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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 06 226 53001

Office: NEBRASKA SERVICE CENTER

Date: JAN 02 2009

IN RE:

Petitioner:

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Other Worker Pursuant to § 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a gardening and landscaping company. **It seeks to employ the beneficiary** permanently in the United States as a landscaping and grounds keeping worker. 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 3, 2007, decision, 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)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, 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 either be in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [U.S. Citizenship and Immigration Services (USCIS)].

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 \$12.40 per hour or \$25,792 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 appeal¹. Relevant evidence submitted on appeal includes counsel's brief; copies of the petitioner's previously submitted 2001 and 2002 Forms 1120, U.S. Corporation Income Tax Returns, for the fiscal years February 1 through January 31 (Employer Identification Number (EIN [REDACTED])); copies of the previously submitted 2003 and 2004 Forms 1120 for [REDACTED] for the fiscal years November 1 through October 31 (EIN [REDACTED]); copies of the previously submitted 2001 through 2003 Forms W-2, Wage and Tax Statements, issued by the petitioner on behalf of the beneficiary (social security number [REDACTED]); copies of the previously submitted 2004 and 2005, and the 2006 Forms W-2, issued by [REDACTED] on behalf of the beneficiary (social security number [REDACTED]); copies of the petitioner's bank statements from Wells Fargo for the periods ending January 31, 2002 and January 31, 2003; a copy of a bank statement for SDA Liquidating Trust from Wells Fargo for the period ending January 13, 2004; and copies of bank statements for [REDACTED] c. from Premier Commercial Bank for the periods ending January 31, 2005 and October 31, 2005. Other relevant evidence includes copies of Forms DE-6, Quarterly Wage and Withholding Reports, for the last three quarter of 2005 and the first two quarters of 2006 for [REDACTED] c. and copies of the 1999 and 2000 Forms W-2, issued by the petitioner on behalf of the beneficiary (social security number [REDACTED]). The record does not contain any other evidence relevant to the petitioner's ability to pay the proffered wage.

The petitioner's 2001 and 2002 Forms 1120 reflect taxable income before net operating loss deduction and special deductions or net incomes of -\$28,864 and -\$16,646, respectively. The petitioner's 2001 and 2002 Forms 1120 also reflect net current assets of -\$35,487 and -\$65,015, respectively.²

The 2003 and 2004 Forms 1120 for [REDACTED] reflect taxable income before net operating loss deduction and special deductions or net incomes of -\$81,097 and -\$1,892, respectively.

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

² It is noted that the petitioner submitted its 2000 Form 1120. However, since the 2000 Form 1120 is for the year prior to the priority date of April 25, 2001, it has limited evidentiary value when determining the petitioner's continuing ability to pay the proffered wage of \$25,792 from the priority date. Therefore, the AAO will not consider the petitioner's 2000 federal tax return except when considering the totality of the circumstances affecting the petitioning business if the evidence warrants such consideration.

The 2003 and 2004 Forms 1120 for [REDACTED] also reflect net current assets of -\$45,865 and -\$78,405, respectively.

The 1999 through 2002 Forms W-2, issued by the petitioner on behalf of the beneficiary (social security number [REDACTED]) reflects wages paid by the petitioner to the beneficiary of \$2,726.75, \$16,669.56, \$15,916.42, and \$8,718.50, respectively.

The 2002 and 2003 Forms W-2, issued by the petitioner on behalf of the beneficiary (social security number [REDACTED]) reflects wages paid by the petitioner to the beneficiary of \$8,260 and \$18,161.62, respectively.

The 2004 through 2006 Forms W-2, issued by [REDACTED] on behalf of the beneficiary (social security number [REDACTED]) reflect wages paid by [REDACTED] Inc. to the beneficiary of \$20,432.57, \$20,370.73, and \$29,249.58, respectively.

On appeal, counsel contends that the petitioner has established its ability to pay the proffered wage of \$25,792 based on the wages paid to the beneficiary and based on the petitioner's corporate bank account balance.

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, USCIS 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 the instant case, the petitioner would need to show that it is a successor in interest to the original business, which filed the labor certification. The petitioner must show that it has assumed all the rights, duties, and obligations of that business. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

In determining the petitioner's ability to pay the proffered wage, USCIS 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 750, signed by the beneficiary on March 30, 2001, the beneficiary claims to have been employed by the petitioner from October 1999 to the present (March 30, 2001). In addition, counsel has submitted the 1999 through 2003 Forms W-2, issued by the petitioner on behalf of the beneficiary, as proof that the beneficiary was employed by the petitioner during those years. Counsel also submitted the 2004 through 2006

Forms W-2, issued by [REDACTED], on behalf of the beneficiary that shows that [REDACTED] employed the beneficiary in 2004 through 2006.³

The petitioner is obligated to show that it had sufficient funds to pay the difference between the proffered wage of \$25,792 and the actual wages paid to the beneficiary of \$15,916.42 in 2001, \$16,978.50 in 2002, and \$18,161.62 in 2003.⁴ Those differences were \$9,875.58 in 2001, \$8,813.50 in 2002, and \$7,630.38 in 2003. The differences between the proffered wage of \$25,792 and the actual wages paid to the beneficiary under social security number 631-74-9058 by [REDACTED] of \$20,432.57 in 2004, \$20,370.73 in 2005, and \$29,249.58 in 2006 were \$5,359.43 less than the proffered wage in 2004, \$5,421.27 less than the proffered wage in 2005, and \$3,457.58 more than the proffered wage in 2006.

As an alternative means of determining the petitioner's ability to pay the proffered wage, USCIS 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 (9th 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 (7th Cir. 1983). In *K.C.P. Food Co., Inc.*, the court held that USCIS 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 USCIS 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. [USCIS] 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.

³ It is noted that the visa petition was filed with USCIS on July 31, 2006, supposedly by the petitioner.

⁴ The wages paid to the beneficiary in 2001 was under the social security number [REDACTED] in 2002, under social security numbers [REDACTED] and [REDACTED] and in 2003, under social security number [REDACTED].

(Emphasis in original.) *Chi-Feng Chang*, 719 F. Supp. at 537

In order to determine the petitioner's ability to pay the proffered wage of \$25,792, the AAO must first determine the relationship between [REDACTED] and [REDACTED].

The I-140, Immigrant Petition for Alien Worker, filed with USCIS on July 31, 2006, shows the petitioner as [REDACTED] (IRS Tax # [REDACTED]⁵ at [REDACTED] Brea, CA 92821. The Form ETA 750 shows the employer to be the same as the one listed on the I-140.⁶ However, a review of public records (*See* [http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=\[REDACTED\]](http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=[REDACTED]) and [REDACTED] accessed on December 8, 2008) reveals that [REDACTED] was dissolved in January 2004 while [REDACTED] was incorporated on October 24, 2003. Therefore, it appears that the petitioner as listed on the Form I-140 and on the Form ETA 750 no longer existed at the time of filing the visa petition with USCIS.

The issue that must be determined is whether or not [REDACTED] is a successor in interest to [REDACTED] or that it is the same entity as [REDACTED].

In this case, the AAO finds that [REDACTED] and [REDACTED] cannot be the same entity because [REDACTED] and [REDACTED] have different EIN numbers. 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 [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

The record contains no evidence that [REDACTED] qualifies as a successor-in-interest to [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). This status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that [REDACTED] is doing business at the same location as [REDACTED] does not establish that the petitioner is a successor-in-interest nor does it establish that it is the same entity as [REDACTED]. In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to

⁵ The tax returns show this tax number belongs to [REDACTED]. The tax returns show the tax number [REDACTED] belongs to [REDACTED].

⁶ It is noted that there is no place on the Form ETA 750 for the petitioner's EIN.

pay the proffered wage from the priority date until the date of the change in ownership. Moreover, the successor-in-interest must establish its financial ability to pay the certified wage from the date of the change in ownership. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). The record does not establish that [REDACTED] is the successor-in-interest to the petitioner. The record does not contain an asset purchase agreement, bill of sale or any other documentation evidencing that the petitioner was purchased by [REDACTED]

Even assuming that [REDACTED] had established that it is the same entity or the successor-in-interest to [REDACTED], it has not established that [REDACTED] had the ability to pay the difference of \$9,875.58 in 2001 or the difference of \$8,813.50 in 2002 between the proffered wage of \$25,792 and the actual wages paid to the beneficiary in 2001 and 2002, nor has [REDACTED] established its ability to pay the difference of \$7,630.38 in 2003 or the difference of \$5,359.43 in 2004 between the proffered wage of \$25,792 and the actual wages paid to the beneficiary in 2003 and 2004 from its net income in those years.⁷

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, USCIS 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, USCIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

⁷ The petitioner is organized as a "C" corporation. For a "C" corporation, USCIS considers net income to be the figure shown on line 28 of the petitioner's Form 1120, U.S. Corporation Income Tax Return or line 24 of the petitioner's Form 1120-A, U.S. Corporation Short-Form Income Tax Return. The petitioner's tax returns demonstrate that its net incomes in 2001 and 2002 were -\$28,864 and -\$16,646, respectively. The petitioner could not have paid the proffered wage of \$25,792 in 2001 and 2002 from its net incomes. In addition, [REDACTED]'s tax returns reflect net incomes of -\$81,097 in 2003 and -\$1,892 in 2004. [REDACTED] could not have paid the proffered wage or the difference between the proffered wage and wages actually paid in 2003 and 2004 from its net incomes.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁸ 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. [REDACTED]'s net current assets in 2001 and 2002 were -\$35,487, and -\$65,015, respectively. [REDACTED] Inc. has not established its ability to pay the difference of \$9,875.58 in 2001 and the difference of \$8,813.50 in 2002 between the proffered wage of \$25,792 and the actual wages paid to the beneficiary in 2001 and 2002 from its net current assets in 2001 and 2002. In addition, [REDACTED]'s net current assets were -\$45,865 in 2003 and -\$78,405 in 2004. [REDACTED] could not have paid the difference of \$7,630.38 in 2003 or the difference of \$5,359.43 in 2004 between the proffered wage of \$25,792 and the actual wages paid to the beneficiary in 2003 and 2004 from its net current assets in 2003 and 2004.

On appeal, counsel contends that the petitioner has established its ability to pay the proffered wage based on the wages paid to the beneficiary and its monthly bank balances.

Counsel is mistaken. Counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that is considered when determining the petitioner's net current assets.

Finally, if the petitioner does not have sufficient net income or net current assets to pay the proffered salary, USCIS may consider the overall magnitude of the entity's business activities. Even when the petitioner shows insufficient net income or net current assets, USCIS may consider the totality of the circumstances concerning a petitioner's financial performance. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). In *Matter of Sonogawa*, the Regional Commissioner considered an immigrant visa petition, which had been filed by a small "custom dress and boutique shop" on behalf of a clothes designer. The district director denied the petition after determining that the beneficiary's annual wage of \$6,240 was considerably in excess of the employer's net profit of \$280 for the year of filing. On appeal, the Regional Commissioner considered an array of factors beyond the

⁸ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

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*, USCIS 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. USCIS 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 USCIS deems to be relevant to the petitioner's ability to pay the proffered wage. In this case, the petitioner has provided tax returns for the years 2001 through 2004 (2001 and 2002 for [REDACTED] c. and 2003 and 2004 for [REDACTED]). However, none of the tax returns establish the petitioner's ability to pay the proffered wage of \$25,792. There also is not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. Further, there is no evidence of the petitioner's reputation throughout the industry. 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.⁹

⁹ The AAO also notes that a review of public records reveals that the beneficiary appears to have in the past and is currently using a social security number that does not belong to him. Misuse of another individual's social security number is a violation of Federal law and may lead to fines and/or imprisonment and disregarding the work authorization provisions printed on an individual's Social Security card may be a violation of Federal immigration law. Violations of applicable law regarding Social Security Number fraud and misuse are serious crimes and will be subject to prosecution.

The following provisions of law deal directly with Social Security number fraud and misuse:

- **Social Security Act:** In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Social Security Act made it a felony to *willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.*

For the reasons discussed above, the assertions of counsel 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.

Violators of this provision, Section 208(a)(6) of the Social Security Act, shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both. See <http://ssa-custhelp.ssa.gov> (accessed on December 23, 2008).

• **Identity Theft and Assumption Deterrence Act:** In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act (Public Law 105-318) to address the problem of identity theft. Specifically, the Identity Theft and Assumption Deterrence Act made it a Federal crime when anyone *...knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.*

Violations of the Identity Theft and Assumption Deterrence Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

If an employer unknowingly hires an unauthorized alien, or if the alien becomes unauthorized while employed, the employer is compelled to discharge the worker upon discovery of the worker's undocumented status. 8 U.S.C.A. § 1324a(a)(2). Employers who violate the Immigration Reform and Control Act of 1986 (IRCA) are punished by civil fines, § 1324a(e)(4)(A), and may be subject to criminal prosecution, § 1324a(f)(1). IRCA also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents. § 1324c(a). It thus prohibits aliens from using or attempting to use any forged, counterfeit, altered, or falsely made document or any document lawfully issued to or with respect to a person other than the possessor for purposes of obtaining employment in the United States. §§ 1324c(a)(1)-(3). Aliens who use or attempt to use such documents are subject to fines and criminal prosecution. 18 U.S.C. § 1546(b). Therefore, in the present case, with the filing of a Form I-485, Application to Register Permanent Residence or Adjust Status, the beneficiary may be considered inadmissible under Section 212(a)(6)(C)(i) of the Act which states:

[Misrepresentation] IN GENERAL. – Any 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.