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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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FILE: EAC 06 091 50087 Office: NEBRASKA SERVICE CENTER Date: OCT 22 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition and a subsequent motion to reopen were denied by the Director, Nebraska Service Center, and the visa petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record shows that the appeal was properly filed by an attorney representing the petitioner. However, the AAO received a letter on June 24, 2008 in regard to another immigrant petition filed by the petitioner from the executor of the attorney's estate informing the AAO that the attorney of record died on November 2, 2007 and instructing the AAO to direct any and all future correspondence to the petitioner. Therefore, the AAO will provide its decision to the petitioner only at the address provided by the attorney's executor.

The petitioner is a fast food store. It seeks to employ the beneficiary permanently in the United States as a baker. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

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 original March 15, 2007 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.

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the 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 CFR § 204.5(d). The priority date in the instant petition is April

25, 2001. The proffered wage as stated on the Form ETA 750 is \$12.00 per hour (35 hour week) or \$21,840 annually.

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>1</sup>. Relevant evidence submitted on appeal includes counsel's brief, copies of the petitioner's 2005 and 2006 Form 1120S, U.S. Income Tax Return for an S Corporation, copies of various websites related to an S Corporation, a copy of an article in the AILA Handbook for the year 2005-2006, a letter, dated April 2, 2007, from [REDACTED], CEO of B.A.P.S. Management Corporation, and a copy of a Board of Alien Labor Certification Appeals (BALCA) decision (*Matter of Ranchito Coletero* 2002-INA-105 (2004 BALCA)). Other relevant evidence includes copies of the petitioner's 2001 through 2004 Forms 1120S and copies of the 2001 through 2005 Forms 1040, U.S. Individual Income Tax Returns, for the petitioner's owner. The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's 2001 through 2006 Forms 1120S reflect ordinary incomes or net incomes of -\$15,812, -\$87,146 (Schedule K), \$7,912, -\$20,820, \$75,453, and \$115,320 (Schedule K), respectively. The petitioner's 2001 through 2005 Forms 1120S also reflect net current assets of -\$99,272, -\$169,701, -\$132,984, -\$78,151, -\$93,546, and -\$16,600, respectively.

The 2001 through 2005 Forms 1040 for the petitioner's owner reflect adjusted gross incomes of \$171,391, \$150,532, \$185,374, \$124,569, and \$608,942, respectively.

The letter, dated April 2, 2007, from [REDACTED] states:

This is to certify that I am the managing director of BAPS Management Corporations, who manages 16 Corporations and total employees are more than 100 and [the petitioner] is part of BAPS management Corp. These corporations are in existence since 2001 and at present they are working and in good standing.

On appeal, counsel asserts:

It is conceded that the grounds stated in your letter are very strong but they are not exhaustive but narrative. There can be another grounds or circumstances required to be considered such as reasonable expectation of future financial viability, as to potentiality of profit, other assets in the hand of the employer meaning that the employer owns other Corporations, personal income, etc. Totality of test should be employed as it is more relevant and as discussed hereinafter this being an S Corporation that test is legal and proper.

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<sup>1</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). 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).

Please note that 9/11 was a major factor and player which rendered many businesses in [the] negative in the year 2001 and its effect continued for three to four years. Petitioner was not an exception. You have to consider whether the business is viable and can employ the beneficiary. This business has made initial loss but made profit in 2005 of \$75,453.00 and in 2006 of \$134,276. This shows that we have [the] ability to pay wages. A copy of tax returns are attached and marked as Exhibit A.

\* \* \*

[The petitioner] is managed by BAPS Management Corporation, who owns 16 other Corporation[s] now but had 10 Corp in the year 2001 owned by [the] same individual, i.e. Alka Patel. The total number of employees is over 100. According to 8 C.F.R. § 204.5(g)(2), a statement made by the financial officer is acceptable and could establish ability to pay wages. A copy of the letter from the managing director, who discharges the function of financial officer is attached and marked exhibit B. A list of corporations managed by BAPS Management Corporation is attached.

Please note that this is an S corporation and a family business and not a C corporation. C corporation, which is distinct and separate entity and there is double taxation. In order to avoid that people opt for S Corporation, which is more like proprietorship business profit and loss passes directly to the individual owner and [is] reflected on owner's 1040. The owner has more direct control and test of totality of assets are to be considered. See 26 U.S.C. Sections 1361, 1363, 13(e)(2) AND 1373 will support our submission. I attach relevant copies of the sections for your review. This clearly shows that S Corp is more like an individual where an individual can show his other assets to pay wages. We attach copies of 1040 from the employer since 2001 to this date in this appeal. Which shows sufficient income to pay the beneficiaries salary or wages? We attach copies of relevant Internal Revenue Act aka 26 U.S.C. marked Exhibit C.

I would like to draw your kind attention to the fact that there is exhaustive article in AILA Handbook for the year 2005-6 at 277 on ability to pay wages and relevant discussion regarding S corporation starts from page 285 onwards. I attach [a] copy of the article for your kind review marked Exhibit D. Basically it states that S Corporation setting is more like individual and totality of asset test should be considered.

\* \* \*

Relative to the foregoing tax structure and tax liability of the S-Corporation, USCIS should consider not only the initial evidence of tax return on 1120S, but also the other material documenting the shareholder's personal financial capacity when evaluating the ability to pay.

*Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967) allows the employer to show ability to pay if it has a reasonable expectation of future financial profit such that the ability to pay [the] proffered wage is fulfilled upon the alien obtaining permanent residence.

Employer has shown significant increases [in] income since 2004, 2005, and 2006 subsequent to the filing of the petition. It is not uncommon for an employer to suffer losses in some years but picking up in subsequent years. In 2005, the employer has shown an income of over \$75,000, for 2006, it has [a] profit of \$134,276. Proof attached.

In *Matter of* ██████████ 2002-INA-105 (2004 BALCA) held an individual's farming operation showing losses can be supplement losses by other income of the owner personal tax returns. A copy is attached marked Exhibit E.

Please note that petitioner is part of 16 corporations owned by the family now and ten corporations in the year 2001. Where they employ more than 100 employees. A letter from the managing shareholder showing that the employer owned 16 corporations and made gross income of \$13,873,982.00 in the year 2006 and continued till this date. 8 C.F.R. § 204.5(g)(2). Thus the employer is satisfying this need of ability to pay wages. Abstract marked Exhibit F of 2001-2002 for all the S Corp is attached herewith.<sup>2</sup>

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).

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on January 16, 2002, the beneficiary does not claim the petitioner as a past or present employer. In addition, counsel has not submitted any Forms W-2 or Forms 1099-MISC, Miscellaneous Income, issued by the petitioner on behalf of the beneficiary, as proof of the beneficiary's employment with the petitioner. Therefore, the petitioner has not established that it employed the petitioner in the pertinent years (2001 through 2006), and it is obligated to show that it had sufficient funds to pay the entire proffered wage of \$21,840 in those years. In addition, the AAO notes that the petitioner has filed additional Forms I-140 with priority dates in the same year or subsequent years; and,

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<sup>2</sup> 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, the AAO will not consider the petitioner's "abstract" when determining the petitioner's continuing ability to pay the proffered wage of \$21,840 from the priority date of April 25, 2001.

therefore, the petitioner is obligated to show that it had sufficient funds to pay all of the proffered wages for all the beneficiaries filed for with those priority dates.<sup>3</sup>

As an alternative means of determining the petitioner's ability to pay the proffered wage, CIS will next examine the petitioner's net income figure as reflected on the petitioner's federal income tax return, 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 federal case law. *See Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9<sup>th</sup> Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd.*, 703 F.2d 571 (7<sup>th</sup> Cir. 1983). In *K.C.P. Food Co., Inc.*, the court held that CIS had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. 623 F.Supp at 1084. The 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. *See Elatos Restaurant Corp.*, 632 F. Supp. at 1054. The court in *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 Chang*, 719 F. Supp. 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 IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003) or line 17e (2004-2005) of Schedule K. *See Instructions for Form 1120S*, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed March 22, 2007) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner did not have additional 2001 and 2003 through 2005 income and deductions shown on its Schedule K, the petitioner's net income is found on line 21 of page one of the petitioner's IRS Form 1120S. Because the petitioner did have additional 2002 and 2006 deductions shown on its Schedule K, the petitioner's net income is found on line 23 of Schedule K for 2002 and line 17e of Schedule K for 2006.

In the instant case, the petitioner's net incomes for 2001 through 2006 were -\$15,812, -\$87,146, \$7,912, -\$20,820, \$75,453, and \$115,320, respectively. The petitioner could have paid the proffered wage of \$21,840 from its net incomes in 2005 and 2006, but not in 2001 through 2004. Therefore, the petitioner has established its ability to pay the proffered wage in 2005 and 2006, but not in 2001 through 2004.

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<sup>3</sup> The AAO notes that the beneficiaries of two of the additional Forms I-140 live at the same address as the current beneficiary.

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.<sup>4</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 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 2001 through 2004 net current assets were -\$99,272, -\$169,701, -\$132,984, and -\$78,151, respectively. The petitioner could not have paid the proffered wage of \$21,840 from its net current assets in 2001 through 2004. Therefore, the petitioner has not established its ability to pay the proffered wage in 2001 through 2004.

On appeal, counsel claims that the petitioner's owner's personal assets should be considered when determining its ability to pay the proffered wage of \$21,840. Counsel also claims that the petitioner should be treated as a sole proprietor since the corporation passes the profit and losses directly to the shareholders who pay taxes and apply them against other income when filing their personal returns. In addition, counsel claims that a statement from BAPS Management Corporation should be accepted as proof of the petitioner's ability to pay the proffered wage. Counsel further claims that "9/11 was a major factor and player which rendered many businesses in [the] negative in the year 2001 and its effect continued for three to four years." Counsel cites *Matter of Ranchito Coletero* 2002-INA-105 (2004 BALCA), *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967), and the AILA Handbook in support of his contentions.

Counsel is mistaken. The petitioner is structured as an S corporation,<sup>5</sup> and because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

With regard to CIS accepting the letter from the CEO of BAPS Management Corporation, if the petitioner reads the regulation at 8 C.F.R. § 204.5(g)(2) closely, he will discover that it states that CIS *may* accept a statement from a financial officer of the organization which establishes the prospective employer's ability to

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<sup>4</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.

<sup>5</sup> Shareholders of an S Corporation have limited legal liability. Generally, a shareholder is liable for the debts and liabilities of the corporation to the extent of his or her investment. Personal assets usually are not at risk.

pay the proffered wage. CIS is not obligated to do so, and in this case, the petitioner does not employ 100 or more employees, only BAPS Management Corporation does, and BAPS Management Corporation is not obligated to pay the proffered wage of \$21,840 to the beneficiary from the priority date of August 25, 2001. The petitioner is obligated to do so.<sup>6</sup>

With regard to the AILA Handbook, counsel has not provided a published citation relating to treating an S corporation as a sole proprietor. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all CIS 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).

Counsel cites *Ranchito Coletero*, 2002-INA-104 (2004 BALCA) for the premise that entities in an agricultural business regularly fail to show profits and typically rely upon individual or family assets. Counsel does not state how the Department of Labor's (DOL) Board of Alien Labor Certification Appeals (BALCA) precedent is binding on the AAO. Again, 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, BALCA 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). Moreover, *Ranchito Coletero* deals with a sole proprietorship and is not directly applicable to the instant petition, which deals with a corporation.

With regard to the events of September 11, 2001, the record of proceeding contains no evidence specifically connecting the petitioner's business decline to the events of September 11, 2001, not even a statement from the petitioner showing a loss or claiming difficulty in doing business specifically because of that event. A mere broad statement by counsel that, because of the nature of the petitioner's industry, its business was impacted adversely by the events of September 11, 2001, cannot by itself, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Rather, such a general statement merely suggests, without supporting evidence, that the petitioner's financial status might have appeared stronger had it not been for the events of September 11, 2001.

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

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<sup>6</sup> The AAO notes that a letter from BAPS Management Corporation, dated January 2, 2007 states that BAPS Management Corporation manages 19 corporations. *Matter of Ho*, 19 I&N Dec. 582, 591 - 592 (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.

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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.

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, the petitioner’s tax returns indicate it was incorporated in 1999. The petitioner has provided its tax returns for 2001 through 2006, with only the 2005 and 2006 tax returns establishing the petitioner’s ability to pay the proffered wage of \$21,840. In addition, the tax returns are not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. There is also no evidence of the petitioner’s reputation throughout the industry or of any temporary and uncharacteristic disruption in its business activities. Furthermore, the petitioner has filed additional immigrant petitions with the same or similar priority dates. Therefore, the petitioner must establish that it had sufficient funds to pay all the wages from the priority date and continuing to the present. 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 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2). Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal do not overcome the decision of the director.

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.