

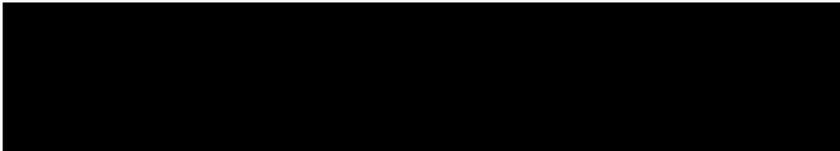
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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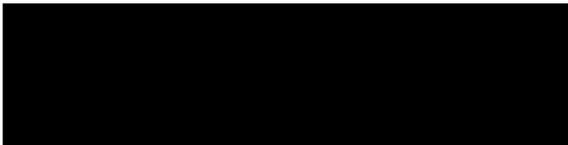
DATE: JUL 20 2012

Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

The petitioner is an Indian restaurant. It seeks to employ the beneficiary<sup>1</sup> permanently in the United States as a specialty cook. As required by statute, a Form ETA 750,<sup>2</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to establish that the petitioner had the continuing ability to pay the proffered wage. The director further determined that the petitioner failed to demonstrate that the beneficiary possessed the work experience required by the labor certification and denied the petition, accordingly.

On appeal, the petitioner, submits a statement on Part 3 of the Form I-290B, Notice of Appeal or Motion relevant to the ability to pay and the beneficiary's experience. The petitioner also indicates on Part 2 of the Form I-290B that a brief and/or additional evidence would be submitted to the AAO within 30 days. The appeal was dated May 16, 2009.

Nothing further has been received to this office more than thirty-six months later. Therefore, this decision will be rendered on the record as it currently stands.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The procedural history in this case is documented by the record and incorporated. Further elaboration of the procedural history will be made only as necessary.

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.

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<sup>1</sup> This beneficiary was substituted for the original beneficiary specified on the labor certification. The regulation at 20 C.F.R. § 656.11(a) prohibits any request to change the identity of an alien beneficiary on any application for permanent labor certification that is submitted after July 16, 2007. All Immigrant Petition(s) for Immigrant Worker(s) (Form I-140) using a substitute beneficiary on an approved labor certification must have been filed before July 16, 2007. This substitution was permitted because the Form I-140 petition was filed on July 13, 2007.

<sup>2</sup> After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

Relevant to a beneficiary's qualifying work experience, the regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* 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.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The petitioner must also demonstrate that it has the continuing financial ability to pay the proffered wage beginning on the priority date, which is the date of the Form ETA 750 is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA 750 was accepted for processing on October 4, 2000, which establishes the priority date.<sup>3</sup> The proffered wage is \$10.00 per hour, which amounts to \$20,800 per year.

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<sup>3</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job

Part A-14 of the ETA 750 indicates that the only requirement for the offered position of specialty cook is that the beneficiary must have two years of employment experience in the job offered.

Part B of the Form ETA 750, signed by the beneficiary on July 11, 2007, does not indicate that the petitioner has employed the beneficiary.

On Part 5 of the Immigrant Petition for Alien Worker, (Form I-140), it is claimed that the petitioner was established in 1995, employs six workers and reports gross annual income of \$487,725 and an annual net income of \$71,034.

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 overall 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).

With the petition and in support of its ability to pay the proffered wage of \$20,800 per year, the petitioner provided a copy of its Form 1120S U.S. Income Tax Return for an S Corporation for 2006. In response to the director's Request for Evidence (RFE), the petitioner submitted copies of its Form 1120, U.S. Corporation Income Tax Return(s) for 200 and 2001 and copies of its Form 1120S for 2002, 2003, 2004, 2005, and 2007. The petitioner's returns reflect that its fiscal year is a standard calendar year. The tax returns also contain the following information:

Year	2000	2001	2002
Net Income <sup>4</sup>	\$ 51,671	\$ 73,807	\$86,197

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opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

<sup>4</sup>The petitioner was a C corporation in 2000 and 2001 and filed Form 1120 corporate tax returns. On these returns, the petitioner's net income is found on line 28 (taxable income before net operating loss deduction and special deductions). For C corporations, USCIS uses a corporate petitioner's taxable income before the net operating loss deduction as a basis to

Current Assets	\$ 110,772	\$ 195,677	\$ 273,640
Current Liabilities	\$ -0-	\$ -0-	\$ -0-
Net Current Assets	\$ 110,772	\$ 195,677	\$ 273,640

Year	2003	2004	2005
Net Income	\$ 117,025	\$ 86,490	\$ 71,510
Current Assets	\$ 352,096	\$ 457,256	\$ 354,917
Current Liabilities	\$ -0-	\$ 10	\$ -0-
Net Current Assets	\$ 352,096	\$ 457,246	\$ 354,917

Year	2006	2007
Net Income	\$ 72,896	\$ 58,086
Current Assets	\$ 346,067	\$ 253,046
Current Liabilities	\$ -0-	\$ 1,698
Net Current Assets	\$ 346,067	\$ 251,348

As indicated in the table above, besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, USCIS will examine a petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current

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evaluate its ability to pay the proffered wage in the year of filing the tax return because it represents the net total after consideration of both the petitioner's total income (including gross profit and gross receipts or sales), as well as the expenses and other deductions taken on line(s) 12 through 27 of page 1 of the corporate tax return. Because corporate petitioners may claim a loss in a year other than the year in which it was incurred as a net operating loss, USCIS examines a petitioner's taxable income before the net operating loss deduction in order to determine whether the petitioner had sufficient taxable income in the year of filing the tax return to pay the proffered wage. In the remaining years from 2002 through 2007, the petitioner filed Form 1120S as a subchapter S corporation. 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. 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 23 (2002, 2003), line 17e (2004, 2005) or line 18 (2006, 2007) of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Here, the net income is found on line 23 in 2002 and 2003, line 17e in 2004 and 2005, and on line 18 in 2006 and 2007.

liabilities.<sup>5</sup> It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. In this case, the corporate petitioner's year-end current assets and current liabilities are shown on Schedule L of its federal tax returns. Current assets are shown on line(s) 1 through 6 of Schedule L and current liabilities are shown on line(s) 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets.<sup>6</sup>

Relevant to the beneficiary's qualifying two years of work experience, Part B of the ETA 750 instructs the filer to list all jobs held during the past three years and to list any other jobs related to the occupation for which the alien is seeking certification. In this matter, the beneficiary listed two prior jobs:

1. From January 2001 to October 2004, she states that she worked for Tourstars in India in the position of "Kitchen-in-Charge Tour Kitchen."
2. From December 2004 to November 2006, the beneficiary states that she was a "Commi II (Sous Chef)" for Saffron Spice (India) and worked for the executive chef, [REDACTED]

With the petition, the petitioner submitted two employment verification letters from the two employers listed by the beneficiary on Part B of the Form ETA 750.

On January 16, 2009, the director issued a RFE to the petitioner requesting additional documentation related to its ability to pay the proffered wage and the beneficiary's experience. The director noted that the employment verification letters do not establish the beneficiary's two years of experience in the job offered as of the October 4, 2000 priority date because the all of the work experience occurred after the priority date. With respect to the ability to pay the proffered wage, the director requested tax returns and wage reports for 2008. Further, as the petitioner has filed multiple Form I-140 petitions, the director requested that the petitioner furnish evidence that it could pay the respective proffered wage for all of the submitted filings from each priority date onward. For each filing, he requested that the petitioner furnish the receipt number, the name and date of birth for each beneficiary, the priority date, the proffered wage, evidence of wages paid to each beneficiary, and the disposition of each filing.

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<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.

<sup>6</sup> A petitioner's total assets and total liabilities are not considered in this calculation because they include assets and liabilities that, (in most cases) have a life of more than one year and would also include assets that would not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage.

Although the petitioner responded with evidence of its ability to pay the proffered wage in the form of the requested tax returns and wage reports for 2008, it failed to provide any of the requested documentation relevant to its other sponsored beneficiaries as requested by the director.

Regarding the beneficiary's qualifying two years of work experience and in response to the RFE, the petitioner submitted an additional letter, dated March 1, 2009 from [REDACTED] Proprietor of the Hotel Swastik Palace, who states that the beneficiary worked as a specialty cook for that entity from February 1992 to December 2000.

The director denied the petition on April 17, 2009. He noted the level of the petitioner's net income and net current assets as shown by its tax returns for 2000 through 2007, but also stated that the petitioner had filed ten petitions for the past couple of years. He concluded that because the petitioner had failed to supply the requested information regarding its ability to pay all of its sponsored beneficiaries, it had not established that it had the ability to pay the instant beneficiary from the priority date onward.

The director noted that the beneficiary's additional employment verification letter from the Hotel Swastik Palace, standing alone, was insufficient to establish the beneficiary's requisite two years of experience as the job had been omitted on the ETA 750 and represented a significant number of years.

### **Ability to Pay the Proffered Wage**

On appeal, the petitioner's statement on the notice of appeal contains information relevant to the other beneficiaries' for whom the petitioner had filed petitions, including names and dispositions of the petitions, but not containing any evidence of wages paid or the wage for each sponsored worker. It is noted that this information was specifically requested in the director's RFE. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the petitioner's statement submitted on appeal.

The regulation requires that a petitioning entity demonstrate its *continuing* ability to pay the proffered wage beginning on the priority date. The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which in this case is October 4, 2000, as established by the labor certification.

The petitioner has not established its continuing financial ability to pay the proffered wage of \$20,800 per year. It is noted that if a 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. To the extent that the petitioner may have paid the beneficiary less than the proffered wage, those amounts will be considered. If the difference between the amount of wages paid and the proffered wage can be covered by the petitioner's net income or net current assets for a given period, then the petitioner's ability to pay the full proffered wage for that period will also be demonstrated. In this matter, the record contains no evidence that the petitioner has employed the beneficiary.

If a petitioner does not establish that it has employed and paid the beneficiary an amount at least equal to the proffered wage during the pertinent period, USCIS will next examine the net income figure or net current assets reflected on the petitioner's federal income tax return or audited financial statements 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), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). 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." *Chi-Feng Chang* at 537 (emphasis added).

In this case, as noted by the director, although the petitioner's tax returns show sufficient net income and net current assets to cover the proffered wage in this matter, the petitioner has filed for at least ten other beneficiaries. Therefore, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence or is otherwise terminated. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). See also 8 C.F.R. § 204.5(g)(2). Because the required information, including evidence of any wages paid and the proffered wage for each beneficiary has not been provided, it is not possible to determine whether the petitioner has the ability to pay the respective proffered wage to the instant beneficiary and the additional sponsored workers. Therefore, it must be concluded that the petitioner has not established its continuing financial ability to pay the proffered wage to the beneficiary from the priority date onward.

*Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967), is sometimes applicable where other factors such as the expectations of increasing business and profits overcome evidence of small profits. That case, however relates to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years. During the year in which the petition was filed, the *Sonogawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of

time when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look*. Her clients included movie actresses, society matrons and Miss Universe. The petitioner had 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, historical growth and outstanding reputation as a couturiere.

In this case, as noted above, the petitioner has not provided relevant evidence concerning the other sponsored beneficiaries in response to the director's RFE or on appeal. Further, it may not be concluded that such analogous factual circumstances to *Sonegawa* are present in this case that would overcome the evidence reflected in the tax returns. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Unlike the *Sonegawa* petitioner, the instant petitioner has not submitted evidence demonstrating factors such as outstanding reputation or other circumstances that prevailed in *Sonegawa* are present in this matter. The AAO cannot conclude that the petitioner has established that it has had the continuing ability to pay the proffered wage.

### **Beneficiary's Qualifying Experience**

As discussed above, the petitioner submitted an employment verification letter that claims work experience in a job that was omitted from Part B of the ETA 750. Part B of the ETA 750 was signed under penalty of perjury by the beneficiary on July 11, 2007. See *Matter of Leung*, 16 I&N 12 (BIA) (Decided on other grounds, but court deemed applicant's testimony concerning employment omitted from the labor certification to be not credible.) 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. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On the notice of appeal, the petitioner's principal shareholder states that an earlier-dated letter from the Swastik Palace was given to an attorney along with a blank form<sup>7</sup> signed by the

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<sup>7</sup> Specifically, his failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11<sup>th</sup> Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a

petitioner's principal shareholder, but the letter had been misplaced and a new letter had been requested in 2009. Given the fact that the beneficiary had omitted this experience from the Form ETA 750, this statement alone without independent objective corroborating evidence is not sufficiently convincing to establish the beneficiary's employment with this employer. As noted by the director, this employment represents a substantial number of years of qualifying work experience and would ordinarily be expected to be listed on Part B of the Form ETA 750.

For the reasons explained above, the petition may not be approved. The regulation at 8 C.F.R. § 204.5(g)(2) requires that a petitioner establish a *continuing* financial ability to pay the proffered wage beginning at the priority date. (Emphasis added.) Upon review of the evidence contained in the record and submitted on appeal, the AAO concludes that the evidence failed to demonstrate that the petitioner has had the continuing ability to pay the proffered wage. Further, the petitioner has not established that the beneficiary possessed the requisite two years of experience in the job offered as of the priority date.

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.

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matter where he provided all the supporting documents and signed a blank document would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.