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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**

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FILE: [REDACTED]  
SRC 06 800 18850

Office: TEXAS SERVICE CENTER

Date: FEB 18 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:



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).

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a software consulting business. It seeks to employ the beneficiary<sup>1</sup> permanently in the United States as a market research manager. 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 (the DOL) with Form ETA 750 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 beginning on the priority date of the visa petition. 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, an issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Beyond the decision of the director, another 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 of other employment based petitions from the priority date. 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).

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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

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<sup>1</sup> An I-140 petition for a substituted beneficiary retains the same priority date as the original Form 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](http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf) (March 7, 1996).

*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 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 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 March 29, 1999. The proffered wage as stated on the Form ETA 750 is \$72,000.00 per year.

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 at 1002 n. 9. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup>

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1998 and to currently employ eight workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on August 17, 2006, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form 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

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<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations 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).

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 during any relevant timeframe including the period from the priority date in 1999 or subsequently.

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 gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts 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. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income.

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 record before the director closed on October 30, 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 2007 federal income tax return was not yet due. Therefore, the petitioner’s income tax return for 2006 was the most recent return available. The petitioner’s tax returns demonstrate its net income shown in the table below.

- In 1999, the Form 1120S stated a net income<sup>3</sup> loss of <\$86,861.00>.
- In 2000, the Form 1120S stated net income of \$ 49,018.00.
- In 2001, the Form 1120S stated net income of \$293,640.00.
- In 2002, the Form 1120S stated net income of \$228,306.00.
- In 2003, the Form 1120S stated net income of \$322,694.00.
- In 2004, the Form 1120S stated net income of \$ 94,424.00.
- In 2005, the Form 1120S stated net income of \$ 69,358.00.
- In 2006, the Form 1120S stated net income of \$ 98,872.00.

Therefore, for the years 1999, 2000, and 2005 the petitioner did not have sufficient net income to pay the proffered wage.

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<sup>3</sup> Where an S corporation’s income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner’s IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003), line 17e (2004-2005), or line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, 2006, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed on January 28, 2010) (indicating that Schedule K is a summary schedule of all shareholder’s shares of the corporation’s income, deductions, credits, etc.). Because the petitioner had additional income, deductions, and other adjustments as shown on its Schedule K for the years for which tax returns were submitted, the petitioner’s net income is found on Schedule K of its tax returns.

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.<sup>4</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If 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 as shown in the table below.

- In 1999, the Form 1120S stated net current assets of \$ 48,625.00.
- In 2000, the Form 1120S stated net current assets of \$ 97,257.00.
- In 2001, the Form 1120S stated net current assets of \$ 81,112.00.
- In 2002, the Form 1120S stated net current assets of \$241,983.00.
- In 2003, the Form 1120S stated net current assets of \$465,935.00.
- In 2004, the Form 1120S stated net current assets of \$330,145.00.
- In 2005, the Form 1120S stated net current assets of \$ 90,971.00.
- In 2006, the Form 1120S stated net current assets of \$146,810.00.

Therefore, for the year 1999, the petitioner did not have sufficient net current assets to pay the proffered wage.

Therefore, from the date the Form ETA 750 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 its net income or net current assets in 1999.

On appeal, the petitioner submits a USCIS internal memorandum dated January 11, 2006; a copy of the adopted decision *Matter of Chawathe*, [REDACTED] (AAO Jan. 11, 2006); a copy of California Service Center and AILA liaison meeting agenda minutes dated December 13, 2006;<sup>5</sup> and a Wage and Tax Statement (W-2) issued by the petitioner to an employee in 1999.

According to counsel, the director is required to follow the "preponderance of evidence" standard as expressed in the cases of *See Matter of Chawathe*, A 74 254 994 (AAO Jan. 11, 2006), and *USA v. Cardozo-Fonseca*, 480 U.S. 421 (1987). On appeal, counsel asserts that the director erred by not

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<sup>4</sup>According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>5</sup> The minutes arise from a periodic teleconference meeting of USCIS officers and American Immigration Lawyers Association (AILA) members and others on various immigration law practice and procedure matters of interest. The minutes are reprinted in AILA's monthly mailing to its members.

using the preponderance of evidence standard or the “totality of the circumstances” concerning the petitioner’s circumstances according to the case of *Matter of Sonegawa*, 12 I&N Dec. 612.

Counsel also cites the following court cases under the heading “Case Law Governing ATP:” *Masonry Masters, Inc. v. Thornburgh*, 875 F.2d 898 (D.C. Cir. 1989); *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988); *Matter of Sonegawa*, 12 I & N Dec. 612; and, *Matter of Ranchito Coletero*, 2002-INA-104 (2004 BALCA).<sup>6</sup>

According to counsel, the *Masonry Masters* case relates to a beneficiary’s ability to generate income as proof of the petitioner’s ability to pay the proffered wage. The AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). By implication, counsel urges the consideration of the beneficiary’s proposed employment as an indication that the petitioner’s income will increase. Although part of this decision mentions the ability of the beneficiary to generate income, the holding is based on other grounds and is primarily a criticism of USCIS for failure to specify a formula used in determining the proffered wage.<sup>7</sup> Further, in this instance, no detail or documentation has been provided to explain how the beneficiary’s employment as a market research manager will significantly increase profits for a software consulting business. Counsel’s assertion cannot be concluded to outweigh the evidence presented in the corporate tax returns.

According to counsel, the *Full Gospel* case stands for the proposition that funds pledged to the petitioner can be considered as proof of the petitioner’s ability to pay the proffered wage. The decision in *Full Gospel* is not binding here. As noted above, although the AAO may consider the reasoning of the decision, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715. Further, the decision in *Full Gospel* is distinguishable from the instant case. The court in *Full Gospel* ruled that USCIS should consider the pledges of parishioners in determining a church’s ability to pay the wages of a beneficiary. Since the subject case involves a corporation, not a church, and there is no pledge of assets in this case, the case cited and assertion by counsel are misplaced here.

Further, counsel refers to a decision issued by the AAO (“X,” EAC 01 018 50413 (AAO January 31, 2003)) concerning normal accounting practices of a company, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

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<sup>6</sup> *Matter of Ranchito Coletero* is a case concerning a sole proprietorship and the owner’s personal assets. Therefore, the case decision of *Matter of Ranchito Coletero* is not relevant in the subject case involving a corporation.

<sup>7</sup> Subsequent to that decision, USCIS implemented a formula that involves assessing wages actually paid to the alien beneficiary, and the petitioner’s net income and net current assets.

On appeal, counsel submitted a Wage and Tax Statement (W-2) for a former employee who worked for the petitioner in 1999 and was paid \$66,000.00. Citing the USCIS internal memorandum, according to counsel the former employee's<sup>8</sup> W-2 statement is probative evidence of the petitioner's ability to pay the proffered wage. In support of this contention, counsel asserts that net income may be added to wages paid to the beneficiary to demonstrate the ability to pay the proffered wage. Similarly, counsel is contending that the petitioner's net current asset figure of \$48,625.00 may be added to the former employee's wages of \$66,000.00 to show that the petitioner was able to pay the proffered wage in 1999. The memorandum relied upon by counsel provides guidance to adjudicators to review a record of proceeding and make a positive determination of a petitioning entity's ability to pay if, in the context of the beneficiary's employment, "[t]he record contains credible verifiable evidence that the petitioner is not only employing the beneficiary but also has paid or currently is paying the proffered wage." Counsel's reliance on the memorandum and the wages paid in 1999 is misplaced as no wages were paid to the beneficiary.

Assuming the wage payment was made to the beneficiary, the AAO consistently adjudicates appeals in accordance with the USCIS memorandum. However, counsel's interpretation of the language in that memorandum is overly broad and does not comport with the plain language of the regulation at 8 C.F.R. § 204.5(g)(2) set forth in the memorandum as authority for the policy guidance therein. The regulation requires that a petitioning entity demonstrate its continuing ability to pay the proffered wage beginning on the priority date. If USCIS and the AAO were to interpret and apply the internal memorandum as counsel urges, then in this particular factual context, the clear language in the regulation would be usurped by an interoffice guidance memorandum without binding legal effect. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is March 29, 1999.

Further, the Form I-140 indicated that the proffered position was not a new position, thereby implying that the beneficiary would be replacing a previously hired employee. The validity of the job offer would be further strengthened if the beneficiary had been replacing and assuming the salary of an employee who had left the organization. This is not the case here. *See Matter of Great Wall, id.*

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.* 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

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<sup>8</sup> Counsel indicates that the former employee was identified in the labor certification which was later used by the petitioner to sponsor the present beneficiary.

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 *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.

Counsel makes the following assertions on appeal concerning the petitioner's financial circumstances:

- The petitioner is "making a living" and has employed workers without evidence of financial difficulties; and, the petitioner was established in 1998 and currently employs eight workers. The petitioner net income has increased from a negative <\$89,099.00><sup>9</sup> in 1999, to \$95,692.00 in 2006.
- The petitioner had unusual expenses in 1998 which were "start up expenses and costs," and in 1999 a short term loan was made by a shareholder to be repaid in 2001.

The overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal or borderline. See *Matter of Sonegawa*, 12 I&N Dec. 612. In 1999, the petitioner had no ability to pay the proffered wage since it suffered a net income loss of <\$89,861.00>. According to counsel, based upon the above assertions, the petitioner had a reasonable expectation of "future financial profit" from 1999. Generally, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Counsel asserts that the petitioner had unusual expenses in 1998 which were "start up expenses and costs," and, in 1999, received a short term loan from a shareholder. However, counsel has not submitted sufficient evidence to explain why corporate start up expenses and costs for 1998 (the year the petitioner was established) are unusual expenses/costs. Rather, it appears from the record that the petitioner was undercapitalized and had insufficient funds in the year of its establishment requiring an infusion of capital by a shareholder.

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<sup>9</sup> In 1999, net income was stated on Form 1120S, Schedule K, Line 23, <\$86,861.00>, and in 2006, Form 1120S, Schedule K, Line 18, stated net income of \$98,872.00.

Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the ability to pay the proffered wage in year 1999.

There is an additional ground of ineligibility. 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 or approved 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 I7N Dec. 142. (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 ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). The record in the instant case contains no information about wages offered or paid to other potential beneficiaries of immigrant and nonimmigrant petitions filed by your organization. According to the electronic records of USCIS, the petitioner has filed numerous USCIS Form I-140 and USCIS Form I-129 petitions.<sup>10</sup> However, the petitioner has not submitted sufficient evidence that it had the ability to pay the proffered wage for all the petitions pending.

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.

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<sup>10</sup> USCIS record numbers SRC1080002679; SRC0980012789; SRC0980012594; WAC0480048021; WAC0480052599; EAC0303151959; EAC0122360184; EAC0303554188; and EAC0201052997.