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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
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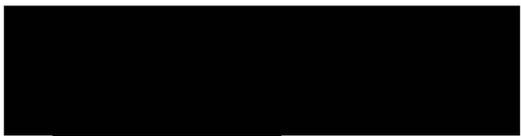
FILE: LIN 07 005 52337 Office: NEBRASKA SERVICE CENTER

Date: SEP 24 2009

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, 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 Chinese restaurant. It seeks to employ the beneficiary¹ permanently in the United States as a cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL) with a Form 750, Part B for the substituted beneficiary. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as well as the proffered wages of all the beneficiaries that it sponsors beginning on the priority date of the visa petitions. 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.

As set forth in the director's denial dated November 29, 2007, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage from the priority date as well as the proffered wages of each of the beneficiaries from the priority date that it also sponsors for visa preference immigrant petitions. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, an additional issue in this case is whether or not the petitioner demonstrated that the beneficiary satisfied the minimum level of education as stated on the labor certification; specifically, whether or not the petitioner submitted documentation to show that the beneficiary had the requisite education of six years of grade school education to meet the terms of the labor certification.

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

¹ The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, Immigration and Naturalization Service, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).

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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the Form ETA 750 was accepted on August 28, 2002. The proffered wage as stated on the Form ETA 750 is \$11.87 per hour (\$21,603.20 per year²). The Form ETA 750 states that the position requires two years experience.

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.³

Relevant evidence in the record includes the original Form ETA 750, Application for Alien Employment Certification, certified by DOL with a Form 750, Part B for the substituted beneficiary; the petitioner's U.S. Internal Revenue Service (IRS) Form 1120 tax returns for 2002, 2003, 2004, and 2005; approximately 31 of the petitioner's commercial banking statements for 2003 and 2004; a letter from counsel dated September 12, 2006; and a letter from the petitioner dated July 19, 2006.

The director issued a notice to deny the petition to the petitioner on August 2, 2007. The director stated that the petitioner filed three I-140 petitions simultaneously. The director requested additional evidence of the petitioner's ability to pay the proffered wage for all sponsored beneficiaries. Further, the director requested evidence of the beneficiary's education. The petitioner failed to

² Based on a 35-hour work week.

³ 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).

respond to the director's request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1992, to have a gross annual income of \$764,067.00, and to currently employ six to seven workers. According to the tax returns in the record, the petitioner's fiscal year is on a calendar basis. On the Form ETA 750B, signed by the beneficiary on September 1, 2006, the beneficiary did not claim to have worked for the petitioner as the beneficiary has not entered the United States.

According to the director's decision, the petitioner has three pending petitions,⁴ including the subject petition, with the proffered wage the same for all petitions (\$11.87 per hour). All three wages total \$64,810.20 per year.

Counsel dated the appeal December 27, 2007. Although counsel checked the box on the appeal form that a legal brief and/or additional evidence would be submitted to the AAO within 30 days, no brief or additional evidence was submitted.⁵ The regulation at 8 CFR §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO. Accordingly, the AAO will consider the evidence in the record before us.

On appeal, counsel asserts that the petitioner has the financial ability to pay the proffered wage. According to counsel for the years 2002 to 2007 the petitioner's gross sales, net income, total assets and cash on hand or in a bank account are evidence of the petitioner's ability to pay the proffered wage. According to counsel the petitioner's current assets of \$322,495.00 and cash of \$62,317.00 are greater than the proffered wage.

On appeal counsel submits the petitioner's U.S. Internal Revenue Service (IRS) Form 1120 tax returns for 2002, 2003, 2004, 2005, and 2006; the petitioner's compiled statements of assets and liabilities, dated December 31, 2001, 2002, 2003, 2004, 2005, 2006, and 2007; and the petitioner's compiled⁶ statements of revenues and expenses for the years of 2001, 2002, 2003, 2004, 2005, 2006, and 2007.

⁴ The two other petitions are identified in the records of USCIS as LIN0703352423 and SRC0706550941.

⁵ This deficiency presents an additional ground of ineligibility.

⁶ 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 counsel 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

The petitioner must establish that its job offer to the beneficiary is a realistic one as well as to each beneficiary it now sponsors for a visa preference petition. 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, United States Citizenship and Immigration Services (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 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 petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date as the beneficiary resides in the People's Republic of China.

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. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). 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 gross sales and profits and wage expense is misplaced. According to counsel for the years 2002 to 2007 the petitioner's gross sales are evidence of the petitioner's ability to pay the proffered wage. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

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. 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).

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. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on September 2, 2007, when the 30 day period to respond to the director's notice to deny expired with a response received. As of that date, the petitioner's 2007 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2006 is the most recent return available. The petitioner's tax returns demonstrate its net income for the years stated.

- In 2002, the Form 1120 stated net income of \$37,229.00.
- In 2003, the Form 1120 stated net income of \$.....127.00.
- In 2004, the Form 1120 stated net income of \$.6,558.00.
- In 2005, the Form 1120 stated net income of \$56,002.00.
- In 2006, the Form 1120 stated net income of \$.6,000.00.

Therefore, for years 2003, 2004 and 2006, the petitioner did not have sufficient net income to pay the subject beneficiary the proffered wage. For the years 2002, 2003, 2004, 2005, 2005 and 2006, the petitioner did not have sufficient net income to pay all the proffered wages for each sponsored beneficiaries.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for years 2002, 2003, 2004, 2005, 2005 and 2006, as shown in the table below.

- In 2002, the Form 1120 stated net current assets of \$13,680.00.

⁷According 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.

- In 2003, the Form 1120 stated net current assets of <\$21,443.00>⁸.
- In 2004, the Form 1120 stated net current assets of <\$5,444.00>.
- In 2005, the Form 1120 stated net current assets of <\$6,615.00>.
- In 2006, the Form 1120 stated net current assets of \$22,669.00.

Therefore, for years 2002, 2003, 2004, and 2005, the petitioner did not have sufficient net income to pay the subject beneficiary the proffered wage. For the years 2002, 2003, 2004, 2005, 2005 and 2006, the petitioner does not have sufficient net current assets to pay the proffered wages for all sponsored beneficiaries.

Counsel asserts in his brief accompanying the appeal that there is another way to determine the petitioner's continuing ability to pay the proffered wage from the priority date.

According to counsel the petitioner's cash that was deposited in a bank account for years 2003 and 2004 is evidence of the petitioner's ability to pay the proffered wage. Counsel's reliance on the balances in the petitioner's bank account for 2003 and 2004 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 will be considered below in determining the petitioner's net current assets.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The

⁸ The symbols <a number> indicate a negative number, or in the context of a tax return or other financial statement, a loss.

petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the 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 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 relevant to the petitioner's ability to pay the proffered wage.

In the instant case, in only two years out of five years, did the petitioner have net income to pay the proffered wage for the subject beneficiary, and in no year did the petitioner have either net income or net current assets to pay the wages for all sponsored beneficiaries. Otherwise, there is a paucity of information concerning the petitioner's business expectations or prospects. The petitioner offered no explanation for the depressed net incomes for 2003, 2004 and 2006, and no evidence was submitted to demonstrate that there were unusual or novel expenses, losses or costs that would have depressed the net incomes in those years which were below the proffered wage for the subject beneficiary. 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.

On appeal, counsel does not address or present evidence of the petitioner's ability to pay for all sponsored beneficiaries. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage for the subject beneficiary in years 2003 and 2004, and in no year did the petitioner have either net income or net current assets to pay the wages for all sponsored beneficiaries in 2002, 2003, 2004, 2004, 2005, and 2006.

The Beneficiary's Qualifications

The director found that the petitioner has not demonstrated that the beneficiary met the educational requirements of the labor certification at the time it was filed.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides:

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.

A beneficiary is required to document prior educational, training or experience, in accordance with 8 C.F.R. § 204.5(i)(3), which provides:

(ii) Other documentation-

(A) **General.** Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) **Skilled workers.** 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.

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

To determine whether a beneficiary is eligible for an employment based immigrant visa, 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, the Application for Alien Employment Certification, Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of cook. In the instant case, item 14 describes the requirements of the proffered position of cook as follows:

14.	Education [Years]	
	Grade School		<u>6</u>
	High School		<u>0</u>

College	<u>0</u>
College Degree Required	<u>Blank</u>
Major Field of Study	<u>Blank</u>

According to the labor certification, the applicant must also have two years of experience in the job offered. The duties are delineated at Item 13 of the Form ETA 750A: "Prepare and cook Chinese style foods for restaurant and carryout customers."

Item 15 of Form ETA 750A "Other special requirements" is blank.

According to Form ETA 750B, Item 11, the beneficiary stated that he attended "Jan Jo 81 Farm 32 Elem.," Hainan, China, from September 1982 to July 1987 in general studies but the field within Item 11 entitled "Degrees or Certificates Received" is blank. No educational completion certificate or diploma for the beneficiary was found in the record of proceeding. The burden of proof in these proceedings rests solely with the petitioner.

The director issued a notice to deny the petition to the petitioner on August 2, 2007. The director requested, *inter alia*, evidence of the beneficiary's education consistent with the regulation 8 C.F.R. § 204.5(l)(3)(ii)(A) above stated. The director requested evidence that the beneficiary had six years of grade school education to meet the terms of the certified labor certification. No response was made to this request or in the appeal statement.

We note that while the beneficiary stated in the labor certification that he attended elementary school, the beneficiary did not state he received a certificate or diploma of satisfactory completion. As the petitioner has not provided, when asked by the director, to corroborate that the beneficiary in fact attended grade school or completed it, the lack of corroboration raises doubts.

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). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner has not demonstrated that the beneficiary met the requirements of the labor certification at the time it was filed

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage for the subject beneficiary in years 2003 and 2004, and in no year did the petitioner have either net income or net current assets to pay the wages for all sponsored beneficiaries in 2002, 2003, 2004, 2004, 2005 and 2006.

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

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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.