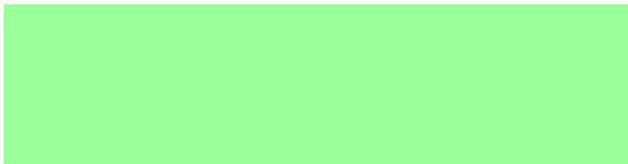


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

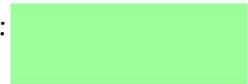
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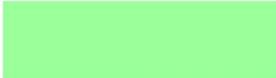
DATE: JUN 28 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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: The employment-based immigrant 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 seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a professional worker and to permanently employ the beneficiary in the United States as a programmer analyst. The director concluded that the petitioner failed to demonstrate that the beneficiary possesses the required U.S. Bachelor's of Science degree or foreign equivalent degree required by the terms of the labor certification. Accordingly, the director denied the petition.

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is December 9, 2010, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The proffered wage is \$49,670.00 annually.

On June 29, 2012, the Nebraska Service Center director denied the petition. The director's decision concludes that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification. The petitioner appealed this decision to the Administrative Appeals Office (AAO).¹

On appeal, the petitioner refers to an opinion letter earlier submitted by the petitioner on February 27, 2012, in response to the director's December 22, 2011 request for evidence. [REDACTED] Professor, Computer Science Dept., [REDACTED] Bellingham, WA [REDACTED] states in the letter dated February 22, 2012, that the beneficiary's education and experience is equivalent to a bachelor's degree in Computer Information Systems from a regionally accredited university in the United States. With the appeal, the petitioner resubmits a copy of the same evaluation by [REDACTED] dated February 22, 2012.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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.²

¹ The petitioner dated the appeal July 17, 2012. As of the date of this decision, more than ten (10) months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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.

A petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977). See also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (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 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).

On May 1, 2013, the AAO notified the petitioner that the evidence of record was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in Science or equivalent degree as required by the terms of the labor certification. The AAO issued a Request for Evidence (RFE) to request that the petitioner submit such evidence.

On June 7, 2013, the petitioner submitted a response stating the documents to show the beneficiary's eligibility and ability to pay were submitted at the time of filing the Form I-140, and requested that the previously provided documents be considered. No additional evidence was provided.

A petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977). See also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (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 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).

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree.
- H.4B. Major field of study: Science or equi.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study that is acceptable: None accepted.
- H.8. Alternate combination of education and experience: None accepted.

- H.9. Foreign educational equivalent: Accepted.
H.10 Experience in an alternative occupation: None accepted.
H.11 Job duties: Duties as Programmer Analyst:-

- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct.
- Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment.
- Write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic.
- Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements.
- Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes.
- Perform systems analysis and programming tasks to maintain and control the use of computer systems software as a systems programmer.
- Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so that others can understand the program.
- Prepare detailed workflow charts and diagrams that describe input, output, and logical operation, and convert them into a series of instructions coded in a computer language.
- Consult with and assist computer operators or system analysts to define and resolve problems in running computer programs.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in Information Technology from the [REDACTED], Ahmedabad, Gujarat, India, completed in 2000.

The record of proceeding contains a copy of the beneficiary's Bachelor of Science degree in Chemistry from the [REDACTED] completed on December 16, 2000. The petitioner provided the examination results reports associated with this degree program. The record also contain a Performance Statement from [REDACTED] for an examination on June 2, 2000; a Diploma in Advance Computer Arts from [REDACTED] for multimedia training modules the beneficiary attended from September 2000 to March 2001; and, an Advanced Certificate in PC Applications issued by [REDACTED] on November 2, 1999. Additionally, the petitioner submitted the beneficiary's high school transcripts from the [REDACTED]

The record contains an evaluation of the beneficiary's credentials prepared by [REDACTED]

Professor Computer Science Department at the [REDACTED], Bellingham, Washington, on February 22, 2012. With regard to the beneficiary's education, [REDACTED] states that "the [degree] equivalence is based on his degree in Chemistry, supplemented by progressive experience in which he deployed the knowledge and skills normally acquired while earning a baccalaureate in Computer Information Systems." [REDACTED] concludes that the beneficiary's education and experience is equivalent to a bachelor's degree in Computer Information Systems from a regionally accredited university in the United States.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.³ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁴

³ *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

⁴ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree.

EDGE provides a great deal of information about the educational system in India, and it does not suggest that the beneficiary's education may be deemed a foreign equivalent degree to a U.S. baccalaureate. According to EDGE, a three-year Bachelor of Science degree from India is comparable to "two to three years of university study in the United States." Using this guidance, the record does not establish that the beneficiary has earned a single degree equivalent to a U.S. bachelor's degree through education alone.

Based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in Science or equivalent degree as required by the terms of the labor certification. Therefore, the AAO issued a Request for Evidence (RFE) to request that the petitioner submit such evidence. The AAO requested the petitioner to specifically address the conclusions of EDGE set forth above. A copy of the EDGE report was attached to the RFE.

In addition, as noted above, Part J of the labor certification states that the beneficiary possesses a bachelor's degree in Information Technology from the [REDACTED] Ahmedadad, Gujarat, India, completed in 2000. The record, however, does not include evidence that the beneficiary was ever awarded a bachelor's degree in Information Technology from the [REDACTED]. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. The discrepancy is material to the the instant Form I-140 petition as there no evidence of record that the beneficiary was awarded such a degree and that DOL was made aware that the beneficiary does not possess a bachelor's degree in Information Technology from the [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). In the RFE, the petitioner was requested to submit evidence to establish that the beneficiary possesses a bachelor's degree in Information Technology from the [REDACTED] as he stated on the ETA 9089.

In the RFE, the AAO notified the petitioner that if it claims that the organization intended the terms of the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, then it is to submit evidence of its claimed intent. Such evidence would be of the organization's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers. Part H of the labor certification states that the offered position requires a U.S. bachelor's degree in Science or a foreign equivalent degree.

In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

Specifically, the AAO requested that the petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656.17(g)(1), together with copies of the prevailing wage determination, all online, print and additional recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. The AAO also requested the petitioner to include any other communications with the DOL that may be probative of its intent, such as correspondence or documents generated in response to an audit. We notified the petitioner that submission of this evidence may help establish its intent regarding the minimum requirements of the offered position and show that U.S. workers without four-year bachelor's degrees were in fact put on notice that they were eligible to apply for the position. However, as noted above, the petitioner's response to the RFE does not include any of the requested information.

Therefore, the petitioner failed to demonstrate that the beneficiary possesses the required U.S. Bachelor's of Science degree or foreign equivalent degree required by the terms of the labor certification.

Beyond the decision of the director, the evidence in the record does not establish the ability to pay the proffered wage.

In the RFE, the AAO notified the petitioner that evidence in the record does not establish the petitioner's ability to pay the proffered wage. The AAO notified the petitioner that the organization must also demonstrate that it has been able to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). In order to establish ability to pay, the petitioner must submit its annual reports, federal tax returns, or audited financial statements for each year from the priority date. *Id.* The beneficiary has not yet obtained lawful permanent residence. Accordingly, in the RFE the AAO requested that the petitioner submit annual reports, federal tax returns or audited financial statements for 2010 to 2012, and any Internal Revenue Service (IRS) Forms W-2 or 1099 issued to the beneficiary for 2010 to 2012.

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. The record includes IRS Form(s) W-2 showing that the petitioner paid the beneficiary \$41,896 in 2010. The record also includes earnings statements from 2011 indicating the petitioner paid the beneficiary \$10,929.60. Thus, the petitioner has not established its ability to pay in either of the years 2010 and 2011, and must establish the ability to pay the difference between the proffered wage (\$49,670.00) and actual wages paid (\$7,774.00 in 2010 and \$38,740.40 in 2011).

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected

on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). 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 sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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.

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 116. "[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).

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. The record before the director closed on May 27, 2013,

with the deadline for receipt of a response to the AAO's request for evidence, dated May 1, 2013. As of that date, the petitioner's 2013 federal income tax return was not yet due. However, the petitioner did not provide the returns for 2010, 2011, and 2012. As the petitioner has not provided these tax returns, the AAO cannot determine its net income for these years.

Therefore, the petitioner has not demonstrated its ability to pay the proffered wage from the priority date.

In addition, the AAO notified the petitioner that according to USCIS records, the organization has filed multiple I-129 petitions on behalf of other beneficiaries. If a petitioner has filed multiple petitions for multiple beneficiaries, the petitioner must establish that it has the ability to pay the proffered wages to each beneficiary. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

In determining whether the petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS will add together the proffered wages for each beneficiary for each year starting from the priority date of the instant petition, and analyze the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-129 petitions, after the dates the beneficiaries obtained lawful permanent residence, or after the dates their Form I-129 petitions have been withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not consider the petitioner's ability to pay additional beneficiaries for each year that the beneficiary of the instant petition was paid the full proffered wage.

Accordingly, in the RFE, the petitioner was requested to provide the following information for each beneficiary for whom the organization has filed a Form I-129:

- Full name.
- Receipt number and priority date of each petition.
- Exact dates employed by the organization.
- Whether the petition(s) are pending or inactive (meaning that the petition has been withdrawn, the petition has been denied but is not on appeal, or the beneficiary has obtained lawful permanent residence). If a petition is inactive, provide the date that the petition was withdrawn, denied, or that the beneficiary obtained lawful permanent residence.
- The proffered wage listed on the labor certification submitted with each petition.
- The actual wage paid to each beneficiary from the priority date of the instant petition to the present.
- Forms W-2 or 1099 issued to each beneficiary from the priority date of the instant petition to the present.

The petitioner was notified that the submission of this evidence may help establish the organization's ability to pay the proffered wage as of the December 9, 2010 priority date. However, the petitioner failed to provide any of the requested evidence. Thus, the petitioner has not established that it has

the ability to pay the proffered wage of the beneficiary and any of its other sponsored workers during the relevant time period, 2010 – 2012.

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 (BIA 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

The record indicates that the petitioner has been in business since 2007. The record contains no evidence of the petitioner's reputation within the industry. The tax returns provided show varying gross receipts of \$882,602 in 2008; and \$968,902 in 2009. However, the petitioner has not provided 2010, 2011, and 2012 tax returns. Therefore, the AAO cannot assess the petitioners's financial condition in these years. The petitioner has not demonstrated that extraordinary circumstances were the cause of its inability to pay the wage or that the worker in the proffered position would replace an outsourced service. Considering the totality of circumstances, the petitioner has not established the ability to pay the proffered wage from the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.