



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: OFFICE: TEXAS SERVICE CENTER

JUN 24 2013

[Redacted]

IN RE: Petitioner:
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:

[Redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On January 6, 2003, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on October 11, 2003. The director of the Texas Service Center (the director), however, revoked the approval of the immigrant petition on April 26, 2011, and the petitioner subsequently appealed the director's decision to revoke the petition's approval to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a bakery shop.¹ It seeks to permanently employ the beneficiary in the United States as a baker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. §1153(b)(3)(A)(i).² As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. As stated earlier, this petition was approved in 2003, but that approval was revoked in 2011. The director determined that the beneficiary did not have the requisite work experience in the job offered as of the priority date. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.1.

On appeal, counsel for the petitioner contends that the beneficiary had the requisite work experience in the job offered prior to the priority date and is, therefore, qualified to perform the duties of 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

As a procedural matter, although not raised by counsel, the AAO finds that the director erroneously revoked the approval of the petition under the authority of 8 C.F.R. § 205.1. Under 8 C.F.R. § 205.1(a)(3)(iii), a petition is automatically revoked if: (A) the labor certification is invalidated pursuant to 20 C.F.R. § 656; (B) the petitioner or the beneficiary dies; (C) the petitioner withdraws the petition in writing; or (D) the petitioner is no longer in business. Here, the labor certification has not been invalidated; neither the petitioner nor the beneficiary has

¹ The petitioner operates a [REDACTED]

² Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

³ 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).

died; the petitioner has not withdrawn the petition; nor has the petitioner gone out of business. Therefore, 8 C.F.R. § 205.1 is not the proper authority to be used to revoke the approval of the petition here. The director's erroneous citation of the applicable regulation is withdrawn. Nonetheless, as the director does have revocation authority under 8 C.F.R. § 205.2, the director's denial will be considered under that provision under the AAO's *de novo* review authority.

Before discussing the heart of the matter, it is important to address whether the director adequately advised the petitioner of the basis for revocation of approval of the petition and whether the director's 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. Specifically, section 205 of the Immigration and Nationality Act (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).

This means that the director must provide notice before revoking the approval of any petition. Specifically, 8 C.F.R. § 205.2 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 [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, *Matter 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 un rebutted, 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.

Both *Matter of Arias* and *Matter of Estime*, as noted above, held that a notice of intent to revoke a visa petition is properly issued for “good and sufficient cause” when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof.

Here, the director noted in the Notice of Intent to Revoke (NOIR) dated September 3, 2008 that the beneficiary could not have worked as a baker at [REDACTED] beginning in June 1997, because the business [REDACTED] was not registered with the Brazilian authority until December 2, 1999.⁴ Based on the stated facts above, the AAO finds that while the CNPJ number in and of itself is not determinative of the beneficiary’s qualifications for the job offered, the NOIR contains specific derogatory information relating to the current proceeding with respect to the beneficiary’s qualifications, and therefore, the director has adequately provided the petitioner with specific derogatory information to revoke the approval of the petition that if unexplained would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof.

With respect to the beneficiary’s qualifications for the job offered, the petitioner must demonstrate that the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by DOL and submitted with the petition as of the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, the priority date is September 25, 2001, which is the date when the Form ETA 750 was filed and accepted for processing by DOL. *See* 8 C.F.R. § 204.5(d).

The name of the job title or the position for which the petitioner seeks to hire is “baker.” The job description listed on the Form ETA 750 part A item 13 partly states, “Mix and bakes ingredients to produce all types of muffins, pastries, bagels.” Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered or in the related occupation of cook.

The AAO notes that the beneficiary listed on the Form ETA 750B the following relevant work experience under item 15 of the Form ETA 750, part B:

Name and address of employer: [REDACTED]

⁴ The director found the information above by searching the CNPJ database (the CNPJ database can be accessed online at <http://www.receita.fazenda.gov.br/>). 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. The director indicated that the Department of State had determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual’s stated hire and working dates with a Brazilian-based company to that Brazilian company’s registered creation date.

Name of Job: Baker.
Date started: June 1997.
Date left: August 2000.

Submitted along with the approved labor certification and the Form I-140 petition was a letter of employment verification signed by [REDACTED], co-owner, stating that the beneficiary worked as a full-time cook (08:00 AM to 06:00 PM) at [REDACTED] from June 1997 until August 2000.

After the director stated in the NOIR that [REDACTED] was not registered with the Brazilian authority until December 2, 1999, the petitioner through its counsel of record stated that the beneficiary initially worked as a baker for about three years from April 4, 1994 through May 30, 1997 for [REDACTED]. Then the beneficiary, according to counsel, worked as a gourmet cook/baker for [REDACTED] from June 1997 until the company was acquired by [REDACTED] in December 1999.

To demonstrate that the beneficiary worked at [REDACTED] as a baker/gourmet cook from 1994 to 1999, the petitioner submitted the following evidence:

- A statement dated September 12, 2008 from [REDACTED] stating that the beneficiary worked for her company as a baker from April 4, 1994 to May 30, 1997;
- CNPJ of [REDACTED]
- A statement dated September 18, 2008 from [REDACTED] stating that the beneficiary worked at [REDACTED] “exercising the responsibility of gourmet, responsible for the production of all types of breads, cakes, sandwiches, and meals from June 13, 1997 to November 30, 1999;”
- CNPJ of [REDACTED]
- A copy of the record of registration of [REDACTED] with the Municipality of Sao Paulo showing that the business is located on [REDACTED]⁶
- A document issued by the Municipality of Sao Paulo intended to show that [REDACTED] is one of the partners of [REDACTED]; and
- An affidavit dated November 12, 2009 from [REDACTED] the owner of the petitioner, stating that he verified the beneficiary’s past work experience with [REDACTED] before he filed the labor certification application.

On appeal to the AAO, the petitioner submitted a copy of the beneficiary’s workbook and social security statement issued by the Ministry of Employment of Brazil to demonstrate that the beneficiary had the requisite work experience in the job offered or in the alternate occupation as a cook before the priority date. The evidence submitted above shows that the beneficiary worked at

⁵ Counsel indicated that [REDACTED] was registered with the Brazilian authority on August 30, 1993, and the company is still active today.

⁶ We note that the address above is also the address of [REDACTED]

██████████ from April 4, 1994 to May 30, 1997 as a baker; ██████████ from June 13, 1997 to November 30, 1999 as a gourmet cook; and ██████████ from November 30, 1999 to August 1, 2000 as a gourmet cook.

The AAO sent a Request for Evidence (RFE) on April 2, 2013 asking the petitioner to explain why it did not list ██████████ on the Form ETA 750B. In response, counsel states that Mr. ██████████ the petitioner's former attorney,⁷ simply failed to list the beneficiary's work experience at ██████████, despite the beneficiary's notification. In a sworn statement dated May 1, 2013, the beneficiary indicates that he gave ██████████ a letter of employment verification from ██████████, but he did not know whether ██████████ submitted that letter or not. The beneficiary also was told by ██████████ that a separate letter of employment verification from ██████████ was not necessary.

The following additional evidence is submitted in response to the RFE:

- A document showing ██████████ in December 1999; and
- A letter of employment verification dated April 17, 2001 from ██████████

Based on the evidence submitted above, the AAO is persuaded that it is more likely than not that the beneficiary had the requisite work experience in the job offered prior to the priority date. The director's conclusion that the beneficiary did not have the requisite work experience as of the priority date will be withdrawn.

Nonetheless, the petition cannot be approved, and the appeal sustained, because the petitioner has not met 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 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.

⁷ The AAO notes that ██████████ was under USCIS investigation for allegedly submitting fraudulent Form ETA 750 labor certification applications and Form I-140 immigrant worker petitions when the director revoked the approval of the petition in April 2011. ██████████ has since been suspended from practice before the United States Department of Homeland Security for three years effective as of March 1, 2012. ██████████ representations in this matter will be considered. He will be referred to throughout this decision by name.

As noted above, the priority date is April 30, 2001. The rate of pay or the proffered wage specified on the ETA 750 is \$12.91 per hour or \$23,496.20 per year based on a 35 hour work week.⁸ 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, 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).

To demonstrate that the petitioner has the ability to pay the proffered wage from April 30, 2001 onwards, the petitioner submitted copies of the following evidence:

- Internal Revenue Service (IRS) Forms W-2 Wage and Tax Statement issued by the petitioner to the beneficiary for the years 2001 through 2010;
- IRS Forms W-2 issued by [REDACTED] to the beneficiary for 2001 and 2002;
- Documents showing that [REDACTED] owns both the petitioner and [REDACTED]; and
- IRS Form 1120S U.S. Income Tax Return for an S Corporation filed by the petitioner for 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. 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

⁸ The total hours per week indicated on the approved Form ETA 750 is 35 hours. This is permitted so long as the job opportunity is for a permanent and full-time position. *See* 20 C.F.R. § 656.3; 656.10(c)(10). The DOL Memo indicates that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994).

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.

Based on the evidence submitted, the beneficiary received the following wages from the petitioner from 2001 to 2010:

<i>Tax Year</i>	<i>Actual wage (AW) (Box I, W-2)</i>	<i>Yearly Proffered Wage (PW)</i>	<i>AW minus PW</i>
2001	\$15,327.53	\$23,496.20	(\$8,168.67)
2002	\$12,848.16	\$23,496.20	(\$10,648.04)
2003	\$45,344.03	\$23,496.20	Exceeds the PW
2004	\$49,634.75	\$23,496.20	Exceeds the PW
2005	\$49,218.52	\$23,496.20	Exceeds the PW
2006	\$53,287.75	\$23,496.20	Exceeds the PW
2007	\$54,616.55	\$23,496.20	Exceeds the PW
2008	\$66,557.23	\$23,496.20	Exceeds the PW
2009	\$70,611.37	\$23,496.20	Exceeds the PW
2010	\$65,290.39	\$23,496.20	Exceeds the PW

Therefore, the petitioner has established the ability to pay from 2003 onwards, but not in 2001 and 2002.

When the petitioner does not establish that it employed or paid the beneficiary an amount at least equal to the proffered wage during the relevant 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 (1st 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).

The petitioner’s tax returns demonstrate its net income (loss)⁹ for the years 2001 and 2002, as shown below:

⁹ For an S Corporation, 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 if the S corporation’s income is exclusively from a trade or business. 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 23 (2001) of Schedule K. *See* Instructions for Form 1120S, 2001, at <http://www.irs.gov/pub/irs-prior/i1120s--2001.pdf> (last accessed May 18, 2011) (indicating that Schedule K is a summary schedule of all shareholder’s shares of the corporation’s income, deductions, credits, etc.). In the instant case, the net income in 2001 is found on line 23 of schedule K.

<i>Tax Year</i>	<i>Net Income (Loss)</i>	<i>Remainder of the PWage</i>
2001	(\$24,501)	\$8,168.67
2002	N/A – not submitted	\$10,648.04

Therefore, the petitioner did not have sufficient net income to pay the proffered wage in 2001 or 2001, as demonstrated above.

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.¹⁰ 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 and 2002, as shown below:

<i>Tax Year</i>	<i>Net Current Assets</i>	<i>Remainder of the PW</i>
2001	(\$49,231)	\$8,168.67
2002	N/A – not submitted	\$10,648.04

Therefore, the petitioner did not have sufficient net current assets to pay the proffered wage in any of the years shown above. Based on the net income and net current asset analysis, the AAO agrees with the director that the petitioner does not have the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives legal permanent residence.

On appeal, counsel urges the AAO to consider the wages that the beneficiary received from [redacted] – another business that is owned by the owner of the petitioner. The AAO cannot accept this evidence as evidence of the petitioner’s ability to pay. USCIS (legacy INS) has traditionally held that it may not “pierce the corporate veil” and look to the assets of the corporation’s owners to satisfy the corporation’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, “nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS]

¹⁰ 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.

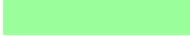
to consider the financial resources of individuals or entities who have no legal obligation to pay the wage.” [REDACTED] and the petitioner are two and distinct legal entities, even though they both are owned by [REDACTED]. For this reason, the AAO will not consider the wages that the beneficiary received from [REDACTED].

Finally, USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States 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.

Unlike *Sonogawa*, however, the petitioner in this case has not provided any evidence reflecting the company's reputation or historical growth since its inception. Nor does it include any evidence or detailed explanation of its milestone achievements. Assessing the totality of the circumstances in this individual case, the AAO determines that the petitioner has failed to meet its burden of proving by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence.

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. Notwithstanding the USCIS burden to show good and sufficient cause in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). 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.

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ORDER: The appeal is dismissed. The director's decision to revoke the approval of the petition is affirmed.