

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



DATE: **MAY 28 2013** OFFICE: TEXAS SERVICE CENTER

FILE:

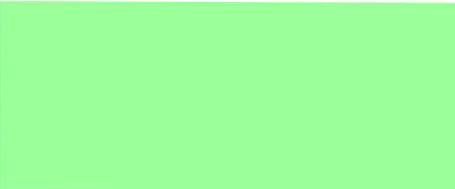


IN RE: Petitioner:
 Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Rachel Ni Jmio
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on July 18, 2012, the AAO dismissed the appeal. Counsel to the petitioner subsequently filed a motion to reopen and a motion to reconsider. The motions will be granted and the prior decision dismissing the appeal shall be affirmed.

The petitioner describes itself as a book bindery. It seeks to employ the beneficiary permanently in the United States as a bindery supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition on June 28, 2008. The petitioner submitted a timely appeal to the denial of the petition that was subsequently dismissed by the AAO on July 18, 2012, with the AAO making the additional determination that the record did not contain sufficient evidence demonstrating that the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification.

The record shows that the motions are properly filed, timely and make 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.

On motion, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred by failing to consider income paid to the petitioner's owner and his wife in determining whether the petitioner has the continuing ability to pay the proffered wage to the beneficiary since the priority date. Counsel contends that the petitioner's owner and sole shareholder was willing to forgo a portion of salary paid to him by the petitioner in 2005, 2006, 2007, and 2008, in order to pay the proffered wage in each of those years. Counsel declares that USCIS also erred by classifying the petitioner's annual depreciation deduction as a loss, and USCIS should instead include the petitioner's annual depreciation deduction as net income in determining the petitioner's ability to pay the proffered wage. Counsel cites two unpublished AAO decision and states that USCIS is not following its own precedent decisions regarding these issues. Counsel notes that the beneficiary is providing a more detailed Career Certificate from his former employer to establish that the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification. Counsel includes copies of previously submitted documents as well as a new Career Certificate from the beneficiary's former employer, a new affidavit from the petitioner's owner, the Forms 1040, U.S. Individual Income Tax Return, of the petitioner's owner for 2005, 2006, 2007, and 2008, the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation, for 2008, the petitioner's Forms 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2007 up through the second quarter of 2012, and copies of documentation relating to the personal expenses of petitioner's owner, in support of the motions.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

As set forth in the AAO's prior dismissal of the petitioner's appeal on July 18, 2012, the first issue to be examined in this proceeding is whether the record contains sufficient evidence demonstrating that the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

On motion, counsel notes that the beneficiary is providing a more detailed Career Certificate from his former employer in order to resolve any inconsistencies and establish that the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification. Counsel includes a new Career Certificate from the beneficiary's former employer, which indicates that the beneficiary was in charge of copy, coating, and the operation of the printing equipment from March 5, 1989 to June 11, 1995. The certificate indicates that the beneficiary was promoted to section chief on June 12, 1995 and that he remained in this position in charge of sales and the operation of printing machines and equipment until November 3, 1999. The AAO finds that this second Career Certificate is sufficient to establish the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification. Therefore, the AAO will withdraw that portion of its prior decision relating to this particular issue.

The next issue to be examined in this proceeding is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the

priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the Form ETA 750 was accepted on November 17, 2004. The proffered wage as stated on the Form ETA 750 is \$52,167.00 per year.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1995 and to currently employ 30 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on November 5, 2011, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it has ever employed the beneficiary.

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); *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, a 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).

On motion, counsel declares that USCIS erred by classifying the petitioner's annual depreciation deduction as a loss, and USCIS should instead include the petitioner's annual depreciation deduction as net income in determining the petitioner's ability to pay the proffered wage. Counsel cites an unpublished AAO decision and states that USCIS is not following its own precedent decisions regarding this issue. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding.

Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Counsel's argument that the petitioner's depreciation deduction should be included in the calculation of its ability to pay the proffered wage is not persuasive. A depreciation deduction does not require or represent a specific cash expenditure during the year claimed. It is a systematic allocation of the cost of a tangible long-term asset. It may be taken to represent the diminution in value of buildings and equipment, or to represent the accumulation of funds necessary to replace perishable equipment and buildings. But the cost of equipment and buildings and the value lost as they deteriorate is an actual expense of doing business, whether it is spread over more years or concentrated into fewer.

While the expense does not require or represent the current use of cash, neither is it available to pay wages. No precedent exists that would allow the petitioner to add its depreciation deduction to the amount available to pay the proffered wage. *See Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532. *See also Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049. The petitioner's election of accounting and depreciation methods accords a specific amount of depreciation expense to each given year. The petitioner may not now shift that expense to some other year as convenient to its present purpose, nor treat it as a fund available to pay the proffered wage. Further, amounts spent on long-term tangible assets are a real expense, however allocated. *See River Street Donuts, LLC v. Napolitano*, 558 F.3d at 111. Therefore, the AAO will not consider the petitioner's depreciation when evaluating its continuing ability to pay the proffered wage to the beneficiary.

Although the petitioner's Form 1120S tax return for 2007 was the most recent return available when the director initially denied the petition on June 28, 2008, the petitioner provides a copy of its Form 1120S tax return for 2008 on motion. The petitioner's tax returns demonstrate its net income for 2004, 2005, 2006, 2007, and 2008, as shown in the table below.

- In 2004, the Form 1120S stated net income¹ of \$63,332.00.
- In 2005, the Form 1120S stated net income of \$32,162.00.
- In 2006, the Form 1120S stated net income of \$26,854.00.
- In 2007, the Form 1120S stated net income of \$1,480.00.
- In 2008, the Form 1120S stated net income of \$18,536.00.

¹ Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions, or other adjustments, net income is found on line 17e (2004-2005) or line 18 (2006-2011) of Schedule K. *See Instructions for Form 1120S*, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed May 16, 2013) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had no additional income, credits, deductions, or other adjustments shown on its Schedule K for 2004, 2005, 2006, 2007, and 2008, the petitioner's net income as found on Schedule K of its tax returns is unchanged.

For the years 2005, 2006, 2007, and 2008, the petitioner did not have sufficient net income to pay the proffered wage of \$52,167.00 per year.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.² 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 2005, 2006, 2007, and 2008, as shown in the table below.

- In 2005, the Form 1120S stated net current assets of \$14,117.00.
- In 2006, the Form 1120S stated net current assets of \$45,891.00.
- In 2007, the Form 1120S stated net current assets of \$25,872.00.
- In 2008, the Form 1120S stated net current assets of \$72,699.00.

For the years 2005, 2006, and 2007, the petitioner did not have sufficient net current assets to pay the proffered wage of \$52,167.00 per year.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets in 2005, 2006, and 2007.

The record contains bank statements from [REDACTED] for the petitioner's business checking account from November 2004 through June 2008. However, any reliance on funds contained in the petitioner's business checking account is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax returns, such as the petitioner's taxable income (income minus

²According 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.

deductions) or the cash specified on Schedule L that was considered above in determining the petitioner's net current assets. Finally, the petitioner's business checking account represents cash needed to conduct the financial transactions involved in the petitioner's regular day-to-day operations rather than a readily available asset that could be used to continually pay the proffered wage to the beneficiary since the priority date. Overall, these records do not establish that the petitioner more likely than not had the continuous and sustainable ability to pay the proffered wage since the priority date.

On motion, counsel asserts that USCIS erred by failing to consider income paid by the petitioner as salaries to the petitioner's owner and his wife in determining whether the petitioner has the continuing ability to pay the proffered wage to the beneficiary since the priority date. Counsel contends that the petitioner's owner and sole shareholder was willing to forgo a portion of salary paid to him by the petitioner in 2005, 2006, 2007, and 2008, in order to pay the proffered wage in each of those years. Counsel again cites an unpublished AAO decision and states that USCIS is not following its own precedent decision regarding this issue. Although 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The documentation in the record establishes that [REDACTED] is the sole owner and shareholder of the petitioner, but that officer compensation is paid by the petitioner to both [REDACTED] and his wife [REDACTED]. According to two affidavits signed by [REDACTED] on July 17, 2008 and August 15, 2012, respectively, Mr. [REDACTED] was willing to forgo that portion of his own salary he received from the petitioner in 2005, 2006, 2007, and 2008, in order to pay the proffered wage of \$52,167.00 per year. In support of this pledge, the petitioner's owner provides his Form 1040 tax returns for 2005, 2006, 2007, and 2008, as well as copies of utility bills, bills for extermination services, bills for landscaping services, and credit card bills as evidence of his personal expenses in 2007. Nevertheless, a pledge to forego funds that have already been paid by the petitioner as salary to [REDACTED] in 2005, 2006, 2007, and 2008, is not persuasive because the funds were paid and cannot be reasonably refunded or returned to the petitioner using affidavits executed after the fact. In addition, the pledge of [REDACTED] to forego a portion of his salary to pay the proffered wage is unenforceable. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 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] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

³ The record also contains an affidavit signed by [REDACTED] who states that she is the wife of [REDACTED]. In the affidavit, [REDACTED] states that she is willing to reduce her salary by \$26,100.00 to cover the beneficiary's salary, however she is not listed as an owner or shareholder, therefore her concession will not be considered under this analysis.

In the present case, however, counsel is not suggesting that USCIS examine the personal assets of the petitioner's owners, but, rather, the financial flexibility that the employee-owners have in setting their salaries based on the profitability of their book binding company.

A relevant factor when determining ability to pay is if the petitioner pays its owner a substantial salary, and the remaining amount required to meet the proffered wage is only a small amount of the total salary paid to the owner. The record must also contain a statement or other evidence establishing that the salary of the owner is not set by contract and that the petitioner would have used and could have used a portion of the owner's salary to pay the proffered wage. In performing this analysis, USCIS does not examine the personal assets of the owner, but instead merely considers the ability of a corporation to set reasonable salaries for its owner based, in part, on the profitability of the organization.

The salary of the petitioner's owner ranged from \$69,000.00 to \$78,000.00 between 2005 and 2008. [REDACTED] stated that he would be willing to reduce his salary by \$26,100.00 in each of these years for ability to pay purposes in his first affidavit. In his second affidavit, [REDACTED] states that that he is willing to forego up to \$52,167.00, the full proffered wage, in salary in each year from 2005 to 2008. However, this results in a reduction of over one-third of [REDACTED] salary each year. These amounts constitute a significant amount of [REDACTED] income, and the evidence in the record is not sufficient to establish that the shareholder was both willing and able to forego over one-third of his salary from the petitioner. Finally, a pledge to forego funds that have already been paid by the petitioner as salary to [REDACTED] is not convincing because the funds were paid and cannot be reasonably refunded or returned to the petitioner merely by using affidavits executed well after the fact.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner possessed the continuing ability to pay the proffered wage since that date the Form ETA 750 was accepted for processing by the DOL.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000.00. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls

outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner failed to establish the ability to pay the annual proffered wage of \$52,167.00 through an examination of wages paid, the petitioner's net income, and the petitioner's net current assets in 2005, 2006, and 2007. In this matter, no specific detail or documentation has been provided similar to *Sonegawa*. The instant petitioner has not submitted any evidence demonstrating that uncharacteristic losses, factors of 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 had the continuing ability to pay the proffered wage to the beneficiary.

Based on a review of the underlying record and arguments submitted on motion, the petitioner has not established its continuing financial ability to pay the proffered wage.

The AAO's decision of July 18, 2012, dismissing the appeal to the denial of the petition will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The prior decision of the AAO dismissing the appeal shall be affirmed.