

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

B6

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: SEP 29 2010

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

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

ON BEHALF OF PETITIONER:

[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,

*Kieran S. Poulos for*

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition and a subsequent motion to reopen were 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 restaurant/carry-out. It seeks to employ the beneficiary permanently in the United States as a cook/specialty foreign food. 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.

As set forth in the director's March 7, 2007 denial and affirmed in his November 1, 2007 decision on the motion, the primary issue in this case is whether or not the petitioner has the continuing ability to pay the proffered wage beginning on the priority date.

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 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>

On April 30, 2001, the Form ETA 750 was filed by [REDACTED] the Form I-140, Immigrant Petition for Alien Worker, was filed by [REDACTED] located at the same address. In support of the petition, the petitioner submitted Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Returns, for the years 2001, 2002, and 2003 from [REDACTED]<sup>2</sup> also showing the [REDACTED]

<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> The federal tax Employment Identification Number (EIN) shown on the IRS Forms 1120 for [REDACTED] This EIN matches the EIN listed for the petitioner on Form I-140.

In a letter dated November 1, 2004 contained in the record of proceedings, [REDACTED], submitted a letter stating that [REDACTED]

On February 26, 2010, the AAO issued a Notice of Derogatory Information (NDI) to the petitioner stating that the official website of the Department of Consumer and Regulatory Affairs (DCRA) in Washington, DC, indicated that the entity's status had been revoked, and that according to the website, a business entity that has been revoked is involuntarily terminated.<sup>4</sup> Specifically, the AAO provided the petitioner with printouts from the website<sup>5</sup> showing that the status of [REDACTED] a domestic limited liability company (registered agent: [REDACTED] had been revoked; the status of [REDACTED] domestic business corporation (registered agent: [REDACTED] Washington, DC) had been revoked; and, the status of [REDACTED] a domestic business corporation (registered agent: [REDACTED] DC) had been dissolved. The [REDACTED] does not have a listing for [REDACTED] the entity listed as the petitioner on Form I-140.

In response to the NDI, counsel submitted a letter stating that [REDACTED] had closed due to the expiration of its lease and that the business was moved to [REDACTED] which is "...the successor entity. It has taken over the former entity's assets and liabilities. [REDACTED] is the owner of the two businesses..." Counsel also submitted a letter from [REDACTED] reiterating this information, as well as a "[REDACTED]" issued by the [REDACTED] showing that on October 19, 2009 it had issued the certificate to [REDACTED] the applicant for [REDACTED] for a business named [REDACTED] with an underlying trade name of [REDACTED] DC address. The petitioner, [REDACTED] has not established that it is an active business. However, since the [REDACTED] provided by the petitioner on the Form I-140 belongs to [REDACTED], we will analyze

<sup>3</sup> [REDACTED] letter was submitted in connection with an appeal from the denial of a Form I-140 [REDACTED] filed by the petitioner on behalf of the beneficiary in 2003. That petition was denied by the Director, Vermont Service Center, on September 8, 2004, because the petitioner had failed to establish its continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the petition. A motion to reopen and reconsider that decision, received on July 27, 2005, was forwarded to the AAO to be treated as an appeal and, on November 7, 2005, the AAO dismissed the appeal.

<sup>4</sup> Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, the AAO noted in the NDI that even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

<sup>5</sup> See [REDACTED] (last accessed September 2, 2010).

the successor-in-interest relationship between [REDACTED] its claimed successor.

*Matter of Dial Auto* is an AAO decision designated as precedent by the Commissioner. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). 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).

By way of background, *Matter of Dial Auto* involved a petition filed by [REDACTED] on behalf of an alien beneficiary for the position of automotive technician. The beneficiary's former employer, [REDACTED] filed the underlying labor certification. On the petition, [REDACTED] claimed to be a successor-in-interest to [REDACTED]. 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 [REDACTED] and itself are issues which have not been resolved. On order to determine whether the petitioner was a true successor to [REDACTED] counsel was instructed on appeal to fully explain the manner by which the petitioner took over the business of [REDACTED] 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 [REDACTED] 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 United States Citizenship and Immigration Services (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>6</sup> This is

---

<sup>6</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

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 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.

A valid successor-in-interest relationship has not been established [REDACTED]. There is no evidence in the record that the successor-in-interest, [REDACTED] purchased the predecessor's assets and essential rights and obligations necessary to carry on the business. Further, the petitioner has not established that its successor had the continuing ability to pay the proffered wage from the date of the alleged business transfer until the beneficiary adjusts status to lawful permanent residence, and the petitioner has not established its ability to pay the proffered wage from the priority date until the date of the alleged transfer.

---

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.

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 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 30, 2001. The proffered wage as stated on the Form ETA 750 is \$11.87 per hour for a 35 hour work week, which equates to [REDACTED]. The Form ETA 750 states that the position requires six years of grade school, three years of high school, and two years of experience in the job offered.

The documentation submitted suggests that the petitioner was structured as a C corporation. On the petition, the petitioner claimed to have been established on August 1, 1999 and to currently employ "2-3" workers.<sup>7</sup> On the Form ETA 750B, signed by the beneficiary on March 27, 2001, the beneficiary claimed to have been unemployed since March 1998.

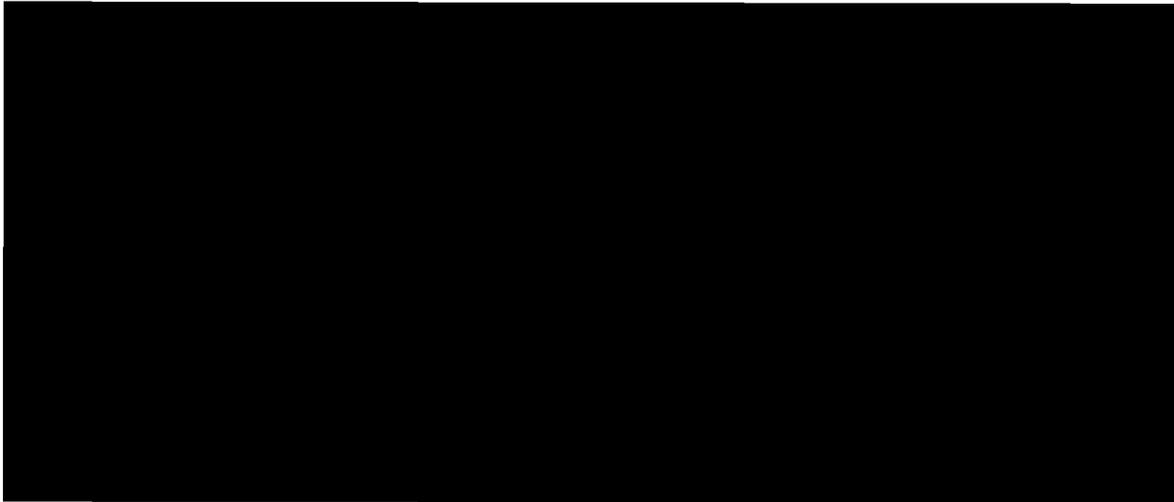
The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as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

---

<sup>7</sup> It is noted that in support of the appeal, counsel submits a letter stating "The petitioner has [REDACTED]"

petitioner's ability to pay the proffered wage. In the instant case, the documentation contained in the record reflects the following:



On appeal, counsel asserts that in 2001, the petitioner paid the beneficiary [REDACTED]. In support of this assertion, counsel submits a letter dated April 13, 2007, from [REDACTED] reiterating this information and a Form 1040X, Amended U.S. Individual Income Tax Return, and Form 502X, Amended Maryland Tax Return, for 2001 for the beneficiary and her spouse, showing that she received [REDACTED] in wages that year. The petitioner also submits an undated letter from [REDACTED] certifying that the petitioner paid the beneficiary [REDACTED]. The petitioner did not submit receipts for such payments or any further evidence that such payments were made.

Despite counsel's explanation of the rationale for amending the beneficiary's 2001 tax returns, because the beneficiary amended her returns in the middle of the proceedings, USCIS would require IRS-certified copies to corroborate the assertion that the amended returns were actually processed by the IRS. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc.

---

<sup>8</sup> It is noted that the petitioner submitted documentation indicating that it paid another worker, [REDACTED] wages of [REDACTED]. In a letter dated January 22, 2006, counsel for the petitioner states that the petitioner no longer employs this other worker and that the employee's wages are available to pay the beneficiary. However, USCIS cannot take those funds into consideration, as they were already used to pay the other worker. In general, wages already paid to others are not available to prove the ability to pay the wage proffered to the beneficiary at the priority date of the petition and continuing to the present. The beneficiary was employed as a cook by the petitioner in 2001 and 2002, the same position held by [REDACTED] in 2001 and 2002. The petitioner has not established that it is replacing [REDACTED] with the beneficiary in 2001 and 2002.

<sup>9</sup> It is noted that wages paid by [REDACTED], are not considered in our determination of the petitioner's ability to pay the proffered wage

Comm. 1988). 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)). Thus, USCIS will only consider the wages paid to the beneficiary as reflected on the 2001 Form W-2 that was initially submitted and not the wages listed on the amended version of the tax returns submitted on appeal.

Therefore, even if we assume that a valid successor-in-interest relationship was established between [REDACTED] the petitioner has not established that the beneficiary was paid the full proffered wage in 2001, 2002, 2003, 2005 and 2006. The difference between the wages paid and the proffered wage in those years is [REDACTED] and [REDACTED] respectively.

It is noted that USCIS records indicate that the petitioner has filed at least one other Form I-140 on behalf of an alien beneficiary since its establishment in 1999. The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

If, as in this case, the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage throughout the requisite time 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*, 558 F.3d 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*, 719 F.Supp. at 537 (emphasis added).

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 November 7, 2006 with the receipt by the director of the petitioner’s submissions, through counsel, in response to the director’s Request for Evidence (RFE) dated September 14, 2006. Therefore, the petitioner’s tax return for 2006 was not yet due and the 2005 tax return was the most recent return available for submission.<sup>10</sup> The tax returns for [REDACTED] demonstrate its net income/loss as follows:

- In 2001, the Form 1120 shows a net loss of [REDACTED]
- In 2002, the Form 1120 shows a net loss of [REDACTED]
- In 2003, the Form 1120 shows a net loss of [REDACTED]

Therefore, even if we assume that a valid successor-in-interest relationship was established between [REDACTED] the petitioner has not established that it had sufficient net income in the years 2001, 2002, 2003 and 2005 to pay the difference between the wages paid to the beneficiary and the proffered wage. The petitioner has also not established when the alleged transfer of its interest in [REDACTED] occurred, and has not established the ability of [REDACTED] to pay the proffered wage from the date of the alleged transfer. The petitioner did not submit financial documentation required by 8 C.F.R. §204.5(g)(2) to establish the ability of [REDACTED] to pay the proffered wage in any relevant year.

---

<sup>10</sup> The petitioner did not submit its tax return for 2005.

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>11</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 tax returns for [REDACTED] demonstrate its end-of-year net current assets as follows:

- In 2001, the Form 1120 shows net current assets of [REDACTED]
- In 2002, the Form 1120 shows net current assets of [REDACTED]
- In 2003, the Form 1120 shows net current assets of [REDACTED]

Therefore, even if we assume that a valid successor-in-interest relationship was established between [REDACTED] the petitioner has not established that it had sufficient net current assets in 2001 and 2005 to pay the difference between the wages paid to the beneficiary and the proffered wage. It had sufficient net current assets to pay the difference between the wages paid to the beneficiary and the proffered wage in 2002 and 2003.

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

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

---

<sup>11</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.

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 *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 this case, at the time the petition was filed, the petitioner claimed to have been established in 1999, to employ 2-3 workers, and to have a gross annual income [REDACTED]. The petitioner listed on the Form I-140, [REDACTED] has not established that it is an active business. Further, [REDACTED], has not established a valid successor-in-interest relationship between [REDACTED] and there is no evidence of the petitioner's reputation within its industry, or the occurrence of any uncharacteristic business expenditures or losses. While the gross receipts of [REDACTED] increased from 2001 to 2003, the petitioner did not provide evidence of its growth or that of its alleged successor from 2004 onward.

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 beginning on the priority date.

Furthermore, the ETA 750B reflects that six years of grade school and three years of high school education are required for the position offered. No evidence of the beneficiary's grade school and high school education is contained in the record. If the petitioner wishes to pursue this matter further, evidence of the beneficiary's education must be provided.

It is noted that there are discrepancies in the record regarding the beneficiary's employment history. On a Form G-325A, Biographic Information sheet, signed by the beneficiary on June 18, 2003, and submitted in connection with a Form I-485, Application to Register Permanent Residence or Adjust Status, she indicated that she had been employed by [REDACTED] [REDACTED] however, on the Form ETA 750B, she indicated that she had been unemployed from March 1998 until March 27, 2001, the date she signed the Form ETA750B.

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.