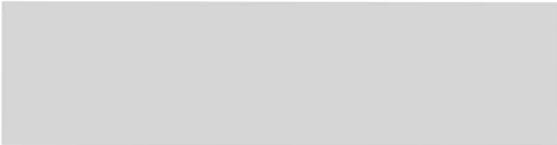


(b)(6)

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: **AUG 27 2015**



IN RE:           Petitioner:  
                    Beneficiary:



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

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is an IT consulting business. On January 7, 2015 it filed the instant Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as a computer and information systems manager pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). Under this statutory provision immigrant classification may be granted to qualified immigrants who hold baccalaureate degrees and are members of the professions. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on June 30, 2014, and certified by the DOL (labor certification) on November 19, 2014.

On February 2, 2015, the petition was denied by the Director on the ground that the petitioner did not establish its ability to pay the proffered wages of the instant beneficiary and all the other beneficiaries of I-140 petitions filed in 2014 who had not yet obtained lawful permanent resident status. The evidence of record showed that only two of the 13 beneficiaries in question were paid at or above their proffered wages, while the instant beneficiary and all the other beneficiaries were paid less than their proffered wages. According to the evidence of record before the Director, the deficit between the cumulative proffered wages and the cumulative amounts paid to the beneficiaries in 2014 was \$290,896. The petitioner's 2013 federal income tax return (Form 1120S) showed that its net income that year was \$50,036, and its net current assets were \$154,997. Since neither of these figures was large enough to make up the \$290,896 shortfall between the wages paid to I-140 beneficiaries and their cumulative proffered wages in 2014, the Director concluded that the petitioner did not demonstrate its ability to pay all the proffered wages in full. Accordingly, the petition was denied.

The petitioner filed a timely appeal on March 6, 2015, which was supplemented by additional documentation. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

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

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<sup>1</sup> and continuing until the beneficiary obtains lawful permanent residence.

The priority date of the instant petition is June 30, 2014. The instant beneficiary has a proffered wage of \$110,885, and the record shows that he was paid \$42,228 for approximately five months of

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<sup>1</sup> The priority date is the date a petition's underlying labor certification was filed at the DOL.

work in 2014. The petitioner must establish its continuing ability to pay the proffered wage from the priority date up to the present. Moreover, the petitioner must establish its ability to pay the proffered wage of every other beneficiary of an I-140 petition that was pending or approved as of June 30, 2014, up to the date each pending petition was withdrawn or denied or, in the case of approved petitions, up to the date the beneficiary gains lawful permanent resident status or ceases to work for the petitioner. See 8 C.F.R. § 204.5(g)(2); see also *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977).

On April 29, 2015, we issued the petitioner a Request for Evidence (RFE). In the RFE we listed 30 individuals who, like the instant beneficiary, were beneficiaries of individual I-140 petitions, employees of the petitioner in 2014, and recipients of Wage and Tax Statements (Forms W-2) from the petitioner for 2014, copies of which were in the record. While the Forms W-2 showed how much each of the 30 other employees was paid in 2014, the petitioner had provided the proffered wages for only 12 of those employees. Accordingly, we requested the petitioner to provide the proffered wages of the other 18 employees in 2014.

In the RFE we also listed 60 other individuals for whom the petitioner had filed I-140 petitions in earlier years. For each of these petitions we requested the following information:

- The date each petition was approved, or denied, or withdrawn.
- If any approvals were subsequently revoked, the date of each revocation.
- For each approved petition, the date (if any) the beneficiary obtained lawful permanent resident status.
- The identity of any petition that had not yet received a decision.

In addition, if any of the 60 beneficiaries was employed by the petitioner between June 30, 2014 and the present, we requested the following information and documentation:

- The date the beneficiary's employment began (even if it was before June 30, 2014).
- The proffered wage of each employee.
- A copy of the Form W-2 issued to each employee for 2014.
- Copies of the three most recent pay statements of each employee in 2015.
- If any beneficiary ceased to work for the petitioner between June 30, 2014 and the present, the date the employment ended.

Finally, we requested information and corroborating documentation with respect to an asset entry in Schedule L of the petitioner's 2014 federal income tax return (Form 1120S) for "trade notes and accounts receivable" in the amount of \$415,530, as well as an explanation as to why no such entry appeared in previous tax returns for the years 2007-2013.

On June 30, 2015 we received the petitioner's response to the RFE. In partial compliance with our request the petitioner furnished the missing proffered wage figures for 18 employees in 2014 who were beneficiaries of I-140 petitions. The petitioner also submitted some documentation pertaining to the "trade notes and accounts receivable" entry of \$415,530 on Schedule L of its 2014 federal

income tax return, including lists of the companies with unpaid receivables and their invoices as of December 31, 2014, and the dates of payment in 2015. However, the petitioner did not provide an explanation, as requested in our RFE, as to why no such entries appeared in previous tax returns. Nor did the petitioner identify any “trade notes” component in its Schedule L entry. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of the applicant’s remaining evidence. *See id.* In this case, the petitioner stated in its response to the RFE that it was “going to discuss the matter with our accountant” with respect to accounts receivable in prior years and “might amend the tax returns” for the years 2007-2013. No follow-up information has been received from the petitioner. We do not regard the petitioner’s incomplete response to our specific inquiry in the RFE as sufficiently probative to establish the credibility of the “trade notes and accounts receivable” entry in Schedule L of its 2014 tax return for the purpose of determining the petitioner’s ability to pay the proffered wage in the instant I-140 petition.

As for the 60 other beneficiaries of I-140 petitions filed in earlier years, the petitioner provided some, but not all, of the information and evidence requested. For example, the petitioner listed 17 of the I-140 petitions as initially approved and subsequently revoked. However, none of the revocation dates were provided. In an attempt to verify this information, we consulted the database records of U.S. Citizenship and Immigration Services (USCIS) and determined that two revocations – for beneficiaries [REDACTED] – occurred in 2008 (though the former was identified as a withdrawal) and four occurred in the time period of April to June 2015 – for beneficiaries [REDACTED]

[REDACTED] For these four beneficiaries, therefore, the petitioner must establish its ability to pay their proffered wages from June 30, 2014 up to their respective dates of revocation in 2015. No such determination can be made, however, since the record contains no evidence of the proffered wages of the four beneficiaries or their pay from the petitioner, if any, in 2014 and 2015. Moreover, some of the information provided by the petitioner appears to be incorrect since it conflicts with USCIS records. In particular, 11 of the undated revocations listed by the petitioner – for beneficiaries [REDACTED]

[REDACTED] – are not reflected in USCIS records. For each of these beneficiaries USCIS records show that the I-140 petitions were approved and do not indicate any revocation thereafter.<sup>2</sup> As far as the record shows, therefore, these 11 individuals continue to be the beneficiaries of approved I-140 petitions up to the present,<sup>3</sup> and the petitioner must establish that it has been able to pay their proffered wages from June 30, 2014 onward. No such determination can

<sup>2</sup> It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of the applicant’s remaining evidence. *See id.*

<sup>3</sup> According to the petitioner, one of the 11 beneficiaries – [REDACTED] – left the petitioner’s employment on March 15, 2011.

be made, however, since the record contains no evidence of the proffered wages of these beneficiaries or their pay from the petitioner, if any, in 2014 and 2015.

Thus, the petitioner has not provided the proffered wages of at least 15 individuals who, according to USCIS records, were the beneficiaries in 2014 and 2015 of earlier approved I-140 petitions. Nor has the petitioner provided evidence of the wages paid to these beneficiaries, if any, from the priority date of June 30, 2014 up to the present. Based on the current record, therefore, we cannot determine the petitioner's total wage obligation and whether the petitioner has had the ability to pay the proffered wage of the instant beneficiary and all of its other I-140 beneficiaries from the priority date onward. Even if we consider the lesser number of beneficiaries identified by the Director, the petitioner has not submitted sufficient evidence to establish that it can pay the identified deficit of \$290,896 in 2014.

Finally, without all of the evidence requested in our RFE, we cannot complete an analysis of the petitioner's ability to pay the proffered wage based on the totality of its circumstances, as in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l. Comm'r. 1967).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. See section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition remains denied.