

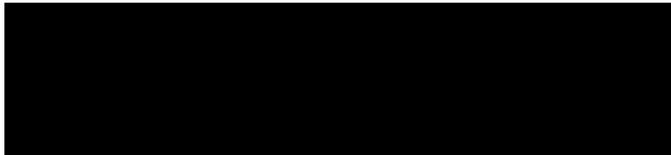
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

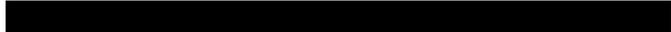
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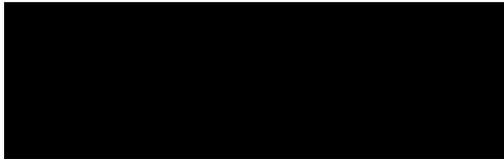
Date: **MAY 03 2011** Office: TEXAS SERVICE CENTER

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: On January 11, 2002, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an immigrant petition for alien worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on May 15, 2002. The director of the Texas Service Center (TSC), however, revoked the approval of the immigrant petition on June 2, 2009, and the petitioner subsequently appealed the director's decision to revoke the petition's approval. On appeal, counsel for the petitioner contends that the director's decision to revoke the previously approved petition was not based on good and sufficient cause, against section 205 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1155.¹ On October 6, 2010, the Administrative Appeals Office (AAO) issued a notice of derogatory information and request for evidence (NDI/RFE) to both the petitioner and the beneficiary, informing them of several inconsistencies in the record concerning the beneficiary's work experience prior to the filing date of the labor certification among other things. On November 9, 2010, the AAO received a brief from the petitioner's counsel of record and additional evidence pertaining to the beneficiary's work experience in Brazil. In her brief, counsel contends that the beneficiary has submitted and provided sufficient evidence and detailed explanation to demonstrate his qualification for the position as set forth on the Application for Alien Employment Certification, Form ETA 750. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(i).² As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification.

The petitioner must demonstrate that, 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 Department of Labor (DOL) – the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Further, the regulation at 8 C.F.R. § 204.5(g)(2) requires the petitioner to demonstrate its ability to pay the proffered wage of the beneficiary from the priority date until the beneficiary obtains lawful permanent residence.³

¹ Section 205 of the Act, 8 U.S.C. § 1155, states, “The Secretary of Homeland Security may revoke the approval of the petition for what he deems to be good and sufficient cause.”

² Section 203(b)(3)(A)(i) of 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.

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

Here, the Form ETA 750 was filed and accepted for processing by the DOL on April 23, 2001. The petitioner sought to hire an experienced cook. The Form ETA 750 specifically required the applicant to have a minimum of two years experience in the job offered.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the beneficiary is, in fact, qualified for the certified job. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. 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). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As set forth above, the proffered position requires the beneficiary to have a minimum of two years of work experience in the job offered prior to the priority date. On the Form ETA 750, signed by the beneficiary on March 26, 2001, he represented that he worked at the following organizations:⁴

- [REDACTED] from June 1997 to February 1998 (8 months);
- [REDACTED] from December 1999 to May 2000 (5 months); and
- [REDACTED] from August 2000 to April 2001 (8 months).

The record shows that this Form ETA 750 was certified by the DOL on December 21, 2001. Following the approval of the Form ETA 750, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, on January 11, 2002. Along with the approved Form ETA 750 and the petition, the petitioner submitted the following documents to demonstrate that the beneficiary had at least two years of work experience in the job offered:

- An affidavit from [REDACTED] dated April 16, 2001 stating that the beneficiary worked as a cook at her establishment from June 1, 1997 to February 1, 1998;

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.

⁴ Based on what the petitioner listed on the Form ETA 750 part B, the AAO observes that the beneficiary only had 21 months of work experience in the job offered, less than two years, before the priority date.

- A handwritten letter from [REDACTED] stating that the beneficiary worked as a cook from December 1999 to May 2000;
- A letter dated April 2001 from [REDACTED] stating that the beneficiary worked as a cook at [REDACTED] located at [REDACTED] from August 7, 2000 to April 7, 2001; and
- A letter from [REDACTED] stating that the beneficiary worked as a cook at [REDACTED] from February 27, 2000 to August 27, 2000.

To demonstrate its ability to pay the beneficiary's wage, the petitioner submitted a copy of its Form 10-Q, quarterly report for the period ended October 3, 2001 (third quarter of the year). In response to the director's request for evidence issued on March 12, 2002, the petitioner claims that the petitioning company is wholly owned and operated by [REDACTED] and that the petitioner is not a franchise business. As stated above, the I-140 petition was approved by the VSC on May 15, 2002.

On February 18, 2009, the TSC director issued a notice of intent to revoke (NOIR) to the petitioner, indicating that USCIS had found the existence of fraudulent information in numerous other employment-based petitions filed by the petitioner's prior counsel of record, [REDACTED]. The director advised the petitioner to demonstrate that the beneficiary met all of the requirements listed on the approved Form ETA 750 labor certification as of the priority date (April 23, 2001).

In response to the director's NOIR, the petitioner submitted the following evidence:

- A letter dated March 1, 2009 from [REDACTED] the manager of the petitioning company, stating that the beneficiary is currently an employee in good standing earning \$14/hour;
- A signed statement from the beneficiary dated March 4, 2009 stating that he was a cook with [REDACTED] in Brazil from June 1, 1997 to February 1, 1998 and that he could no longer reach [REDACTED] as she had closed her business and moved to Switzerland;
- A printout copy of [REDACTED] business registration status, showing that the business owned by [REDACTED] was open as of October 2, 1995 and remained active as of November 3, 2005;
- A generic DOL Advertising and Recruitment Compliance Statement;
- A copy of a classified ad from the *Boston Herald*; and
- A letter from the *Boston Herald* to [REDACTED] confirming his ad placement.

Upon review, the director determined that the petitioner had failed to follow the DOL recruitment procedures and revoked the previously approved petition, accordingly. The issue of whether the beneficiary had the requisite qualifications for the position as of the priority date was left open.

On appeal, counsel for the petitioner indicated that the beneficiary had over two years of work experience as a cook before the priority date. She stated that the beneficiary had submitted sufficient documentation to show that he worked as a cook at [REDACTED] for eight months, [REDACTED] for five months, [REDACTED] for eight months, and at [REDACTED] for six months.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In adjudicating the appeal, the AAO found several inconsistencies in the record pertaining to the beneficiary's past work experience as a cook in Brazil and in the United States. On October 6, 2010, the AAO sent both the petitioner and the beneficiary an NDI/RFE in accordance with 8 C.F.R. §§ 103.2(b)(8)(iv) and 103.2(b)(16)(i). In the NDI/RFE, the AAO noted that the beneficiary claimed he worked as a cook for [REDACTED] and [REDACTED] on the Form ETA 750, part B. However, the record also includes a letter from [REDACTED] stating that the beneficiary was a cook for six months, from February 27, 2000 to August 27, 2000. The AAO also noted that the beneficiary was only 16 years old when he claimed he worked as a cook for [REDACTED] between June 1997 and February 1998. The AAO noted that the beneficiary was likely in school full-time during that time frame. The beneficiary also failed to list his employment with [REDACTED] on his Biographic Information, Form G-325, under a section eliciting information about his work experience abroad. Further, on the Form G-325, the beneficiary indicated that he worked as a cook for [REDACTED] from 2000 to 2000 and for [REDACTED] from 1998 to 1999.

In response to the AAO's NDI/RFE, current counsel for both the petitioner and the beneficiary contends that the inconsistencies in the record as noted above were largely caused by [REDACTED]'s negligence and incompetence as the beneficiary's prior legal counsel. For instance, according to current counsel, the beneficiary's failure to list his employment with [REDACTED] on his Biographic Information (Form G-325) was a mere oversight. The beneficiary states in his signed statement dated November 4, 2010 that he very much relied on [REDACTED] to complete his immigration forms and that he signed those forms believing that the information provided there was accurate. Current counsel states that although many of these oversights were important errors, they were committed not by the beneficiary but by [REDACTED] as he was the one who helped the beneficiary completed the application.

To demonstrate that he worked for [REDACTED] in Brazil, the beneficiary produced a signed statement claiming that he worked 35 hours a week as a cook for [REDACTED] between June 1997 and February 1998 while attending high school at night. Submitted along with this signed statement is a declaration from [REDACTED] stating that the beneficiary attended night classes and finished the first year of his high school. Submitted also by the beneficiary is an affidavit from [REDACTED], sister of [REDACTED]. In her affidavit, [REDACTED] states that her sister is currently residing in Switzerland and that her sister's company went bankrupt.

The beneficiary also submits copies of his paystubs and Forms W-2 from [REDACTED] and [REDACTED], issued in 2000 and 2001 as evidence of his employment at those places and as proof to demonstrate that the beneficiary had the requisite qualification for the position as of the priority date.

Current counsel also submits a copy of the United Nation's report on the Brazilian education system in the 1990s and a letter dated August 29, 2009 from [REDACTED], an attorney who is licensed to practice law in Brazil. Citing the United Nation's report, current counsel states that it was common for the Brazilian young population to attend night classes in the 1990s. Citing [REDACTED] letter, counsel urged the AAO not to use the business registration status as conclusive evidence of the existence of any business in Brazil. In this case, counsel asserts that although [REDACTED] business, according to the business registration status, appeared to be active at least until November 3, 2005, it does not mean that [REDACTED] was still doing business on that date.

As noted above, the AAO conducts appellate review on a *de novo* basis. Upon *de novo* review, the AAO finds that the beneficiary has not demonstrated by a preponderance of the evidence that he had the requisite work experience in the job offered before the priority date (April 23, 2001). In response to the AAO's inquiries regarding the inconsistencies in the record pertaining to the beneficiary's work experience, the beneficiary stated that he fully relied on his former counsel, [REDACTED], to complete his immigration forms, and that any missing information or error was due to [REDACTED] negligence.

The beneficiary in the instant case essentially blamed [REDACTED] for misrepresenting and providing inconsistent information about his actual work experience. This is not a reasonable excuse, however. A failure to apprise oneself of the contents of documents before signing them is generally not recognized as a defense to misrepresentation. *See, e.g., Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (citing *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005) and *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993)).

Further, none of the letters provided to show that the beneficiary worked as a cook before the priority date has all the information, such as name and title of the author, address or location of the business, and a specific job description, as prescribed by the regulation at 8 C.F.R. § 204.5(g)(1).⁵ In addition, the beneficiary failed to list all of his relevant work experience on the Form ETA 750 part B, as instructed. For instance, the beneficiary never claimed he work at either [REDACTED] or [REDACTED] on the Form ETA 750B, but the record contains evidence showing that he might have worked at either place. Since neither [REDACTED] nor

⁵ The letter from [REDACTED] was handwritten on what it looks like a company letterhead by someone who claimed to be a "General Manager," but the author's name beneath his or her signature was not clear; the letter from [REDACTED] was signed by [REDACTED] but it does not include [REDACTED] title and the location of the business; the letter from [REDACTED], similar to the letter from [REDACTED] does not include the author's tile and the location of the business. None of the letters, including the letter from the beneficiary's claimed employer in Brazil, has a specific description of the job duties performed by the beneficiary.

██████████ was listed on the approved Form ETA 750, the AAO finds the evidence from ██████████ (the letter) and ██████████ (the paystubs and the Form W-2) not credible. See *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), where the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B lessens the credibility of the evidence and facts asserted. A review of the paystubs and the W-2 from ██████████ reveals nothing about what the beneficiary did when he worked there. For these reasons, the AAO determines that the beneficiary did not have the requisite work experience in the job offered before the priority date, and the appeal must be dismissed.

Beyond the decision of the director, the AAO also finds that the immigrant visa petition in the instant case cannot be approved since the petitioner has not established its ability to pay the proffered wage. The appeal will be dismissed for this additional reason.

As noted above, 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 rate of pay or the proffered wage set forth by the DOL is \$12.57 per hour or \$22,877.40 per year (based on a 35-hour work per week).⁶ The priority date is April 23, 2001.

As for the ability to pay, 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 Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

⁶ The total hours per week indicated on the approved Form ETA 750 is 35 hours. This is permitted so long as the job opportunity is for a permanent and full-time position. See 20 C.F.R. §§ 656.3; 656.10(c)(10). The DOL precedent establishes that full-time means at least 35 hours or more per week. See Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994).

In a letter dated October 6, 2004 the petitioner states that the beneficiary is a current employee earning approximately \$450/week. Submitted with this letter are copies of various paystubs issued in 2004. The beneficiary's year-to-date wages as of September 22, 2004 was \$17,757.74. In a letter dated October 9, 2008 the petitioner states that the beneficiary is an employee making an hourly wage of \$14/hour. Submitted with this letter is a copy of the beneficiary's pay voucher dated October 9, 2008, showing \$612.36 as the amount payable to the order of the beneficiary.

The evidence does not show that the beneficiary was paid his full proffered wage from the filing date of the Form ETA 750.

When the petitioner fails to pay the beneficiary an amount at least equal to the proffered wage during the relevant time frame, USCIS next examines 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. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

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).

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.⁷ A corporation’s year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation’s end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner fails to submit copies of its federal tax returns, annual reports, or audited financial statements for any year during the qualifying period. The only evidence in the record to show ability to pay is a copy of the petitioner’s Form 10-Q, Quarterly Report for Period Ended October 3, 2001 (third quarter of the year 2001). Due to the lack of evidence, the AAO cannot conclude that the petitioner has the continuing ability to pay the proffered wage from the priority date.

Finally, USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five 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

⁷ 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.

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.

Unlike *Sonegawa*, the petitioner in this case has not shown any evidence reflecting the business' reputation or historical growth. Nor has it included any evidence or detailed explanation of the business' milestone achievements. The record does not contain any newspapers or magazine articles, awards, or certifications indicating the business' accomplishments. Further, no unusual circumstances have been shown to exist to parallel those in *Sonegawa*, nor has it been established that the petitioner had uncharacteristically substantial expenditures in any period during the qualifying time.

In examining a petitioner's ability to pay the proffered wage, 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, supra*. After a review of the relevant evidence, the AAO is not persuaded that the petitioner has that ability. The appeal is dismissed for this additional reason.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The director's previous approval of the petition remains revoked.