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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

Date: **AUG 27 2012** 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 May 23, 2012 the Director, Texas Service Center, revoked the approval of the petition and certified the decision to the Administrative Appeals Office (AAO) for review pursuant to 8 C.F.R. § 103.4(a). Upon review, the AAO will affirm the May 23, 2012 decision.

The petitioner is in the carpentry business. It seeks to permanently employ the beneficiary in the United States as a Carpenter, Rough, 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).<sup>1</sup> As required by statute, the petition is submitted along with an approved Application for Alien Employment Certification (Form ETA 750). The director of the Texas Service Center (the director) revoked the approval of the petition, finding that the petitioner failed to demonstrate that the petitioner has the continuing ability to pay the proffered wage from the priority date and that the beneficiary qualifies for the position offered.

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

**a) The Beneficiary's Qualifications.**

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that the beneficiary has all of the qualifications stated on the Form ETA 750 as certified by the U.S. Department of Labor (DOL) and submitted with the petition as of the priority date -- which is the date the Form ETA 750 was accepted for processing by any office within the employment system of DOL. To determine whether a beneficiary is eligible for a preference immigrant visa, 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 v. Smith*, 696 F.2d, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Here, the Form ETA 750 was filed and accepted for processing by DOL on April 30, 2001. The name of the job title or the position for which the petitioner seeks to hire is "Carpenter, Rough." Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered or in the related occupation of a carpenter.

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<sup>1</sup> 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.

On the Form ETA 750, part B, signed by the beneficiary on March 13, 2001, he represented he worked 40 hours a week as a carpenter at "Unitec" from March 1994 to April 1999. Submitted along with the certified Form ETA 750 and the Form I-140 petition was a letter of employment verification dated March 23, 2001 from [REDACTED] who stated that the beneficiary worked at Unitec as a carpenter from March 1994 to April 1999.

On February 11, 2009 the director sent the petitioner a Notice of Intent to Revoke (NOIR) generally requesting the petitioner to submit additional evidence to demonstrate that the beneficiary had two years of work experience in the job offered before April 30, 2001. Responding to the director's request for additional evidence, the petitioner submitted the following evidence:

- A statement dated February 27, 2009 from [REDACTED] stating that the beneficiary worked at Unitec as a carpenter from March 1994 to April 1999; and
- A copy of the business registration of [REDACTED]

On January 26, 2012 the director sent another NOIR specifically identifying the following problems in the beneficiary's past work experience in Brazil:

- Neither the statement dated February 27, 2009 from [REDACTED] nor the letter of employment verification dated March 23, 2001 from [REDACTED] complies with the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(A), in that neither includes a description of the beneficiary's work experience or the training received; and
- The beneficiary did not include his last occupation abroad on the Form G-325 (Biographic Information) which he filed in connection with the Application to Register Permanent Residence or Adjust Status (Form I-485).

The director advised the petitioner to submit independent objective evidence, such as copies of the beneficiary's paystubs, tax records, and his booklet of employment and social security, to resolve the inconsistencies noted above and to demonstrate that the beneficiary worked at Unitec as a carpenter between March 1994 and April 1999.

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

- An affidavit dated February 24, 2012 from the beneficiary stating that Unitec no longer has copies of his payroll records since the company is only required to keep such records for five years, that he has no social security records from Brazil since he was not required to pay into the social security system in Brazil due to his young age at the time, and that he failed to include his last occupation abroad on the Form G-325 inadvertently;

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<sup>2</sup> Businesses that are officially registered with the Brazilian government are given a unique CNPJ number. CNPJ (Cadastro Nacional da Pessoa Juridica) is similar to the federal tax ID or employer ID number in the United States.

- A statement dated February 9, 2012 from [REDACTED] Partner Manager, stating that the beneficiary, bearer of the [REDACTED] and CPF (Social Security) [REDACTED] worked as a carpenter from March 1994 to April 1999; that he provided services in construction, installation, and maintenance of beams and frames, cabinets, doors, and windows; and that his wages at the time were three times the amount of minimum wages; and
- A statement dated February 9, 2012 from Unitec's accountant, [REDACTED] stating, "The documents received for [REDACTED] [the beneficiary] bearer [REDACTED] from [REDACTED] (Social Security) [REDACTED] states that he [the beneficiary] worked as a full time employee from March 1994 to April 1999 as carpenter and manufacturing cabinet, assembly and manufacturing cabinets, windows, doors and wood lifters, etc."

In reviewing the evidence submitted, we agree with the director that the statements dated February 9, 2012 from [REDACTED] are inconsistent with the beneficiary's February 24, 2012 affidavit. The beneficiary stated in his affidavit that he has no social security records. Both [REDACTED] however, indicated that the beneficiary had [REDACTED] the Unitec's accountant, was able to determine that the beneficiary worked as a carpenter at Unitec from March 1994 and April 1999 because of the documents received in the name of the beneficiary and his [REDACTED] 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). Without independent objective evidence showing where the beneficiary worked between March 1994 and April 1999, the AAO cannot conclude that the beneficiary has the requisite experience in the job offered before the priority date (April 30, 2001) and that he qualifies for the job offered.

**b) The Petitioner's Ability to Pay.**

Moreover, the petition is not approvable because the record does not contain sufficient evidence to demonstrate that the petitioner has the continuing ability to pay the proffered wage from the priority date. 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 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, as stated above, the ETA Form 750 was accepted for processing by the DOL on April 30, 2001. The rate of pay or the proffered wage specified on the Form ETA 750 is \$14.78 per hour or \$26,899.60 per year based on a 35 hour work week.<sup>3</sup>

The record contains the following evidence to demonstrate that the petitioner has the continuing ability to pay \$14.78 per hour or \$26,899.60 per year from April 30, 2001:

- Copies of the beneficiary's Forms W-2 and 1099-MISC for the years 2001, 2002, and 2007;
- A copy of the petitioner's Schedule C Profit or Loss from Business (Sole Proprietorship) for the year 2001; and
- Copies of the petitioner's federal tax returns filed on the Form 1120 U.S. Corporation Income Tax Return for the years 2005 and 2006.

The petitioner states in a letter dated February 24, 2012 that the business was originally structured as sole proprietorship before it was incorporated in 2005. On the petition, the petitioner claimed to have been established on March 3, 1998 and to currently have six employees.

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

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<sup>3</sup> 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 Memo indicates 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).

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.

Based on the evidence submitted, the beneficiary received the following compensation from the petitioner from 2001, 2002, and 2007:

<i>Tax Year</i>	<i>Actual wage (AW) (Box 1, W-2 plus Box 7, 1099-MISC)</i>	<i>Yearly Proffered Wage (PW)</i>	<i>AW minus PW</i>
2001	\$27,631.37	\$26,899.60	Exceeds the PW
2002	\$29,112.97	\$26,899.60	Exceeds the PW
2007	\$4,880.00	\$26,899.60	(\$22,019.60)

Therefore, the petitioner has established the ability to pay in 2001 and 2002 but not in 2003 and thereafter until the beneficiary obtains his lawful permanent residence. In order for the petitioner to meet its burden of proving by a preponderance of the evidence that it has the continuing ability to pay the proffered wage from the priority date, the petitioner must be able to demonstrate that it can pay the following amounts:

- The full proffered wage of \$26,899.60 per year from 2003 to 2006 and from 2008 forward until the beneficiary obtains legal permanent residence; and
- \$22,019.60 in 2007.

The petitioner can show that it can pay these amounts through either its net income or net current assets. If the petitioner chooses to pay these amounts through its net income, USCIS will 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); *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. 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." *Chiu-Feng Chang* at 537 (emphasis added).

The record before the director closed on February 28, 2012 with the receipt by the director of the petitioner's submissions in response to the director's January 26, 2012 NOIR. As of that date, the petitioner's 2010 and 2011 federal income tax returns were not yet available. Therefore, the petitioner's income tax return for 2009 should be the most recent return available. No tax returns, annual reports, or audited financial statements for the years 2003, 2004, and from 2007 through 2009 have been submitted, however.

The petitioner's tax returns demonstrate its net income (loss) for the years 2005 and 2006, as shown below:

<b>Tax Year</b>	<b>Net Income (Loss)<sup>4</sup> – in \$</b>	<b>The Remainder of the PW – in \$</b>
2005	0	26,899.60
2006	(93)	26,899.60

Therefore, the petitioner does not have sufficient net income to pay the remainder of the proffered wage from 2003 through 2009.

<sup>4</sup> 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.

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>5</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner's tax returns demonstrate its end-of-year net current assets for the years 2005 and 2006, as shown below:

<i>Tax Year</i>	<i>Net Current Assets – in \$</i>	<i>The Remainder of the PW – in \$</i>
2005	(181)	26,899.60
2006	11,559	26,899.60

Therefore, the petitioner does not have sufficient net current assets to pay the remainder of the beneficiary's proffered wage in 2007 or the full proffered wage from 2003 through 2006 and in 2008 and 2009. Based on the net income and net current asset analysis, the AAO agrees with the director that the petitioner does not have the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives legal permanent residence

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 and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, 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

<sup>5</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.

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 during the qualifying period had uncharacteristically substantial expenditures.

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*. Given that the petition's approval has been revoked and the fact that the petitioner failed to respond to any of the director's Notices of Intent to Revoke, the AAO is not persuaded that the petitioner has that ability. We conclude that the petitioner has not met the burden of proving by a preponderance of the evidence that it has the ability to pay the proffered wage continuously from the priority date.

**c) Good and Sufficient Cause to Revoke the Approval of the Petition.**

Section 205 of the Act, 8 U.S.C. § 1155, states:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

However, the regulation at 8 C.F.R. § 205.2 states:

(a) *General.* Any Service [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition **upon notice** to the petitioner on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this Service [USCIS]. (emphasis added).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceedings

*Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However, where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

Here, the director specifically identified to the petitioner the problems or defects in the record pertaining to the petitioner's ability to pay and with regards to the beneficiary's qualifications for the job offered. First, the director stated in the January 26, 2012 NOIR that neither the statement from [REDACTED] nor the letter of employment verification from [REDACTED] complies with the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), in that neither includes a description of the beneficiary's work experience or the training received. The director also stated that the beneficiary failed to include his last occupation abroad on the Form G-325, which is not consistent with his claim on the Form ETA 750B that he worked at Unitec in Brazil as a carpenter from March 1994 to April 1999.

The director specifically advised the petitioner to provide independent objective evidence to resolve the problems in the record as noted above. No independent objective evidence corroborating the beneficiary's claim of employment in Brazil has been submitted thus far. In addition, the petitioner failed to submit copies of its tax returns, audited financial statements, or annual reports for the relevant years from the priority date to establish the ability to pay.

For these reasons, the AAO finds that the director had good and sufficient cause to to reopen the matter and to revoke the approval of the petition as required by section 205 of the Act, 8 U.S.C. § 1155. The petitioner failed to establish that the beneficiary possessed the requisite work experience in the job offered before the priority date and that the petitioner has the continuing ability to pay the proffered wage from the priority date. Where the petitioner and/or the beneficiary of an approved visa petition is not eligible for the classification sought, the director may seek to revoke the petitioner's and or the beneficiary's approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for good and sufficient cause. Notwithstanding the USCIS burden to show good and sufficient cause in proceedings to revoke the approval of a visa

petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The petition will remain revoked as the petitioner has not established by a preponderance of the evidence that it has the continuing ability to pay the proffered wage from the priority date and that the beneficiary has the requisite work experience in the job offered prior to the priority date. 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 director's decision to revoke the approval of the petition is affirmed.