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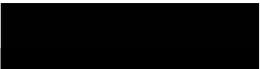
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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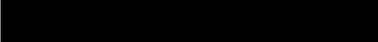
B6



FILE: 
LIN-07-074-53889

Office: NEBRASKA SERVICE CENTER

Date: OCT 01 2009

IN RE: Petitioner: 
Beneficiary: 

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:

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.

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).

Perry Rhey
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition for the substituted beneficiary 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 software service company. On January 16, 2007, the petitioner filed the I-140 petition to seek to employ the beneficiary permanently in the United States as a system engineer under Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (Form 9089 or labor certification), approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a bachelor's degree as required on the Form 9089. The director 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 the decision. Further elaboration of the procedural history will be made only as necessary.

On appeal, the petitioner asserted that the beneficiary's three year degree plus one year course work at the graduate level towards a Master's degree resulted in the equivalent of a U.S. Bachelor's degree in Computer Science, Physics, CIS or related field.

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

During the adjudication of instant appeal, this office noted that the petitioner did not submit sufficient documentary evidence to support its assertions on appeal. On May 5, 2009, the AAO issued a request for evidence (RFE) granting the petitioner 12 weeks to submit requested evidence. The petitioner's timely response has been incorporated into the record. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal and in response to its RFE.¹

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*

As set forth in the AAO's May 5, 2009 RFE, the primary issue in the current petition is whether the petitioner has demonstrated that the beneficiary possessed the requisite bachelor's degree for the proffered position.

Section 203(b)(3)(A)(i) of the Act 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 also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To determine whether a beneficiary is eligible for an employment based immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, Form 9089, Part H set forth the minimum requirements for the position of systems engineer. The proffered position requires a bachelor's degree in computer science, physics, CIS [computer information systems] or related or a foreign educational equivalent and 24 months (two years) of experience in the job offered or in an alternate occupation as a systems engineer, shipping systems engineer, or instrumentation engineer. Part H Item 8 indicates that the employer will not accept a combination of education and experience as an alternative. Item 14 of Part H does not reflect any specific skills or other requirements.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is a Bachelor's degree in physics, math, and chemistry in 1974 from Osmania University Giriraj Government College in India. In corroboration of the ETA Form 9089, the petitioner provided the beneficiary's Bachelor of Science degree and transcripts from Osmania University, and a credential evaluation dated August 18, 2004 from [REDACTED] of International Credential Evaluators, Inc. (ICE). On appeal, the petitioner also submits a study certificate for the beneficiary issued on July 10, 2007 by University College Acharya Nagarjuna University (ANU) and an expert letter dated July 18, 2007 from [REDACTED] of Mathematics at William Paterson University [REDACTED]. In response to the AAO's RFE, the petitioner states that the transcripts for the beneficiary's one year course work in the Master's degree program at ANU are not available since that was more than 30 years ago. The petitioner also verifies that both the H-1B nonimmigrant petition and the I-140 immigrant petition

were filed on behalf of the beneficiary for the same professional position, and the petitioner had no intent to pursue or had claimed the proffered position as a skilled worked position. The petitioner submitted copies of the H-1B petition and recruitment materials to support this assertion.

In this case although the petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, the ETA Form 9089 requires a bachelor's degree or a foreign educational equivalent as the minimum educational requirements and clearly indicates that the employer will not accept an alternative combination of education and experience in lieu of the bachelor's degree requirement. In addition, the petitioner clearly expressed in the response to the RFE that the petition was filed to seek the proffered position under the professional category². Therefore, the AAO finds that the director has properly analyzed this petition under the professional category. Accordingly, the AAO will adjudicate the instant appeal under the professional category only.

For the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The beneficiary possesses a three-year bachelor's degree in physics, math, and chemistry from Osmania University Giriraj Government College in India. In determining whether this degree is equivalent to a U.S. bachelor's degree in computer science, physics, CIS or related as required by the Form 9089 in this case, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education

² A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. A bachelor’s degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary’s three-year bachelor’s degree in physics, math, and chemistry from Osmania University Giriraj Government College in India cannot be considered a foreign equivalent degree in computer science, physics, CIS or related field.

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor’s degree “represents attainment of a level of education comparable to a bachelor’s degree in the United States.” The “Advice to Author Notes,” however, provide:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor’s degree.

The beneficiary also submitted a study certificate issued on July 10, 2007 by University College ANU and a letter dated July 20, 2009 verifying that the pre-requisite for admission to the Post Graduate program is a three years Bachelor’s degree from an accredited university of India. However, there is no evidence in the record of proceeding showing that the beneficiary’s one year study certificate itself or even combined with his three year degree is a single bachelor’s degree. Therefore, the beneficiary’s certificate from ANU itself or combined with his three year degree from Osmania University Giriraj Government College cannot be considered as a single degree which is equivalent to a U.S. bachelor’s degree as required by the Form 9089. Thus, the petitioner failed to demonstrate that the beneficiary possessed a U.S. bachelor’s degree or a single foreign equivalent degree as required by the Form 9089 in the instant case for the proffered position under the professional category.

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree” in computer science, physics, CIS or related field, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for “skilled workers,” states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, *and any other requirements of the individual labor certification*, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification.” And for the “professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” Thus, regardless of the category sought, the beneficiary must have a four year bachelor’s degree or its foreign equivalent in computer science, physics, CIS or related and two years of work experience in the job offered. In the instant case, the petitioner failed to submit the beneficiary’s transcripts for the alleged one year study in a master’s degree program, therefore, the record does not contain any evidence that the beneficiary possessed either a single or combined bachelor’s degree required. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and the petitioner’s assertions on appeal and in response to the RFE cannot overcome the grounds of denial in the director’s June 26, 2007 decision. Therefore, the director’s ground for denying the petition under the professional category must be affirmed.

Beyond the director’s decision and the petitioner’s assertions on appeal, the AAO has identified an additional ground of ineligibility and requested the petitioner to submit additional evidence to rebut the new ground. The AAO will discuss whether or not the petitioner has established its ability to pay the proffered wage from the priority date to the present. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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 9089 was accepted for processing by the employment system of the DOL. See 8 C.F.R. § 204.5(d). Here, the Form 9089 was accepted on December 7, 2006. The proffered wage as stated on the Form 9089 is \$54,500 per year.

The evidence in the record of proceeding shows that the petitioner is a corporation. On the petition, the petitioner claimed to have been established in 2002, to have a gross annual income of \$7,080,000, to have a net annual income of \$93,000, and to currently employ 92 workers. On the Form 9089, the beneficiary claimed to have worked for the petitioner since 2005.

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS 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 beneficiary did claim to have worked for the petitioner and the petitioner submitted the beneficiary's W-2 forms for 2006 through 2008. These W-2 forms show that the petitioner paid the beneficiary \$41,897.15 in 2006, \$51,935.60 in 2007 and \$44,551.41 in 2008 respectively. The record has demonstrated that the petitioner employed and paid the beneficiary the partial proffered wage in these years, however, the petitioner is still obligated to demonstrate that it could pay the difference of \$12,602.85 in 2006, \$2,564.40 in 2007 and \$9,948.59 in 2008 between wages actually paid to the beneficiary and the proffered wage with its net income or its net current assets.

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, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's total income and wage expense is misplaced. Showing that the petitioner's total income exceeded

the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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

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.

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

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.

Net current assets are the difference between the petitioner's current assets and current liabilities.³ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Therefore, counsel's assertion on appeal that loans to shareholders on Schedule L, line 7 are considered as the petitioner's current assets is misplaced. A corporation's 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.

³According 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.

The record contains copies of the petitioner's Forms 1120, U.S. Corporation Income Tax Return, for 2005 and 2008. The petitioner also submitted its financial statements for 2005. According to the tax returns, the petitioner is structured as a C corporation and its fiscal year is based on a calendar year. However, the petitioner's tax return and financial statements for 2005 are not necessarily dispositive since the priority date in the instant case is December 7, 2006. In addition, 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. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statements that the petitioner submitted with the petition are not persuasive evidence. The accountant's report that accompanied those financial statements makes clear that they were produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The petitioner did not submit its annual reports, tax returns, or audited financial statements for 2006 and 2007. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by this office in its RFE, the petitioner declined to provide copies of its tax returns, annual reports or audited financial statements for 2006 and 2007. The tax returns would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. Therefore, the petitioner failed to submit regulatory-described evidence to establish its ability to pay the differences between wages actually paid to the beneficiary and the proffered wage in 2006 and 2007 respectively with its net income or its net current assets. Further, the petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

In response to the AAO's RFE, the petitioner submitted its tax return for 2008. The tax return shows that the petitioner had net income⁴ of \$78,072 and net current assets⁵ of \$266,953 in 2008. However, the petitioner submitted an amended version of its 2008 tax return with Form 1120X, Amended U.S. Corporation Income Tax Return without the initial filing copies of the tax return and any explanation

⁴ Taxable income before net operating loss deduction and special deductions as reported on Line 28 of the Form 1120.

⁵ Net current assets are the difference between the petitioner's current assets and current liabilities. 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.

why and what part of the tax return was amended. It is also noted that the amended tax return was filed on May 18, 2009, 13 days after this office issued a RFE requesting the petitioner to submit evidence to establish its continuing ability to pay the proffered wage. Further, the amended tax return does not bear any Internal Revenue Service (IRS) stamps or other evidence of IRS filing copies.⁶ Without such objective evidence, the AAO cannot accept this amended tax return as the one actually filed with IRS and thus cannot consider it as primary evidence to establish the petitioner's ability to pay the proffered wage in the instant case. 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). Therefore, the petitioner failed to submit regulatory-prescribed evidence to establish the petitioner's ability to pay the proffered wage in 2008.

Therefore, from the date the Form 9089 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, its net income, or its net current assets with its tax returns, audited financial statements or other regulatory-prescribed evidence.

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

ORDER: The director's June 26, 2007 decision is affirmed. The appeal is dismissed.

⁶ If the tax returns submitted on appeal or in response to a RFE are the petitioner's amended tax returns, USCIS would require IRS-certified copies to corroborate the assertion that the amended returns were actually processed by the IRS. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).