

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: **SEP 10 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On May 4, 2005, United States Citizenship and Immigration Services (USCIS) received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved on February 18, 2006. The Director for the Texas Service Center (the director), however, revoked the approval of the immigrant petition on August 14, 2012, and the petitioner subsequently appealed the director's decision to revoke to the Administrative Appeals Office (AAO). The appeal will be dismissed and the director's decision to revoke the approval of the petition will be affirmed.

The petitioner is a grocery store and seeks to employ the beneficiary permanently in the United States as a store manager.¹ On May 4, 2005, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the beneficiary. As required by statute, an ETA Form 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition. The petition was approved on February 18, 2006. However upon further review of the record, the director noticed that the petition was not approvable because the record did not contain evidence of the petitioner's continuing ability to pay the proffered wage. The director issued a Notice of Intent to Revoke (NOIR) on June 20, 2012. In the NOIR, the director also indicated that the record contained inconsistent information regarding the petitioner's address and that the evidence did not establish the petitioner's ability to offer permanent employment. The director revoked the petition accordingly.

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

As a threshold issue, the AAO will address whether or not the director adequately advised the petitioner of the basis for revocation of approval of the petition.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

¹ 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.

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 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).

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.

The AAO finds that the director's NOIR contained specific deficiencies and derogatory information relating to the petition and the petitioner in this case. Both *Matter of Arias* and *Matter of Estime*, as noted above, held that a notice of intent 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.

In this case, the director pointed out in the NOIR that the record did not demonstrate that the petitioner had the continuing ability to pay the proffered wage, that the record contained inconsistent information regarding the petitioner's address, and that the evidence of record did not establish the petitioner's ability to offer permanent employment. Therefore, the AAO finds that the NOIR contained specific derogatory information relating to the current proceeding and that the director adequately provided the petitioner with specific derogatory information that would warrant a revocation of the approval of the petition if unexplained and un rebutted, and thus was properly issued for good and sufficient cause.

As noted above, the director revoked the approval of the petition, in part because he concluded that the petitioner failed to establish the continuing ability to pay the proffered wage from the priority date.

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

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 priority date is the date when the Form ETA 750 labor certification was accepted for processing by DOL. *See* 8 C.F.R. § 204.5(d). Here, that date is April 30, 2001. The rate of pay or the proffered wage specified on the Form ETA 750 is \$20.00 per hour or \$41,600 per year based on a 40 hour work week. Therefore, the petitioner is required to demonstrate the ability to pay \$20.00 per hour or \$41,600 per year from April 30, 2001 and continuing until the beneficiary receives lawful permanent residence. For the purposes of this decision, the AAO will determine whether the director had good and sufficient cause to revoke the approval of the petition based on the petitioner's ability to pay the proffered wage as of the date of approval of the petition, February 18, 2006. As of the date of approval, February 18, 2006, the petitioner's 2005 taxes were not yet due. Therefore, the AAO will look at whether the record demonstrates that the petitioner had the ability to pay the proffered wage from 2001 to 2004.

The record indicates that the petitioner paid the beneficiary the following figures from 2001 to 2004:

Year	IRS ³ Form W-2	Form 1099-MISC	The amount the petitioner must show ability to pay
2001		\$40,000	\$1,600
2002		\$40,000	\$1,600
2003	\$9,740	\$32,000	\$0
2004	\$16,000		\$25,600

In 2003, the petitioner paid the beneficiary an amount equal to or greater than the proffered wage, therefore, establishing its ability to pay. However, there is no other evidence in the record

³ Internal Revenue Service.

demonstrating that the petitioner employed and paid the beneficiary the full proffered wage in 2001, 2002, and 2004.

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). In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

The record indicates that the petitioner was initially established as a C corporation in 2001, however, elected to be an S corporation on December 31, 2003. 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. 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.⁴ The petitioner's 2001, 2002, and 2004 tax returns provide the following net income figures:⁵

⁴ If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003) line 17e (2004-2005) line 18 (2006-2011) of Schedule K. *See* Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed on May 13, 2013) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.).

⁵ The petitioner submitted Form 1120 in 2001-2002 and Form 1120S in 2004.

Year	Net Income	The amount the petitioner must show ability to pay
2001	\$-5,404.00	\$1,600
2002	\$-623.00	\$1,600
2004	\$20,075.00	\$25,600

The petitioner did not have sufficient net income to pay the difference between the actual wages paid and the proffered wage in 2001, 2002, and 2004.

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.⁶ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. 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.

Year	Current Assets	Current Liabilities	Net Current Assets	The amount the petitioner must show ability to pay
2001	\$65,000	\$73,932	\$-8,932	\$1,600
2002	\$41,226	\$40,605	\$621	\$1,600
2004	\$31,391	\$19,238	\$12,153	\$25,600

Therefore, for the years 2001, 2002, and 2004, the petitioner did not have sufficient net current assets to pay the difference between the actual wages paid and the proffered wage.

However, USCIS may also 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. 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

⁶According 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.

designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

Furthermore, the sole shareholder of a corporation has the authority to allocate expenses of the corporation for various legitimate business purposes, including for the purpose of reducing the corporation's taxable income. Compensation of officers is an expense category explicitly stated on tax returns. For this reason, the petitioner's figures for compensation of officers may be considered as additional financial resources of the petitioner, in addition to its figures for ordinary income.

Unlike *Sonegawa*, the petitioner in the instant case has failed to demonstrate its ability to pay the proffered wage for several years. Furthermore, the evidence in the record, as of the approval date in 2006, did not demonstrate the petitioner's historical growth since its inception, nor did it demonstrate its reputation in the industry. In addition, the record is silent regarding whether the sole shareholder would forego her officer compensation in order to pay the proffered wage.⁷ Considering the totality of the circumstances, the AAO concludes that at the time of the approval of the petition in 2006, the petitioner had not established its continuing ability to pay the proffered wage from the priority date onwards and therefore, the director had good and sufficient cause to revoke the approval of the petition as it was not approvable on February 18, 2006. For this reason, the director's decision to revoke the approval of the petition is upheld.

As noted earlier, 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. at 590. 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).

⁷ The petitioner's tax returns indicate that it paid the beneficiary officer compensation the following amounts: 2001, \$8,000; 2002, \$4,266; 2003, \$9,740. These amounts have already been credited to the petitioner as payment to the beneficiary in those years.

The director also concluded that the petitioner failed to demonstrate its ability to offer permanent employment to the beneficiary. Section 203(b)(3)(A)(i) of the Act requires the employment for skilled workers to be permanent, and “not of a temporary or seasonal nature.” The director discovered that the sole shareholder of the petitioner is unlawfully present in the United States and therefore concluded that the petitioner failed to demonstrate its continuing ability to operate in the absence of the sole shareholder.⁸

In his response to the NOIR, counsel asserted that the corporation is a separate individual from the shareholders and its existence “vested with the capacity of continuous succession, irrespective of changes in its membership.” In support of these assertions, the petitioner, among other evidence, submitted several newspaper advertisements of its business; a copy of its workers compensation and employers liability insurance policy for the period of 2012-2013; food stamp program permit, dated November 20, 2004; certificate of training for [REDACTED] the sole shareholder; water/sewer bill issued to the beneficiary for October 2011 at the petitioner’s address; an electric bill for the petitioner, dated July 20, 2012; an article featuring the petitioner and the beneficiary, dated May 15, 2005. The AAO agrees with the director that the petitioner has not established that it has a sufficient management infrastructure to keep the petitioner in operation were the owner of the store to leave the United States. The evidence is insufficient to demonstrate the petitioner’s ability to sustain its operations in the absence of its sole shareholder and its ability to offer permanent employment.

Moreover, in response to the AAO’s June 26, 2013 Notice of Intent to Dismiss and Notice of Derogatory Information (NOID/NODI), the petitioner submitted a letter from [REDACTED] on [REDACTED] letterhead, stating that she is the new owner of the petitioning corporation and confirms the need for the beneficiary’s services.⁹ However, there is no evidence in the record demonstrating that [REDACTED] is the successor-in-interest to the petitioner. The petitioner has failed to submit any document demonstrating the transaction transferring ownership of the petitioner to [REDACTED] and establishing that the successor acquired not just assets, but the essential rights and obligations necessary to carry on the business. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Ms. [REDACTED] provided no details as to when the transfer of ownership occurred or that [REDACTED] is an established corporation in New York. The petitioner has not filed tax returns since 2010 and submitted no evidence demonstrating that its business is in operation.¹⁰

⁸ The record does not indicate that the sole shareholder of the petitioner has obtained a lawful permanent resident status in the United States.

⁹ Ms. [REDACTED] also states that the beneficiary is currently in Mexico awaiting his immigrant visa.

¹⁰ The petitioner also submitted a letter dated May 7, 2012, from [REDACTED] CPA, indicating that the petitioner requested extension to file its 2011 New York State taxes. The record indicates that the petitioner sought extension for its 2011 federal tax filing as well.

A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If [REDACTED] is a different entity than the petitioner/labor certification employer and appellant, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.* at 481.

A valid successor relationship may be established for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor; it does not demonstrate that the job opportunity will be the same as originally offered; and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods.

Considering all the evidence in the record, the AAO concludes that the petitioner has failed to demonstrate its continuing operations. Furthermore, there is no evidence in the record establishing that [REDACTED] is an established corporation in New York and that it is the successor-in-interest to the petitioner. The AAO concludes that the petitioner has failed to demonstrate its ability to offer a permanent employment to the beneficiary. Therefore, the petition also cannot be approved for this reason.

Beyond the director's decision, the AAO concludes that the petitioner has failed to demonstrate that there is a *bona fide* job offer. Under 20 C.F.R. §§ 656.10(c)(8), 656.17(1), and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA October 15, 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000). The burden rests on the employer to provide clear evidence that a *bona fide* job opportunity is available, and that the employer has, in good faith, sought to fill the position with a U.S. worker. *Matter of Amger Corp.*, 87-INA-545 (BALCA October 15, 1987).

The DOL applies a totality of circumstances test to ascertain a *bona fide* job offer with respect to the beneficiary's inappropriate control over a job offer. The DOL considers multiple factors including whether the beneficiary:

- a. is in a position to control or influence hiring decisions regarding the job for which labor certification is sought;

- b. is related to corporate directors, officers, or employees;
- c. was an incorporator or founder of the company;
- d. has an ownership interest in the company;
- e. is involved in the management of the company;
- f. is on the board of directors;
- g. is one of a small number of employees;
- h. has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application; and
- i. is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue in operation without the alien. *See Modular Container Systems, Inc.*, 89-INA-228 (BALCA July 16, 1991) (*en banc*).

The record contains birth certificates for the four children of [REDACTED] the petitioner's sole shareholder, which show the beneficiary as the father of her children. The record also contains a notarized letter, dated July 7, 2008, signed by Ms. [REDACTED] in which she states:

[REDACTED] [the beneficiary] is the father of my four (4) children. He has supported them from the time they were born. He provides financial support as well as emotional support for them. He goes to school for them, he takes them to Church and he goes to the sporting practice and competitions.

Furthermore, the record reflects that Ms. [REDACTED] and the beneficiary reside at the same residential address, [REDACTED]. The record also shows that Ms. [REDACTED] and the beneficiary provided common addresses over the years. On the petitioner's 2001 and 2002 tax returns, Ms. [REDACTED] indicated the address of the petitioning company as [REDACTED] which is the same address shown on the beneficiary's 2001 Internal Revenue Service (IRS) Form W-2. On the 2002 individual tax return, the beneficiary indicated his address as [REDACTED] which is the same address that Ms. [REDACTED] provided on her son's birth certificate.

The record also indicates that the beneficiary was a corporate officer and received compensation from the petitioner as one of the two officers of the petitioner in 2001, 2002, and 2003. In a letter dated July 10, 2012, Ms. [REDACTED] the petitioner's certified public accountant, states that the beneficiary's incarceration has had a negative impact on the business, which "was not performing as well without [the beneficiary]" and his absence has resulted in "overdrafts in the bank account." Ms. [REDACTED] further states,

When funds were not available for the payroll taxes or payroll service fees, ADP stopped providing services in December resulting in accurate reports not being timely filed, payroll taxes not being paid, incorrect W-2s, penalties, etc. ... This is in stark contrast to the situation only a few years ago when [the beneficiary] and [REDACTED] were looking for a new building to expand their business in [REDACTED]

In his response to the AAO's NOID/NODI, counsel states that the beneficiary and Ms. [REDACTED] are not married and are not relatives. However, contrary to counsel's assertions, the evidence in the record demonstrates that the beneficiary and the sole shareholder of the petitioner, Ms. [REDACTED] have a familial relationship as they are the parents of four children - three of their children were born prior to the filing of the Form ETA 750, and one child was born eight months after the filing of the Form ETA 750, which indicates an intimate relationship between the beneficiary and Ms. [REDACTED] around the time the labor certification was filed. They have been sharing common residential addresses over the years. Furthermore, the record demonstrates that the beneficiary received officer compensation from the petitioner. The record also suggests that the beneficiary was involved in the management of the petitioning company as the beneficiary and Ms. [REDACTED] held themselves out as the owners of the petitioner, and that the beneficiary was involved in expanding their business.¹¹ In addition, the record demonstrates that the petitioning company was not able to continue its operations without the presence of the beneficiary. The totality of the circumstances suggests that there was no *bona fide* job opportunity available to U.S. workers at the time of recruitment. The record does not establish that the petitioner informed the DOL of the familial relationship before or during the DOL application process. Also for this reason, the petition is not approvable.

In summary, the petitioner has failed to demonstrate that it has the continuing ability to pay the proffered wage as of the priority date onwards, that the petitioner has the ability to offer a permanent employment to the beneficiary, and that there is a *bona fide* job offer. Therefore, the petition was not approvable on the date of the approval, February 18, 2006. The director had good and sufficient cause to revoke the approval of the petition, consistent with section 205 of the Act, 8 U.S.C § 1155. For these reasons, the director's decisions to revoke the approval of the petition is upheld.

The approval of the petition will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹¹ In an affidavit dated August 10, 2011, the beneficiary's wife [REDACTED] states that the beneficiary "now owns the largest [REDACTED] by the name of [REDACTED] (Emphasis added).