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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

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DATE: **JUL 27 2011** OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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 geotechnical and environmental engineering company. It seeks to employ the beneficiary permanently in the United States as an engineering technician for road construction. 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, 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 June 1, 2009, denial, the single 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.

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:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

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

by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on December 31, 2001. The proffered wage stated on the Form ETA 750 is \$19.93 per hour (\$41,454.40 per year). The Form ETA 750 states that the position requires a Bachelor of Science in Engineering.¹

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *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.²

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established in 1984, to have a gross annual income of \$4,620,903, and to currently employ 40 workers. According to the tax returns in the record, the petitioner's fiscal year is from July 1 through June 30. In the employment experience section of Form ETA 750B, 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 ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

On appeal, counsel asserts that the director should have considered the petitioner's ability to pay the proffered wage in accordance with *Construction and Design Co. v. USCIS*, 563 F.3d 593 (7th Cir. 2009). In that case, the seventh circuit directly addressed the method used by USCIS in determining a petitioner's ability to pay the proffered wage.³ The employer in *Construction and Design* was a

¹ The record of proceeding documents the beneficiary's qualifications for the proffered position as of the priority date.

² 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).

³ The United States Court of Appeals for the Seventh Circuit has jurisdiction over Illinois, Indiana and Wisconsin. The worksite of the offered position is at the petitioner's office in Highland,

small construction company which was organized as a Subchapter S corporation. The employer sought to employ the beneficiary at a salary of over \$50,000 per year. The court noted that, according to the employer's tax returns and balance sheet, its net income and net assets were close to zero. The court also noted that the owner of the corporation received officer compensation of approximately \$40,000.

In considering the employer's ability to pay the proffered wage, the court stated that if an employer "has enough cash flow, either existing or anticipated, to be able to pay the salary of a new employee along with its other expenses, it can 'afford' that salary unless there is some reason, which might or might not be revealed by its balance sheet or other accounting records, why it would be an improvident expenditure."⁴

The court then turned to an examination of the USCIS method for determining an employer's ability to pay the proffered wage. The court noted that USCIS "looks at a firm's income tax returns and balance sheet first."⁵ The court, recognizing that the employer bears the burden of proof, went on to state that if the petitioner's tax returns do not establish its ability to pay the proffered wage the petitioner "has to prove by other evidence its ability to pay the alien's salary."⁶ The court found that the employer had failed to establish that it had sufficient resources to pay the proffered wage "plus employment taxes (plus employee benefits, if any)."⁷

Thus, the court in *Construction and Design* concurred with existing USCIS procedure in determining an employer's ability to pay the proffered wage. This method, which is described in detail below, involves (1) a determination of whether a petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage; (2) where the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during the relevant period, an examination of the net income figure and net current assets reflected on the petitioner's federal income tax returns; and (3) an examination of the totality of the circumstances affecting the petitioning business pursuant to *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

Further, the court in *Construction and Design* noted that the proffered wage actually understates the cost to the employer in hiring an employee, as the employer must pay the salary "plus employment taxes (plus employee benefits, if any)." As noted above, because the instant case arose in the seventh circuit, the AAO is bound by the seventh circuit's decision in *Construction and Design*. Therefore, pursuant to the decision in *Construction and Design*, the petitioner in the instant case must establish that it has the ability to pay the proffered wage plus compensation expenses for the employee which may include legally required benefits (Social Security, Medicare, federal and state

Indiana.

⁴ *Id.*

⁵ *Id.* at 596.

⁶ *Id.*

⁷ *Id.*

unemployment insurance, and worker's compensation), employer costs for providing insurance benefits (life, health, disability), paid leave benefits (vacations, holidays, sick and personal leave), retirement and savings (defined benefit and defined contribution), and supplemental pay (overtime and premium, shift differentials, and nonproduction bonuses). The costs of such benefits are significant. The Office of Management and Budget (OMB) has determined that, in order to calculate the "fully burdened" wage rate (i.e., the base wage rate plus an adjustment for the cost of benefits) the wage rate may be multiplied by 1.4.⁸ In this case, as noted above, the proffered wage as stated on the Form ETA 750 is \$41,454.40 per year. Using the OMB-approved formula, the "fully burdened" wage rate in this case equates to \$58,036.16 per year. Therefore, pursuant to the seventh circuit decision in *Construction and Design*, the petitioner in this case must establish its ability to pay \$58,036.16 per year.

Accordingly, in determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date of December 31, 2001.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *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); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

⁸ The 1.4 multiplier is based on Bureau of Labor Statistics figures for employer costs as a percentage of employee compensation. See <http://www.bls.gov/news.release/ecec.t01.htm>.

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 118. “[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).

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 petitioner’s Forms 1120, U.S. Corporation Income Tax Return, reflect its net income as shown below:

Year	Net income
2001	(\$45,438)
2002	(\$8,038)
2003	\$4,008
2004	\$39,330
2005	(\$42,494)
2006	\$25,215
2007	(\$344,792)
2008	(\$107,183)

Therefore, because the petitioner’s net income was less than the proffered wage of \$41,454.40 per year, and less than the “fully burdened” wage rate of \$58,036.16 per year, the petitioner did not have sufficient net income to pay the proffered wage for any year from 2001 through 2008.

Since the net income the petitioner demonstrates it had available does not equal the amount of the proffered wage or more, USCIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.⁹ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. 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 below.

Year	Net Current Assets
2001	(\$56,347)
2002	(\$9,341)
2003	(\$2,739)
2004	\$13,882
2005	(\$81,618)
2006	(\$163,928)
2007	(\$565,573)
2008	(\$740,298)

Therefore, the petitioner did not have sufficient net current assets to pay the proffered wage, or the "fully burdened" wage rate of \$58,036.16 per year for any year from 2001 through 2008.

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 wages paid to the beneficiary, or its net income or net current assets.

In addition to the petitioner's 2006 Form 1120, counsel also submitted the petitioner's unaudited financial statements for 2006. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The unaudited financial statement that counsel submitted is not

⁹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

persuasive evidence. The accountant's report that accompanied that financial statement makes clear that it was produced pursuant to a compilation rather than an audit. As the accountant's report also makes clear, financial statements produced pursuant to a compilation are the representations of management compiled into standard form. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

Counsel also provided an audited financial statement for fiscal year 2007. However, this statement was prepared on an accrual basis of accounting while the petitioner's income tax returns were reported on a cash basis of accounting. This office is not, however, persuaded by an analysis in which the petitioner, or anyone on its behalf, seeks to rely on tax returns or financial statements prepared pursuant to one method, but then seeks to shift revenue or expenses from one year to another as convenient to the petitioner's present purpose. If revenues are not recognized in a given year pursuant to the cash accounting, then the petitioner, whose taxes are prepared pursuant to cash rather than accrual, and who relies on its tax returns in order to show its ability to pay the proffered wage, may not use those revenues as evidence of its ability to pay the proffered wage during that year. Similarly, if expenses are recognized in a given year, the petitioner may not shift those expenses to some other year in an effort to show its ability to pay the proffered wage pursuant to some hybrid of accrual and cash accounting. The amounts shown on the petitioner's 2007 tax return shall be considered as they were submitted to the IRS, not as amended pursuant to the accountant's adjustments.¹⁰

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

¹⁰ The petitioner's 2007 audited financial statement also shows that it had a net loss and negative net current assets for that fiscal year.

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 the instant case, the petitioner's gross income, business longevity, and officer's compensation amounts are notable and have been analyzed; however, the petitioner was unable to establish ability to pay with its net income or net current assets in any of the relevant years considered; it consistently had negative net income and net current assets; its losses far outweighed the three years of modest profitability; and the amount of its losses and net current liabilities were steadily increasing. The evidence in the record does not establish the petitioner's reputation in the industry, the historical growth of the petitioner's business, the occurrence of any uncharacteristic business expenditures or losses, or whether the beneficiary is replacing a former employee or an outsourced service.

On appeal, counsel requests that USCIS consider the majority shareholder's offer to "forego part of his salary to pay" the proffered wage, and submits a Form I-134, Affidavit of Support, completed by that same shareholder. Counsel also submits copies of the petitioner's bank records as "further evidence of its ability to pay the proffered wage." Counsel misconstrues the use of the Affidavit of Support. The Affidavit of Support is utilized to establish that an alien is not inadmissible pursuant to section 212(a)(4) of the Act as a public charge. However, for an I-140 petition, the petitioner must establish its ability to pay the proffered wage as of the priority date, not its guarantee to support the beneficiary in the future. See 8 C.F.R. § 204.5(g)(2). There is no provision in the employment-based immigrant visa statutes, regulations, or precedent that permits a personal guarantee or Affidavit of Support to be utilized in lieu of proving ability to pay through prescribed financial documentation. The Affidavit of Support is a future pledge of payment and does nothing to alter the immediate eligibility of the instant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

However, a relevant factor when determining ability to pay is if the petitioner pays its officer-owner(s) a substantial salary, and the remaining amount required to meet the proffered wage is only

a small percentage of the total salary paid to the officer-owner(s). The record must also contain a statement or other evidence establishing that the salary of the officer-owner(s) is not set by contract and that the petitioner would have used and could have used a portion of the officer-owner(s) salary to pay the proffered wage. In performing this analysis, USCIS does not examine the personal assets of the officer-owner(s), but instead merely considers the ability of a corporation to set reasonable salaries for its officer-owner(s) based, in part, on the profitability of the organization.

USCIS has long held that it may not “pierce the corporate veil” and look to the assets of the corporation’s owner to satisfy the corporation’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation’s ability to pay the proffered wage. In the present case, however, counsel is not suggesting that USCIS examine the personal assets of the petitioner’s owners, but, rather, the financial flexibility that the employee-owners have in setting their salaries based on the profitability of their business.

The evidence in the record establishes that [REDACTED] holds 51 percent of the petitioner’s stock. [REDACTED] stated that he was “willing to spare a portion of [his] handsome annual compensation to cover the beneficiary’s salary as proffered.” According to the petitioner’s IRS Form 1120, Schedule E (Compensation of Officers), [REDACTED] elected to pay himself as follows:

Year	Compensation
2001	\$166,424
2002	\$186,420
2003	\$199,412
2004	\$207,435
2005	\$231,478
2006	\$231,481
2007	\$271,875

[REDACTED] stated in affidavits dated April 10, 2009, that he was “willing to spare a portion of [his] handsome annual compensation to cover the beneficiary’s salary as proffered.” However, [REDACTED] did not specify exactly what “portion” of his salary he was willing to forego. On September 29, 2010, the AAO issued a Request for Evidence (RFE), instructing the [REDACTED] submit an affidavit confirming his offer to pay the beneficiary’s proffered wage and to state whether he has also made a similar offer for any other beneficiaries. In response to the RFE, [REDACTED] submitted an affidavit dated November 10, 2010, testifying that he had also offered to share portions of his earnings from the petitioner with other beneficiaries. He did not state the amounts offered to other beneficiaries. In addition, the amount of money [REDACTED] would have to forego in order to pay the proffered wage in the instant case alone would constitute a significant percentage of his overall compensation. For

these reasons, [REDACTED] claim that he would and could forego his officer compensation to pay the proffered wage is not accepted.

In addition, the petitioner has filed multiple petitions on behalf of other beneficiaries. If the petitioner has filed Form I-140 petitions on behalf of other beneficiaries, then it must also demonstrate its ability to pay the offered wage to each additional beneficiary of a pending or approved petition. See *Matter of Great Wall*, 16 I&N Dec. at 144. In determining whether the petitioner has established its ability to pay the offered wage to multiple beneficiaries, USCIS will add together the offered wages for each beneficiary for each year starting from the priority date of the primary petition, and analyze the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-140 petitions, after the dates the beneficiaries obtain lawful permanent residence, or after the dates their Form I-140 petitions have been withdrawn, revoked, or denied without a pending appeal.

The AAO RFE also instructed the petitioner to submit information pertaining to the other beneficiaries, including their priority dates, proffered wages, current employment status, wages paid, and whether any of the petitions have been withdrawn. In response to the RFE, the petitioner provided a list of 17 beneficiaries for whom it had petitioned. The petitioner stated that 13 of the beneficiaries on its list were no longer with the company and that the four beneficiaries who were still employed by the company were currently being paid more than their proffered wage. However, the record does not contain documentary evidence supporting these claims. The record also contains no information about the priority dates of the petitions and when the petition process was terminated for each beneficiary. Thus, the petitioner has not established its ability to pay the proffered wage for the beneficiary and the proffered wages to the beneficiaries of the other petitions.

Therefore, considering the totality of the circumstances, the petitioner has not established that it possessed the continuing ability to pay the proffered wage (or the "fully burdened wage") from the priority date until the beneficiary obtains lawful permanent residence.

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.