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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



**U.S. Citizenship  
and Immigration  
Services**

B6

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 20 2010**

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:

[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a seafood restaurant. It seeks to employ the beneficiary permanently in the United States as a "specialty cook, seafood." 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). 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. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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.

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.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be 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). The petitioner must also 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 DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on April 17, 2001. The proffered wage as stated on the Form ETA 750 is \$694.40 per week (\$36,108.80 per year). The Form ETA 750 states that the position requires two years of experience in the job offered as a specialty seafood cook.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

The petitioner submitted tax returns for the “Afacan Restaurant Group, LLC,” which is structured as a single-member limited liability company throughout the requisite period.<sup>2</sup> On the petition, the petitioner does not state when it was established, but states that it employs from 15 – 17 employees. On the Form ETA 750B, signed by the beneficiary on April 6, 2001, the beneficiary claimed to have worked for the petitioner from November 1997 to the date he signed the Form ETA 750B.

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 addition to the issue of ability to pay, as set forth in the Notice of Intent to Deny (NOID) issued by the AAO on January 11, 2010, at issue in this case is whether Maydonoz, Inc. is the successor-in-interest to the petitioner, Pescatore Restaurant, and therefore entitled to use the Application for Alien Employment Certification approved by the United States Department of Labor (DOL) (Form ETA 750) and accepted for processing on April 17, 2001.

*Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986) is an AAO decision designated as precedent by the Commissioner. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

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

<sup>2</sup> W-2 statements for the petitioner’s owner identify the petitioner as Afacan Restaurant Group LLC d/b/a Pescatore. Limited liability companies with a single member are generally “disregarded” for the purpose of filing a federal tax return. See Internal Revenue Service, Tax Issues for Limited Liability Companies, Publication 3402 (Rev. 7-2000), at 2, available at <http://www.irs.gov/pub/irs-pdf/p3402.pdf> (accessed July 9, 2010). If the only member of an LLC is an individual, as indicated by the record in the instant case, the income and expenses of the LLC are reported on the member’s IRS Form 1040, Schedule C, E, or F.

By way of background, *Matter of Dial Auto* involved a petition filed by Dial Auto Repair Shop, Inc. (Dial Auto) on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, Elvira Auto Body, filed the underlying labor certification. On the petition, Dial Auto claimed to be a successor-in-interest to Elvira Auto Body. The part of the Commissioner's decision relating to successor-in-interest issue is set forth below:

Additionally, the *representations made by the petitioner* concerning the relationship between Elvira Auto Body and itself are issues which have not been resolved. On order to determine whether the petitioner was a true successor to Elvira Auto Body, counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of Elvira Auto Body and to provide the Service with a copy of the contract or agreement between the two entities; however, no response was submitted. If the *petitioner's claim* of having assumed all of Elvira Auto Body's rights, duties, obligations, etc., is found to be untrue, then grounds would exist for *invalidation of the labor certification under 20 C.F.R. § 656.30 (1987)*. Conversely, if the claim is found to be true, *and it is determined that an actual successorship exists*, the petition could be approved if eligibility is otherwise shown, including ability of the predecessor enterprise to have paid the certified wage at the time of filing.

(All emphasis added). The legacy INS and USCIS has, at times, strictly interpreted *Matter of Dial Auto* to limit a successor-in-interest finding to cases where the petitioner could show that it assumed all of the original entity's rights, duties, obligations and assets. However, a close reading of the Commissioner's decision reveals that it does not explicitly require a successor-in-interest to establish that it is assuming all of the original employer's rights, duties, and obligations. Instead, in *Matter of Dial Auto*, the petitioner had *represented* that it had assumed all of the original employer's rights, duties, and obligations, but had failed to submit requested evidence to establish that this was, in fact, true. And, if the petitioner's claim was untrue, the Commissioner stated that the underlying *labor certification* could be *invalidated for fraud or willful misrepresentation* pursuant to 20 C.F.R. § 656.30 (1987).<sup>3</sup> This is why the Commissioner said "[i]f the petitioner's claim is found to be true, *and it is determined that an actual successorship exists*, the petition could be approved." (Emphasis

<sup>3</sup> The regulation at 20 C.F.R. § 656.30(d) (1987) states:

(d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

added.) The Commissioner was explicitly stating that the petitioner's claim that it assumed all of the original employer's rights, duties, and obligations is a separate inquiry from whether or not the petitioner is a successor-in-interest. The Commissioner was most interested in receiving a full explanation as to the "manner by which the petitioner took over the business of [the alleged predecessor] and seeing a copy of "the contract or agreement between the two entities."

In view of the above, *Matter of Dial Auto* did not state that a valid successor relationship could only be established through the assumption of all of a predecessor entity's rights, duties, and obligations. Instead, based on this precedent and the regulations pertaining to this visa classification, a valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor.

Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of business transfer until the beneficiary adjusts status to lawful permanent resident.

In the instant case, the record of proceeding does not contain any documentation (i.e., purchase and sale agreements, contracts, bill of sale) establishing that Maydonoz, Inc. purchased the petitioner's assets or acquired the essential rights and obligations of the petitioner which were necessary to carry on the business in the same manner as had been carried on by the petitioner. The only evidence in that regard pertaining to this issue is the unsupported statements of the petitioner. 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)). Additionally, Maydonoz, Inc. has not submitted any evidence to establish that it can pay the proffered wage from the date of the alleged sale. The petitioner failed to respond to the Notice of Intent to Deny (NOID) dated January 11, 2010. The purpose of such a request is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Therefore, the evidence in the record is not sufficient to establish that Maydonoz, Inc. is a successor-in-interest to the petitioner or that the two entities are one and the same. For this reason, the petition may not be approved.

Regarding the petitioner's ability to pay, in determining the petitioner's ability to pay the proffered wage during a given period, U.S. Citizenship and Immigration Services (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. The petitioner submitted an affidavit that it paid the beneficiary in cash and therefore no Form W-2s or other pay records are available. The affidavits are insufficient, as will be addressed later in the decision, to establish that the petitioner paid wages to the beneficiary. Therefore, the petitioner must establish its ability to pay the full proffered wage for all the years in question.

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 (1<sup>st</sup> 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 wage expense is misplaced. Showing that the petitioner paid wages in excess of the proffered wage is insufficient.

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

*River Street Donuts* at 116. "[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.” *Chi-Feng Chang* at 537 (emphasis added).

The petitioner was organized as a single-member limited liability company.<sup>4</sup> Therefore, the petitioner’s net income is reported on the member’s IRS Form 1040, Schedule C at line 31. The record before the director closed on March 1, 2007 with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. As of that date, the petitioner’s 2005 federal income tax return was the most recent return available. The petitioner’s tax returns demonstrate its net income for 2001 through 2005, as shown in the table below.

- In 2001, the Form 1040 Schedule C stated net income of \$15,825.00.
- In 2002, the Form 1040 Schedule C stated net income of \$25,909.00.
- In 2003, the Form 1040 Schedule C stated net income of \$43,849.00.
- In 2004, the Form 1040 Schedule C stated net income of \$46,902.00.
- In 2005, the Form 1040 Schedule C stated net income (loss) of -\$37,727.00.

Additionally, USCIS electronic records show that the petitioner filed five other Form I-140 petitions, which have been pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2). The record in the instant case contains no information about the proffered wage for the beneficiaries of the additional five petitions, about the current immigration status of the beneficiaries, whether the beneficiaries have withdrawn from the visa petition process, or whether the petitioner has withdrawn its job offers to the beneficiaries. Furthermore, no information is provided about the current employment status of the beneficiaries, the date of any hiring, and any current wages of the beneficiaries. The record in the instant petition fails to establish the petitioner’s continuing ability to pay the proffered wage to the single beneficiary of the instant petition. While the petitioner’s net income could show the petitioner’s ability to pay the proffered wage in 2003 and 2004 only, the petitioner’s net income is insufficient to establish its ability to pay for all of the petitioner’s sponsored immigrant beneficiaries.

The petitioner cites a May 4, 2004 Memorandum from [REDACTED] for the proposition that the petitioner’s net income and net current assets should be combined to demonstrate its ability to pay

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<sup>4</sup> The AAO’s NOID misidentified the petitioner as a sole proprietor. As discussed above, the petitioner is a single-member limited liability company.

the proffered wage. The AAO's analysis complied with policy set forth by [REDACTED] Associate Director of Operations of USCIS, who issued an internal memorandum guiding adjudications of petitioning entities' continuing ability to pay the proffered wage through the following three-tiered analysis:

Adjudicators should make a positive ability to pay determination on an I-140 under the following circumstances:

- The petitioner's net income is equal to or greater than the proffered wage;
- The petitioner's net current assets are equal to or greater than the proffered wage; or
- The employer submits credible, verifiable evidence that the petitioner is both employing the beneficiary and has paid or is currently paying the proffered wage.

The [REDACTED] Memorandum makes no statement that a business's income and current assets should be joined together to show the ability to pay the proffered wage. And, as stated above, the courts have upheld the analysis of the ability to pay the proffered wage without adding back in any depreciation amount. See *Elatos Restaurant Corp.*, 632 F. Supp. at 1054; *Chi-Feng Chang*, 719 F. Supp. 532; *K.C.P. Food Co., Inc.*, 623 F. Supp. 1080; *Ubeda*, 539 F. Supp. 647.

The petitioner submitted a letter from its accountant, [REDACTED] who attached a table to his correspondence stating that the petitioner had available cash from 2001 through 2005 in the following amounts respectively: \$45,854.00; \$75,984.00; \$107,516.00; \$104,200.00; and \$42,798.00. Mr. [REDACTED] arrived at these cash figures by adding to net income and net current assets depreciation listed on Schedule C of his tax returns, reasoning that depreciation is not a current expense of business operations. As noted above, judicial precedent supports the use of tax returns and the net income figures in determining petitioner's ability to pay without adding back depreciation. See *River Street Donuts*, 558 F.3d at 116. The petitioner's argument that these figures should be revised by adding back depreciation is without support. The accountant also stated that the petitioner reported its earnings on the cash basis of accounting, and as such, available cash reported does not include the petitioner's average balance in accounts receivable. Regarding the addition of net current assets and net income, net current assets and net income represent separate measures and would not be added together to determine the petitioner's ability to pay the proffered wage. Net current assets are the difference between a corporation's current assets and current liabilities. Net current assets may properly be considered in determining a petitioner's ability to pay the proffered wage. Because of the nature of net current assets, however, demonstrating the ability to pay the proffered wage with net current assets is truly an alternative to demonstrating the ability to pay the proffered wage with income and wages actually paid to the beneficiary. Net current assets are not cumulative with income, but must be considered separately. This is because income is viewed retrospectively and net current assets are viewed prospectively. That is, for example; a 2001 income greater than the amount of the proffered wage indicates that a petitioner could have paid the wages during 2001 out of its income. Net current assets at the end of 2001 which are greater than the proffered wage indicate that the petitioner anticipates receiving roughly one-twelfth of that amount each month, and that it anticipates being able to pay the proffered wage out of those

receipts. Therefore, the amount of the petitioner's net income is not added to the amount of the petitioner's net current assets in the determination of the petitioner's ability to pay the proffered wage. Additionally, as the petitioner sponsored other workers, it is unclear that the accountant's figures, even if accepted, would evidence sufficient funds to pay all of the sponsored workers.

In the instant case, the petitioner claims to have employed and paid the beneficiary on a cash basis throughout the requisite period because the beneficiary was an undocumented alien. The petitioner submitted an affidavit from [REDACTED] dated June 13, 2007, which stated that Afacan Restaurant Group, LLC paid the beneficiary \$700 per week (\$36,400 per year) from April 2001 to December 2006. The petitioner also submitted an affidavit from the beneficiary stating that he received \$700 per week (\$36,400 per year) from April 2001 to the date of signing the affidavit, June 14, 2007. The director found these affidavits insufficient to demonstrate that the petitioner paid the beneficiary during this time. The petitioner failed to submit sufficient evidence to overcome this deficiency on appeal. The petitioner submitted the beneficiary's tax returns for 2006. The tax returns indicate that the beneficiary earned income in that year, however, nothing in the tax return indicates that the income received was from the petitioner. Instead, the income is listed as "business income" on Line 12 of the Form 1040 and the beneficiary filled out Schedule C indicating that he operated a sole proprietorship. The beneficiary also filed a form with New York State indicating that he operated an unincorporated business during this time. The beneficiary's tax documents do not indicate that he received compensation from the petitioner or performed work for the petitioner. The undocumented assertions of wages paid and income earned do not establish that the beneficiary was employed and paid wages by the petitioner during any year of the requisite period. Simply 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)).

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 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 *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, 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, the petitioner presented no evidence that it could pay the beneficiary for all the years in question or show its ability to pay the wages of the other sponsored workers. The petitioner has shown modest profits for most years of the requisite period, but not significant profits which would lead to the conclusion that it is more likely than not that it would have the ability to pay the proffered wage during each year of the requisite period. The petitioner has submitted no evidence of its reputation in the industry which would lead to the conclusion that its standing in the industry makes it more likely than not that it would have the ability to pay the proffered wage despite its inability to establish that factor through the use of its tax returns. The record does not establish that there were any uncharacteristic business expenditures or losses during the requisite period which adversely affected its financial standing or submitted any financial information to establish that it could pay the beneficiary the proffered wage from the alleged date of sale. The petitioner has sponsored multiple workers and must establish that it can pay for all sponsored workers. Additionally, Maydonoz, Inc. has not established that it is the successor-in-interest to the petitioner. 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.

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 appeal is dismissed.