for 2004, the petitioner indicated

² 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).

³ This office notes that although the petitioner was organized on March 28, 2002, the petitioner did not submit its 2002 federal income tax return. Further, the petitioner claims in response to the director's NOID that it is amending its 2003 federal income tax return. However, the petitioner did not submit an IRS certified copy of its amended return in connection with the director's certification. A petitioner may not make material changes

that Mr. [REDACTED] was an officer of the petitioner and owned 0% of the petitioner;⁴ and (c) on the petitioner's federal income tax return for 2005 signed by Mr. [REDACTED] in his capacity as manager of the petitioner on March 13, 2006, the petitioner indicated that Mr. [REDACTED] was an officer of the petitioner and owned no membership interests in the petitioner.⁵ The petitioner's filings with the Illinois Secretary of State indicate the following: (a) the petitioner's Articles of Organization indicate that it was organized as a limited liability company in the State of Illinois on March 28, 2002 by [REDACTED] as organizer, manager and registered agent; (b) the petitioner's annual report dated March 3, 2003 lists [REDACTED] as the manager of the petitioner; (c) the petitioner's Articles of Amendment dated March 19, 2004 and signed by [REDACTED] as manager, propose to admit a new manager, [REDACTED], and to allow for the withdrawal of [REDACTED] as manager; (d) the petitioner's annual report dated February 18, 2005 lists [REDACTED] as the manager of the petitioner; and (e) the petitioner's annual report dated February 14, 2006 lists [REDACTED] as the manager of the petitioner. Pursuant to a Resignation notice signed by [REDACTED] on March 19, 2004, Mr. [REDACTED] resigned as a member and manager of the petitioner "effective as of the date which a new Manager has been appointed."

The only evidence submitted by the petitioner to establish its ownership is its federal income tax returns. As set forth above, the petitioner's tax returns do not support the petitioner's claims that that the original beneficiary of the labor certification had no ownership interest in the petitioner, that [REDACTED] was the sole member of the petitioner from March 28, 2002 through March 19, 2004, and that [REDACTED] was the sole member of the petitioner from March 19, 2004 to the present. The petitioner has failed to resolve the inconsistencies in the record regarding its ownership. Therefore, this matter will be remanded to the director to further evaluate whether there was willful misrepresentation or fraud concerning the labor certification process pursuant to 20 C.F.R. § 656.30(d).

The second issue to be discussed in this case is whether a limited liability company (LLC) may restructure its ownership after filing an application for labor certification and continue to remain the same LLC. As noted by the director, a limited liability company is an entity separate from its members.⁶ Therefore, a limited liability company's membership may generally change without affecting the validity of the entity.⁷

to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

⁴ If Mr. [REDACTED] became the sole member of the petitioner on March 19, 2004, the petitioner's 2004 federal tax return should have listed Mr. [REDACTED] as owning 100% of the membership interests in the petitioner. Instead, the tax return lists him as owning 0% of the membership interests in the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

⁵ If Mr. [REDACTED] remained the sole member of the petitioner in 2005, the petitioner's 2005 federal tax return should have listed Mr. [REDACTED] as owning 100% of the membership interests in the petitioner. Instead, the tax return indicates he owns no membership interests in the petitioner.

⁶ A limited liability company is an entity formed under state law by filing articles of organization. Members of an LLC are generally not liable for its debts. An LLC may be classified for federal income tax purposes as if it were a sole proprietorship, a partnership or a corporation. If the LLC has only one owner, it will automatically be treated as a sole proprietorship unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. If the LLC does not elect its classification, a default classification of

The third issue to be discussed in this case is whether a non-member of a limited liability company may act as a representative of the petitioner by signing the labor certification application. The director determined that that a non-member of a limited liability company may not act as a representative of the petitioner by signing the labor certification application. However, this determination fails to take into account the ability of a manager, who is not a member of a petitioning entity, to act as a representative of a petitioning limited liability company. The petitioner was organized under the laws of the State of Illinois. In Illinois, a limited liability company may be managed by a manager who is not a member.⁸ In a manager-managed LLC, unless otherwise provided by 805 Ill. Comp. Stat. 180/15-1(c), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.⁹ Therefore, if the Form ETA 750 was signed by the petitioner's manager, then the signature is valid. Further, as noted by counsel on appeal, an authorized representative of the petitioner, including a non-manager employee, may sign the ETA Form 750. In the instant case, the Form ETA 750 was signed by ██████ in his capacity as manager of the petitioner on December 3, 2003. According to the evidence submitted by the petitioner, Mr. ██████ did not become a member or manager of the ██████ until March 19, 2004.¹⁰ While ██████ had the authority to sign the Form ETA 750 on behalf of the petitioner in his capacity as manager of the petitioner, Mr. ██████ did not. Counsel asserts on certification that Mr. ██████, an employee, was authorized by the petitioner to sign the Form ETA 750. However, the record contains no evidence, such as payroll statements, paystubs or employment tax documents, of Mr. ██████'s employment by the petitioner prior to 2004.¹¹ Further, Mr. ██████ listed his title as "Manager" of the petitioner on Form ETA 750, but counsel

partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. The election referred to is made using IRS Form 8832, Entity Classification Election. See <http://www.irs.gov/pub/irs-pdf/f8832.pdf> (accessed July 15, 2008). The petitioner did not submit its IRS Form 8832 in connection with the instant petition.

⁷ This office notes that under 20 C.F.R. § 656.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). Where the petitioner is owned by the person applying for position, it is not a *bona fide* offer. See *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992). Therefore, while a limited liability company's membership may change without affecting the validity of the entity, a petitioner cannot establish that it has made a *bona fide* job offer to a beneficiary if the petitioner is owned by the beneficiary. This office also notes that Internal Revenue Code (I.R.C.) § 706(c)(2)(A) provides that the taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates. Additionally, I.R.C. §708(b)(1)(B) generally provides for the taxable year of the partnership to close if there has been a sale or exchange of 50% or more of the total interest in partnership capital and profits within a 12-month period.

⁸ See 805 Ill. Comp. Stat. 180/15-1(b).

⁹ See 805 Ill. Comp. Stat. 180/15-1(b)(2).

¹⁰ This office also notes that the posting notice submitted by the petitioner in response to the director's NOID is signed by ██████ in his capacity as President of the petitioner. Additionally, the petitioner's letter submitted in support of the petition was signed by ██████ in his capacity as President of the petitioner. While the petitioner's tax returns indicate that it had officers in 2003, 2004 and 2005, the other evidence submitted by the petitioner does not establish that it elected officers. Further, the evidence does not establish the duties of the officers of the petitioner.

¹¹ The petitioner's 2003 tax return indicates that Mr. ██████ was a 33% owner of the petitioner and devoted

now claims that he was a senior employee. Therefore, this matter will be remanded to the director to further evaluate whether the application for labor certification was signed by a non-legal representative of the petitioner.

The AAO thus affirms the director's decision that a limited liability company may restructure its ownership after filing an application for labor certification and continue to remain the same limited liability company. However, the petitioner has failed to demonstrate that the original beneficiary of the labor certification had no ownership interest in the petitioner and that the Form ETA 750 was properly signed by the petitioner. Therefore, this matter will be remanded to the director to further evaluate whether there was willful misrepresentation or fraud concerning the labor certification process pursuant to 20 C.F.R. § 656.30(d) and whether the Form ETA 750 was properly signed by the petitioner.

Beyond the decision of the director, the fourth issue to be discussed in this case is whether the petitioner has shown its continuing ability to pay the proffered wage beginning on the priority date.¹² 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 either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). Here, the proffered wage as stated on the Form ETA 750 is \$76,732.00 per year and the priority date is December 23, 2003. Relevant evidence in the record includes the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Returns, for 2003, 2004 and 2005. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner is structured as a limited liability company. On the petition, the petitioner claimed to have been established in March 2002, to have a gross annual income of \$1,500,000.00, to have a net annual income of \$250,000.00 and to currently employ 23 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the

67% of his time to the business. However, the petitioner claims this tax return was filed in error. On remand, the director shall request an IRS-certified copy of the petitioner's amended 2003 federal income tax return to corroborate that the amended return was actually processed by the IRS.

¹² 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*, 229 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 cases on a de novo basis).

Form ETA 750B, signed by the beneficiary on September 19, 2006, the beneficiary claimed to have worked for the petitioner from June 2006 to the date he signed the Form ETA 750B.¹³

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 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 has not established that it employed and paid the beneficiary the full proffered wage from the priority date or subsequently.

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).

For a limited liability company taxed as a C corporation, CIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on November 13, 2006 with the receipt by the director of the petitioner's submissions in response to the director's NOID. The petitioner's tax returns demonstrate its net income for 2003, 2004 and 2005, as shown in the table below.¹⁴

- In 2003, the Form 1120 stated net income of \$7,667.00.
- In 2004, the Form 1120 stated net income of \$3,873.00.
- In 2005, the Form 1120 stated net income of \$19,317.00.

¹³ On certification, counsel provides a Form I-797A dated July 22, 2005, issued to the petitioner indicating that the petitioner's H-1B nonimmigrant petition on the beneficiary's behalf was approved valid from July 22, 2005 through November 25, 2006. Counsel states in his brief on certification that the beneficiary began employment with the petitioner on July 22, 2005, and not June 2006 as set forth by the beneficiary on Form ETA 750B. The beneficiary indicates on his Form ETA 750B that he worked for another company until May 2006. This inconsistency has not been resolved. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

¹⁴ This office notes that the petitioner's 2003 and 2004 federal tax returns list an address in Indiana, and the petitioner's 2005 federal income tax return lists a Texas address. However, a review of the corporate records in Indiana and Texas indicates that the petitioner is not registered as a foreign limited liability company in Indiana or Texas. *See* http://secure.in.gov/sos/bus_service/online_corps/name_search.aspx (accessed July 10, 2008) and <http://ecpa.cpa.state.tx.us/coa/Index.html> (accessed July 10, 2008).

Therefore, for the years 2003, 2004 and 2005, the petitioner did not have sufficient net income to pay the proffered wage of \$76,732.00.

If the net income the petitioner demonstrates that 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 net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.¹⁵ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. 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 petitioner's tax returns demonstrate its end-of-year net current assets for 2003, 2004 and 2005, as shown in the table below.

- In 2003, the Form 1120 stated net current assets of \$3,695.00.
- In 2004, the Form 1120 stated net current assets of \$8,851.00.
- In 2005, the Form 1120 stated net current assets of \$3,856.00.

Therefore, for the years 2003, 2004 and 2005, the petitioner did not have sufficient net current assets to pay the proffered wage of \$76,732.00.

Thus, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner has 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, or its net income or net current assets.¹⁶

¹⁵ 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 as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

¹⁶ CIS electronic records show that the petitioner filed at least four other I-140 petitions which have been pending during the time period relevant to the instant petition. 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 (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). *See also* 8 C.F.R. § 204.5(g)(2). The record in the instant case contains no information about the proffered wage for the beneficiaries of those petitions, about the current immigration status of the beneficiaries, whether the beneficiaries have withdrawn from the visa petition process, or whether the petitioner has withdrawn its job offers to the beneficiaries. Furthermore, no information is provided about the current employment status of the beneficiaries, the date of any hiring and any current wages of the beneficiaries. Since the record in the instant petition fails to establish the petitioner's ability to pay the proffered wage to the single beneficiary of the instant petition, it is not necessary to consider further whether the evidence also establishes the petitioner's ability to pay the proffered wage to the beneficiaries

Therefore, this matter will be remanded. The director must issue a new denial notice, containing specific findings that will afford the petitioner the opportunity to present a meaningful appeal. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is unapprovable for the reasons discussed above. Therefore, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.

of the other petitions filed by the petitioner, or to other beneficiaries for whom the petitioner might wish to submit I-140 petitions based on the same approved ETA 750 labor certifications.