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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



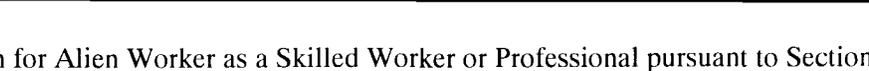
**U.S. Citizenship  
and Immigration  
Services**



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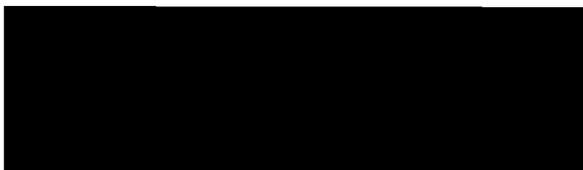
Date: **FEB 10 2012** Office: TEXAS SERVICE CENTER

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 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a general contracting/construction company. It seeks to employ the beneficiary permanently in the United States as a stone mason. 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 September 3, 2008 denial, the 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.

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 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on August 22, 2004. The proffered wage as stated on the Form ETA 750 is \$28.20 per hour (\$58,656 per year). The Form ETA 750 states that the position requires two years of experience in the proffered position.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in January 1998 and to currently employ six workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on August 22, 2004, the beneficiary claimed to have worked for the petitioner since June 2001.

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'l Comm'r 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'l Comm'r 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. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2004 or subsequently.<sup>2</sup>

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>2</sup> As noted above, the petitioner signed, under penalty of perjury, the Form ETA 750 stating that he had been employed by the petitioner since June 2001. The director issued a Notice of Intent to Deny (NOID) on April 8, 2008 requesting, in part, that the petitioner provide copies of the beneficiary's W-2 Forms for years 2004 through 2007. The petitioner did not provide those W-2 Forms as requested, or on appeal. On November 22, 2011, the AAO issued a NOID requesting, in part, that the petitioner provide evidence of all wages paid to the beneficiary in years 2004 through

USCIS records indicate that the petitioner has filed four additional Form I-140 petitions on behalf of other workers. The petitioner would need to demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The petitioner states, on appeal, that while the petitioner filed visa petitions on behalf of several other workers prior to 1994, “[n]o petition other than the beneficiary was filed after the beneficiary’s priority date of August 22, 2004.” This statement is contradicted by USCIS records which indicate that additional Form I-140 petitions were filed by the petitioner on March 16, 2005 (with a March 1, 2001 priority date) and January 7, 2008 (with a November 2, 2004 priority date). Additionally, another Form I-140 petition was filed by the petitioner on March 25, 2004 (before the August 22, 2004 priority date). The petitioner must establish its ability to pay the proffered wages of these workers, in addition to the present beneficiary, from their respective priority dates until each obtains respective permanent residence. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner’s federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1<sup>st</sup> Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner’s ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*quoting Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng*

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2011. The AAO noted that for years 2004 through 2010, such evidence should include copies of W-2 Forms and/or Forms 1099. For 2011, the AAO requested pay stubs showing wages paid year-to-date or other proof of wages paid such as copies of the beneficiary’s pay checks. The petitioner did not provide the information requested by the AAO (copies of W-2 Forms or Forms 1099 for years 2004 through 2010 and copies of pay stubs for 2011) but stated that W-2 Forms were not available for the beneficiary for past employment due to the beneficiary’s “irregular status.” The petitioner stated that the beneficiary was paid under “other costs” on its tax returns. The petitioner did not, however, provide proof of any wages paid directly to the beneficiary as “other costs” in the form of W-2 Forms, Forms 1099 or copies of pay stubs as requested. Thus, the petitioner has not established that the beneficiary was actually employed by it or paid wages during any relevant year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (*quoting Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

*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." *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on May 9, 2008 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return would have been the most recent return available. The director requested in his April 8, 2008 NOID copies of the petitioner's 2004 through 2007 tax returns. Those tax returns were provided by the petitioner in response to the director's NOID. On appeal, the petitioner provided copies of its 2008 through 2010 tax returns. The petitioner's tax returns demonstrate its net income for 2004 through 2010, as shown in the table below.

- In 2010, the Form 1120S stated net income<sup>3</sup> of (\$15,171).
- In 2009, the Form 1120S stated net income of (\$26,111).
- In 2008, the Form 1120S stated net income of (\$82,424).
- In 2007, the Form 1120S stated net income of \$104,296.
- In 2006, the Form 1120S stated net income of (\$444).
- In 2005, the Form 1120S stated net income of \$15,559.
- In 2004, the Form 1120S stated net income of \$8,854.

Therefore, for the years 2004, 2005, 2006, 2008, 2009 and 2010, the petitioner's tax returns do not state sufficient net income to pay the proffered wage. The petitioner's 2007 tax return would state sufficient net income to pay the proffered wage for the instant beneficiary. However, as set forth above, the petitioner has not adequately addressed the issue of other sponsored workers so we are unable to definitively conclude that the petitioner can pay all of its sponsored workers in this year.

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>4</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 2004 through 2010, as shown in the table below.

- In 2010, the Form 1120S stated net current assets of \$3,127.
- In 2009, the Form 1120S stated net current assets of (\$26,111).

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<sup>3</sup> Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 17e (2004-2005) and line 18 (2006-2010) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed January 13, 2012) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional income, credits, deductions and/or other adjustments shown on its Schedule K for years 2004 through 2010, the petitioner's net income is found on Schedule K of its tax returns.

<sup>4</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.

- In 2008, the Form 1120S stated net current assets of (\$82,424).
- In 2007, the Form 1120S stated net current assets of \$128,692.
- In 2006, the Form 1120S stated net current assets of \$36,297.
- In 2005, the Form 1120S stated net current assets of \$47,879.
- In 2004, the Form 1120S stated net current assets of \$27,898.

Therefore, for the years 2004, 2005, 2006, 2008, 2009 and 2010, the petitioner's tax returns do not state sufficient net current assets to pay the proffered wage of the present beneficiary or any other sponsored workers. The petitioner's 2007 tax return would state sufficient net current assets (and net income as previously stated) to pay the proffered wage of the present beneficiary. The record does not contain sufficient documentation about all of the other sponsored worker's priority dates, proffered wages or present employment or immigration status to determine whether the petitioner had sufficient net current assets (or net income) to pay the wages of those other sponsored workers in 2007.

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 and other sponsored workers their respective proffered wages as of the priority date through an examination of wages paid or its net income or net current assets.

On appeal, counsel asserts that the petitioner is a successful business enterprise with substantial gross receipts and sustained profitability which enables it to pay the proffered wage of the beneficiary. The petitioner also states that it could use its officer compensation to pay the proffered wage of the beneficiary should the need arise.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

The sole shareholder of a corporation has the authority to allocate expenses of the corporation for various legitimate business purposes, including for the purpose of reducing the corporation's taxable income. Compensation of officers is an expense category explicitly stated on the Form 1120S U.S. Corporation Income Tax Return. For this reason, the petitioner's figures for compensation of officers may, in certain circumstances, be considered as additional financial resources of the petitioner, in addition to its figures for net income or net current assets. In this instance, however, the petitioner has not presented a statement from its sole shareholder indicating his willingness, or ability, to allocate any portion of his officer compensation to pay the proffered wages of other employees. It would further be necessary for the officer to submit proof of that compensation being paid to him by the petitioner. Under the facts of the present case, the referenced officer compensation will not be considered.<sup>5</sup>

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<sup>5</sup> Additionally, in the absence of any evidence of pay to the instant beneficiary, or resolution of the wages owed to other sponsored workers, we cannot conclude that it would be realistic to allocate

The petitioner submitted selected copies of corporate bank statements for some months, but not all, in the years 2005, 2006, and 2008 in attempt to establish its ability to pay the proffered wage of the beneficiary. Reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that will be considered below in determining the petitioner's net current assets.

The petitioner also submitted a "welcome letter," dated September 29, 2008, from a bank for the approval of a business line of credit in the amount of \$25,000. However, in calculating the ability to pay the proffered salary, USCIS will not augment the petitioner's net income or net current assets by adding in the petitioner's credit limits, bank lines, or lines of credit. A "bank line" or "line of credit" is a bank's unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. See John Downes and Jordan Elliot Goodman, *Barron's Dictionary of Finance and Investment Terms* 45 (5<sup>th</sup> ed. 1998).

The line of credit is a "commitment to loan" and not an existent loan. As the "welcome letter" is dated September 29, 2008, the petitioner cannot establish that any of the funds from the line of credit were available at the time of filing the petition, or at the time of the August 22, 2004 priority date. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).<sup>6</sup>

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almost one-half of the petitioner's officer compensation to cover the salary of this beneficiary alone. USCIS may reject a fact stated in the petition if it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5<sup>th</sup> Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

<sup>6</sup> Moreover, the petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the petitioner's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. Finally, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the petitioner's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer

The tax returns of the petitioner show no wages paid to employees in any year from 2004 through 2010. The petitioner states, however, that its labor costs are listed as "other costs" on its tax returns and that its employees' wages are included in these sums. The record contains no documentation to establish specifically what these reported costs relate to. Indeed, the petitioner states that the beneficiary's wages were included in these undefined sums yet no W-2 Form or Form 1099 was produced to show any wages paid to the beneficiary regardless of how the beneficiary was classified (i.e. as an employee or independent contractor). As such, the sums referenced by the petitioner on appeal as other costs (employee compensation as stated by the petitioner) may not be considered as wages paid by the petitioner in the operation of its business in assessing the petitioner's ability to pay the proffered wages of its sponsored employees in a totality of the circumstances analysis.

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 (Reg'l Comm'r 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 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 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 tax returns show insufficient net income or net current assets to pay the proffered wage of the present beneficiary in 2004, 2005, 2006, 2008, 2009 and 2010. The petitioner's tax returns show either negative or low net income and net current assets in 2004, 2005, 2006, 2008, 2009 and 2010. The record does not establish that the petitioner's reputation in the industry is such that it is more likely than not that it has maintained the continuing ability to pay the proffered wage of the present beneficiary or any other sponsored workers from their respective priority dates. The petitioner failed to adequately respond to the AAO's request for evidence of pay

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is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).

to this beneficiary, and the question of sponsorship of other workers. Without such information, we cannot adequately conclude that the petition would warrant approval based on a totality of the circumstances. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on 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 appeal is dismissed.