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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B6

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: FEB 09 2011

IN RE:

[REDACTED]

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 \$630. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a building and construction trust. It seeks to employ the beneficiary permanently in the United States as a stonemason. 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). 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)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

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 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 April 25, 2001. The proffered wage as stated on the Form ETA 750 is \$14.00 per hour (\$29,120.00 per year).

The AAO conducts appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d

Cir. 2004).<sup>1</sup>

Accompanying the petition and the labor certification, counsel submitted an explanatory letter dated October 31, 2007, and a letter from the petitioner dated September 24, 2007, in which the trustee stated that the job offered is stone fabricator and installer and that the trust will continue to employ the beneficiary. According to the letter, the beneficiary's "current rate of pay is \$25.00 per hour." The Form ETA 750 indicates that the DOL authorized a correction on July 13, 2007 changing the employer to JDP Trust, the current petitioner, from [REDACTED]

Additionally, counsel submitted, *inter alia*, an Application for Employer Identification Number, (Form SS-4) dated July 22, 2005; the first page of a document "Certification of Trust" dated July 22, 2005; a "Certificate of Trustee" dated September 26, 2007; an unaudited financial statement entitled "Balance Sheet (as of August 31, 2007);" copies of "JDPR Construction" bank checking statements for the period July 20, 2006, to August 20, 2007; the petitioner's Schedule B (Form 941) statements entitled "Report of Tax Liability for Semiweekly Schedule Depositors" for calendar quarters in 2006 and 2007; pay statements issued by the petitioner to the beneficiary in 2007 showing year-to-date payments of \$38,628.05 as of September 14, 2007; and partial copies of the beneficiary's federal income tax (Form 1040) returns from 2000 to 2006 submitted without Wage and Income (W-2) or 1099-MISC Statements.

These documents indicate that the petitioner, a revocable trust, came into existence in July 2005.

On November 18, 2008, the director requested additional evidence. The director requested evidence clarifying the relationship between the petitioner and [REDACTED], the original employer listed in the Form ETA 750. The director also instructed the petitioner to submit evidence of its ability to pay the proffered wage from the priority date, April 25, 2001. The director indicated that the petitioner should submit evidence according to regulation 8 C.F.R. § 204.5(g)(2) (i.e. the petitioner's annual reports, or federal tax returns, including copies of all supplementary Schedules, or audited financial statements). No such evidence was submitted.

Regarding the beneficiary, the director requested evidence of any wages\salary\compensation the petitioner paid the beneficiary since the priority date "for all years" by submission of W-2 or 1099-MISC Statements. The director requested evidence demonstrating that the petitioner has already paid or has been paying the beneficiary at a rate equal to or greater than the proffered wage, or that the petitioner's net income equals or is greater than the proffered wage, or that the petitioner has net current assets equal or greater than the proffered wage.

The director also requested the beneficiary's four most recent pay vouchers for 2008. No such pay vouchers were submitted.

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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 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).

In response, counsel submitted an explanatory letter dated December 22, 2008 indicating that the petitioner purchased assets from the original employer identified in the labor certification on October 28, 2005; a notarized statement from the trustee of JDP dated December 22, 2008; a copy of an "Individual Grant Deed" to the petitioner dated September 30, 2005, along with a "Bill of Sale" dated September 23, 2005, and various schedules; a complete copy of a "Certification of Trust" dated July 22, 2005; an Application for Employer Identification Number, (Form SS-4) dated July 22, 2005; a copy of a webpage at <http://data.bls.gov/> ... accessed on December 22, 2008; partial copies of the beneficiary's federal income tax (Form 1040) returns from 2000 to 2007; six W-2 Statements allegedly issued to the beneficiary by [REDACTED] (i.e. [REDACTED] in 2000-\$16,205.52;<sup>2</sup> 2001-\$19,224.70; 2002-\$27,467.91; 2003-\$23,751.14; 2004-\$26,973.12; and in 2005-\$20,578.53. Additionally, counsel submitted two W-2 Statements, one allegedly issued to the beneficiary by the petitioner in 2006-\$21,183.57, and one allegedly issued by [REDACTED] California in 2006-\$36,552.46. Further, counsel submitted one W-2 Statement issued to the beneficiary by the petitioner in 2007-\$52,603.05.

On appeal, counsel submitted a legal brief dated March 10, 2009; only the first two pages of the personal joint federal income tax (Forms 1040) returns for 2004 and 2005 for [REDACTED], and his spouse; a "Certificate of Trustee" dated September 26, 2007, and an unaudited financial statement entitled "Balance Sheet dated August 31, 2007;" copies of [REDACTED] bank checking statements for the period July 20, 2006, to August 20, 2007; two W-2 Statements allegedly issued to the beneficiary by the petitioner in 2006-\$21,183.57, and by [REDACTED] in 2006-\$36,552.46 (both totaling \$57,735.93);<sup>4</sup> and the petitioner's Schedule B (Form 941) statements entitled "Report of Tax Liability for Semiweekly Schedule Depositors" for calendar quarters in 2006 and 2007.

The evidence in the record of proceeding shows that the petitioner is structured as a building and construction trust. On the petition, the petitioner claimed to have been established in 2005 and to currently employ five workers. On the Form ETA 750B, signed by the beneficiary on April 18, 2001, the beneficiary claimed to work for [REDACTED] since May 1996.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a 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

<sup>2</sup> Pay records submitted for years prior to the priority date have little probative value in the determination of the ability to pay from the priority date. However, we will consider the petitioner's pay records generally.

<sup>3</sup> According to counsel's letter dated December 22, 2008, the petitioner utilized [REDACTED], as a contractor to prepare its payroll for its employees.

<sup>4</sup> The AAO will accept these two wage payments as the petitioner's wage payment for 2006, assuming the persuasiveness of the Forms W-2 generally. *See infra*.

a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In the case of a successor-in-interest, the petitioner must establish that the predecessor could pay the proffered wage from the priority date to the date of asset transfer and that the petitioner could pay the proffered wage from the date of transfer to the present. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). In this matter, the petitioner must establish that [REDACTED] [REDACTED] should have paid the proffered wage from April 25, 2001 to October 28, 2005 and that the petitioner, JDP Trust, to the extent this can be separated from the original employer, could pay the wage thereafter.

In determining the petitioner's, or the predecessor's, ability to pay the proffered wage during a given period, USCIS will first examine whether the beneficiary was paid during that period. If the petitioner establishes by documentary evidence that it, or its predecessor, 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 differences between the proffered wage and the wages allegedly paid to the beneficiary by [REDACTED] in 2001 through 2005, the [REDACTED] in 2006, and the [REDACTED] Trust in 2007 are indicated in the following table.

Tax Year:	The Proffered Wage the Petitioner Must Pay:	Petitioner's Wages Paid to the Beneficiary for Years 2001 to 2008:	The Differences:
2001	\$29,120.00	\$19,224.70	\$9,895.30
2002	\$29,120.00	\$27,467.91	\$1,652.09
2003	\$29,120.00	\$23,751.14	\$5,368.86
2004	\$29,120.00	\$26,973.12	\$2,146.88
2005	\$29,120.00	\$20,578.53	\$8,541.47
2006	\$29,120.00	\$57,735.93	\$-0-
2007	\$29,120.00	\$52,603.05	\$-0-

However, in this matter, the Forms W-2 in the record are not persuasive evidence of wages having been paid to the beneficiary in any of the years listed above. Information contained in these Forms W-2 are inconsistent with claims made by the petitioner in the Form I-140 under penalty of perjury. The Forms W-2 in the record state that the wages were paid to a person having social security [REDACTED]. The petitioner responded "none" to the query in the Form I-140 asking for the beneficiary's social security number, even though this information was clearly available to it if, in fact, [REDACTED] is the beneficiary's social security number. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Absent clarification of these inconsistencies in the record, the AAO will not accept the Forms W-2 as persuasive evidence of wages paid to the beneficiary in 2001 through 2007. Although this is not the basis for the AAO's decision in the instant case, it is noted that certain unlawful uses of social security numbers are criminal offenses involving moral turpitude and can lead in certain circumstances to removal from the United States. *See Lateef v. Dept. of Homeland Security*, 592 F.3d 926 (8<sup>th</sup> Cir. 2010).

Accordingly, in the instant case, the petitioner has not established that it or its predecessor paid the beneficiary the full proffered wage from the priority date through 2005. In 2006 and 2007, although it appears that the beneficiary was paid more than the proffered wage, the Forms W-2 are not persuasive given the inconsistency regarding the social security number.

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); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). 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); *Uheda 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.

The petitioner is a building and construction trust. A trust is an entity created and governed under the state law in which it was formed. A trust involves the creation of a fiduciary relationship between a grantor, a trustee, and a beneficiary for a stated purpose. The grantor is the creator of the trust relationship and is generally the owner of the assets initially contributed to the trust. The trustee obtains legal title to the trust assets and is required to administer the trust on behalf of the beneficiaries according to the express terms and provisions of the trust agreement. The beneficiaries are those entitled to receive benefits from the trust. A revocable trust may be revoked and is considered a grantor trust, which is a term used in the Internal Revenue Code to describe any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. *See* 26 U.S.C. § 676. If a trust is a grantor trust, then the grantor is treated as the owner of the assets, the trust is disregarded as a separate tax entity, and all income is taxed to the grantor on his or her Form 1040, U.S. Individual Income Tax Return.<sup>5</sup> Based upon the record, the [REDACTED] is considered a grantor trust.

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<sup>5</sup> *See* <http://www.irs.gov/businesses/small/article/0,,id=106551,00.html> (accessed October 30, 2007).

The AAO notes that counsel has not submitted the petitioner's (which in this instance would be the trust grantor's) annual reports, or complete federal tax returns for years after the establishment of the trust in 2005, in response to the director's RFE dated November 18, 2008.<sup>6</sup> For purposes of analysis and review of the evidence that was submitted, although the petitioner is a grantor trust, its grantor is a sole proprietorship.

A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7<sup>th</sup> Cir. 1983). No personal family recurring expenses were requested or submitted.

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor supports a family of two. The 2004 and 2005 tax returns (but not the 2001, 2002, or 2003 tax returns) of [REDACTED] and his spouse were submitted without schedules or statements. It is not known if the income or loss from the [REDACTED] trust is stated on the 2005 tax return.

The regulation at 8 C.F.R. § 204.5(g)(2) requires copies of petitioner's annual reports, federal tax returns, or audited financial statements to demonstrate its net income. The petitioner failed to provide complete, signed and dated income tax returns. Clearly, incomplete tax returns were not submitted to the IRS. The probative value of the incomplete documents as evidence is diminished substantially. The petitioner had additional time on appeal to submit more complete and persuasive evidence but neglected to do so. 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)).

On appeal, counsel asserts, in pertinent part, the following:

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<sup>6</sup> Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The case was filed in 2001. At that time, the submitted wage was \$8.85/hour. Therefore, for 2001 and 2002 and 2003, the salary needed to show 'ability to pay' should have been \$18,408, NOT \$29,120 as stated by the USCIS. In 2001, 2002 and 2003, the beneficiary was paid above the prevailing wage as evidenced by [the beneficiary's] W-2's and tax returns.

The fundamental focus of the USCIS' determination is whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). Counsel has not cited regulation or court decision to support her assertion that a wage other than the certified wage be considered in this matter. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

According to counsel, the petitioner has paid "well over" the prevailing wage of \$29,120.00. In 2006 and 2007, the beneficiary was paid more than the prevailing wage. In 2001 through 2005, there is no evidence that the petitioner or its reputed successor-in-interest paid the prevailing wage.

Counsel asserts that the amounts stated in the bank checking account submitted are evidence of the petitioner's ability to pay the proffered wage. Counsel's reliance on the monthly closing balances in [redacted] bank account is misplaced assuming they are relevant to show the petitioner's or its successor-in-interest's ability to pay the proffered wage.. 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.

Counsel states on appeal that USCIS must consider the normal accounting practices of the "company," even if the ability to pay is not reflected in the tax returns. Since complete tax returns were not submitted for any entity, counsel's statement is not supported by the record and is misplaced.

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 \$100,000.00. 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 *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 states that the facts "do not fall squarely under" *Sonegawa* although the *Sonegawa* exception can be applied in the context of looking at the "totality of the circumstances" in this case. Counsel's reasoning is that since the petitioner could not obtain documentation concerning the ability to pay from the prior employer, the petitioner sustains its burden of proof in the matter. On the contrary, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary.

The petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency. On November 18, 2008, he director indicated that the petitioner should submit evidence according to regulation 8 C.F.R. § 204.5(g)(2) which are the petitioner's (in this instance the trust's grantor, [REDACTED] annual reports, or complete federal tax returns, or audited financial statements. No such evidence was submitted. The purpose of the request for evidence 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).

Further, counsel states that the differences between the prevailing wage and wages paid were "insignificant." As already stated, the differences between wages paid to the beneficiary by the [REDACTED] Account in 2001 were \$9,895.30, [REDACTED] were \$2,146.88, and in 2005 were \$8,541.47. There is no explanation in the record other than counsel's assertion that these differences are insignificant assuming that the sole proprietorship paid the wages in question. The petitioner only paid the beneficiary the prevailing wage in 2006 and 2007. Finally, as the record contains serious, unresolved inconsistencies pertaining to the identity of the beneficiary and the claimed payment of wages to him, and has significant gaps in evidence, e.g., missing tax return evidence for the petitioner, it cannot be concluded that the petitioner could pay the proffered wage in any of the years in question.

Counsel has not contended or provided evidence of the occurrence of any uncharacteristic business expenditures, losses, or an adverse event relevant to the petitioner's ability to pay the proffered wage during the period for which evidence was provided. The petitioner has not provided evidence of a turn-around of the petitioner's business fortunes, or expectations of

increased profitability. 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.

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.