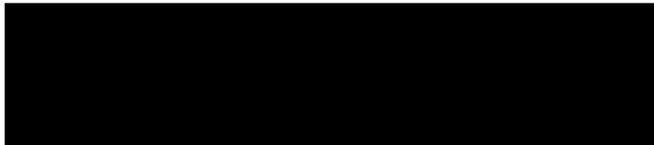


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: JUL 19 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: The preference visa petition was approved by the Director, Vermont Service Center, on July 30, 2004; however, on March 25, 2009 the Director, Texas Service Center, revoked the approval of the immigrant petition. The petitioner has appealed the director's decision to revoke the approval of the petition to the Administrative Appeals Office (AAO). The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a landscaping company. It seeks to permanently employ the beneficiary in the United States as a landscape gardener 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).¹ As required by statute, the petition is submitted along with an approved Application for Alien Employment Certification (Form ETA 750). The director revoked the approval of the visa petition, finding that evidence of record failed to demonstrate that the beneficiary had the requisite work experience in the job offered prior to the priority date and qualified for the position offered. Specifically, the director stated that the identity of the person who issued the declaration of employment on behalf of the beneficiary could not be independently verified.

On appeal to the AAO, current counsel for the petitioner, [REDACTED] contends that the director's conclusion that the beneficiary did not have the requisite work experience in the job offered is erroneous. Counsel states that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary qualifies for the position offered.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. 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.³

1. Good and Sufficient Cause

As a threshold matter, the AAO will address whether the director adequately advised the petitioner of the basis for revocation of approval of the petition and whether the director's

¹ 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.

² Current counsel, [REDACTED] will be referred to as counsel throughout this decision.

³ 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).

decision to revoke the approval of the petition was based on good and sufficient cause, as required by section 205 of the Act, 8 U.S.C. § 1155.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department 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.” 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).

Before revoking the approval of any petition, however, the director must provide notice. The regulation at 8 C.F.R. § 205.2 specifically reads:

(a) *General*. Any [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 [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 proceeding.

Moreover, *Mutter of Arias*, 19 I&N Dec. 568 (BIA 1988); *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, we find that the director has provided the petitioner with notice of the derogatory information specific to the current proceeding. In the Notice of Intent to Revoke (NOIR) dated February 10, 2009, the director indicated that the evidence of the beneficiary's qualifications was deficient in that the letter of qualifying employment for the beneficiary contained no CNPJ

number.⁴ The director advised the petitioner to submit additional evidence to demonstrate that the beneficiary had at least two years of work experience in the job offered before the labor certification application was filed with the DOL.

Responding to the director's NOIR, then counsel for the petitioner submitted additional evidence to demonstrate that the beneficiary worked in Brazil as a garden landscaper.

The director revoked the approval of the petition and stated:

Firstly, the identity of the man claiming to be cannot be independently verified by this office. Hence, this statement attesting to the beneficiary's work history can only be afforded little weight.

Lastly, a statement from the beneficiary herself attesting to his work history also carries little weight in this matter.

The AAO disagrees with the director's conclusion.

2. The Beneficiary's Qualification

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate, among other things, 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 DOL – the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

Here, the Form ETA 750 was filed and accepted for processing by the DOL on April 5, 2001. The name of the job title or the position for which the petitioner seeks to hire is "Landscape Gardener." Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a *minimum* of two (2) years of work experience in the job offered.

⁴ CNPJ or Cadastro Nacional da Pessoa Juridica is a unique number given to every business registered with the Brazilian authority. In Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ.

⁵ Mr. was under USCIS investigation when the NOIR was sent to the petitioner. He was alleged to have submitted fraudulent Form ETA 750 labor certification applications and Form I-140 immigrant worker petitions along with the supporting documentation, such as employment letters for the beneficiary. Mr. has since been suspended from the practice of law before the Immigration Courts, Board of Immigration Appeals (BIA), and Department of Homeland Security (DHS) for a period of three years from March 1, 2012.

On the Form ETA 750, part B, the beneficiary represented that he worked as a landscape gardener at [REDACTED] from November 1996 to November 1998. Submitted along with the Form ETA 750 and the Form I-140 petition was a recommendation letter dated March 15, 2001 from [REDACTED] Work and Public Services, stating that the beneficiary worked as Landscape Gardener for the [REDACTED] from November 1996 to November 1998 and that the beneficiary was responsible for the cleaning services and pruning the garden and public parks in the city.

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).

In response to the director's NOIR the petitioner submitted the following evidence to show that the beneficiary had the requisite experience in the job offered before April 5, 2001:

- A signed statement dated February 26, 2009 from [REDACTED] of Finances, stating that the beneficiary worked for the [REDACTED] as a landscaper and gardener from January 11, 1996 to November 11, 1998; included in this statement is the CNPJ number of the [REDACTED]

On appeal, counsel submits the following evidence to rebut the director's conclusion that the identity of [REDACTED] could not be independently verified:

- A copy of [REDACTED] appointment by the Municipal Mayor of Salto do Ceu as the Secretary of Planning, Administration, and Finances; and
- Copies of [REDACTED] identification cards issued by the government of Brazil.

Upon *de novo* review, the AAO finds that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary had the requisite experience in the job offered before the priority date. The first letter of employment submitted along with the Form ETA 750 and Form I-140 petition contains name, address, and title of the author and a specific description of the beneficiary's duties in accordance with the regulation at C.F.R. § 204.5(l)(3)(ii)(A).⁶

⁶ The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) provides:

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

Nevertheless, the petition is currently not approvable as the record does not establish that the petitioner has the continuing ability to pay the proffered wage from the priority date. For this reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). Further, 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).

3. The Petitioner's Ability to Pay

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, the record shows that the ETA Form 750 was accepted for processing by the DOL on April 5, 2001. The rate of pay or the proffered wage specified on the Form ETA 750 is \$11.08 per hour or \$20,165.60 per year (based on a 35-hour work per week).

On March 13, 2012 the AAO issued a Request for Evidence (RFE) to the petitioner indicating that the evidence submitted is not sufficient to establish the ability to pay the proffered wage from the priority date. Specifically, the AAO found, when adjudicating the appeal, that the petitioner has filed multiple employment-based petitions for other alien beneficiaries since 2002.⁷ The AAO gave the petitioner notice of the deficiency and the opportunity to respond.

⁷ The details of these other petitions filed by the petitioner since 2002 were revealed to the petitioner in the AAO's Request for Evidence (RFE) dated March 13, 2012. The name and the status of the alien beneficiaries will not be disclosed again in this decision.

The record contains the following evidence to demonstrate that the petitioner has the continuing ability to pay \$11.08 per hour or \$20,165.60 per year from April 5, 2001:

- The beneficiary's Wage and Tax Statements (Forms W-2) for the years 2004 through 2011; and
- The petitioner's Forms 1120, U.S. Corporation Income Tax Return, for the years 2001 through 2010.

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 1987.

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.

In response to the AAO's RFE counsel states that the beneficiary started to work for the petitioner in 2004; therefore, no W-2 was issued to the beneficiary from 2001 to 2003. Based on the evidence submitted, the beneficiary received the following compensation from the petitioner from 2004 through 2011:

| Tax Year | Actual wage (AW) (Box 1, W-2) | Yearly Proffered Wage (PW) | AW minus PW |
|-----------------|--|---------------------------------------|--------------------|
| 2001 | \$0 | \$20,165.20 | (\$20,165.20) |
| 2002 | \$0 | \$20,165.20 | (\$20,165.20) |
| 2003 | \$0 | \$20,165.20 | (\$20,165.20) |
| 2004 | \$15,000 | \$20,165.20 | (\$5,165.60) |
| 2005 | \$38,235 | \$20,165.20 | Exceeds the PW |
| 2006 | \$34,545 | \$20,165.20 | Exceeds the PW |
| 2007 | \$36,555.24 | \$20,165.20 | Exceeds the PW |
| 2008 | \$37,780 | \$20,165.20 | Exceeds the PW |

| | | | |
|------|-------------|-------------|----------------|
| 2009 | \$27,389.94 | \$20,165.20 | Exceeds the PW |
| 2010 | \$20,953.96 | \$20,165.20 | Exceeds the PW |
| 2011 | \$28,875.37 | \$20,165.20 | Exceeds the PW |

Therefore, the petitioner has established the ability to pay from 2005 to 2011 but not from 2001 to 2004. 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 therefore be able to pay the full proffered wage of \$20,165.20 from 2001 to 2003 and \$5,165.60 in 2004.

The petitioner can show that it can pay the proffered wages of all of the beneficiaries 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 (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 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 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

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 petitioner’s tax returns demonstrate its net income (loss) for the years 2001 through 2004, as shown below:

| <i>Tax Year</i> | <i>Net Income (Loss)⁸ – in \$</i> | <i>The Remainder of the PW – in \$</i> |
|-----------------|--|--|
| 2001 | 93,395 | 20,165.20 |
| 2002 | 43,620 | 20,165.20 |
| 2003 | (185,131) | 20,165.20 |
| 2004 | (146,681) | 5,165.60 |

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.⁹ 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 2001 through 2004, as shown below:

| <i>Tax Year</i> | <i>Net Current Assets – in \$</i> | <i>The Proffered Wage – in \$</i> |
|-----------------|-----------------------------------|-----------------------------------|
| 2001 | (196,822) | 20,165.20 |
| 2002 | (167,938) | 20,165.20 |
| 2003 | 59,735 | 20,165.20 |
| 2004 | (584,988) | 5,165.60 |

⁸ 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.

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.

The petitioner would have had sufficient net income and net current assets to pay the remainder of the beneficiary's proffered wage in 2001, 2002, and 2003 if the beneficiary were the only beneficiary in the instant proceeding. However, this is not the case. The petitioner did not submit any W-2s, 1099-MISCs, or paystubs issued to the other alien beneficiaries identified in the RFE dated March 13, 2012. Responding to the AAO's RFE, counsel states that the petitioner no longer has other documentation to produce.

The AAO specifically alerted the petitioner that 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). Without additional evidence as requested the AAO cannot find that the petitioner has the continuing ability to pay the proffered wage of the current beneficiary and the other sponsored beneficiaries in any of the relevant years in this case.

Finally, even though not raised by counsel on appeal 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 Sonegawa*, 12 I&N Dec. 612. The petitioning entity in *Sonegawa* 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 *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.

The petitioner has not submitted any evidence reflecting the company's reputation or historical growth since its inception. Nor has it included any evidence or detailed explanation of the corporation's milestone achievements. The record does not contain any newspapers or magazine articles, awards, or certifications indicating the company's accomplishments or unusual circumstances showing inability to pay especially between 2001 and 2004.

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 evidence submitted, the AAO is not persuaded that the petitioner has that ability.

In summary, the AAO finds that the director had good and sufficient cause to reopen the matter and to revoke the approval of the petition. The petitioner has failed to establish that the petitioner has the continuing ability to pay the proffered wage of the beneficiary and of the other beneficiaries as previously indicated from their respective priority dates.

As noted above, the Secretary, Department of Homeland Security (DHS) may seek to revoke the approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for good and sufficient cause. Notwithstanding the DHS obligation 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). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The approval of the petition remains revoked.