



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-, INC.

DATE: AUG. 8, 2016

MOTION ON TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development company, seeks to employ the Beneficiary in the United States as a programmer/analyst. It requests immigrant classification of the Beneficiary as a professional or skilled worker.¹ *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A); 8 U.S.C. § 1153(b)(3)(A). The professional classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. The skilled worker classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least 2 years of training or experience.

The Director, Texas Service Center, denied the petition. The Director concluded that the Beneficiary did not possess a U.S. bachelor's degree or foreign equivalent degree as required by the labor certification and for classification as a professional. The Petitioner appealed the matter to us and on December 1, 2015, we dismissed the appeal and held that the Beneficiary did not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act. We also held that the Petitioner had not established that the Beneficiary met the terms of the labor certification to qualify

¹ Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. A petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. In our decision dated December 1, 2015, we determined that the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act, which grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2). For classification as a professional, the Beneficiary must possess a U.S. bachelor's degree or a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. We stated in our appeal decision that the Beneficiary does not possess a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(l)(2). We determined that the Petitioner has not established that the Beneficiary possessed at least a U.S. baccalaureate or a foreign equivalent degree in the required field as of the priority date. On motion, the Petitioner asserts that the Beneficiary's case is identical to a prior AAO non-precedent decision issued in 2008, where we approved a petitioner's Form I-140 under the skilled worker classification, but determined that the beneficiary did not qualify for classification as a professional because he possessed the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." On motion, the Petitioner does not dispute our finding that the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act. Therefore, this decision addresses only the skilled worker classification.

for classification as a skilled worker, and that the Petitioner had the ability to pay the proffered wages to the Beneficiary and its other sponsored workers.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner states that the Beneficiary meets the terms of the labor certification and that the Petitioner demonstrated its ability to pay the proffered wage. We will deny the motion to reopen and reconsider because the Petitioner has not established that the Beneficiary meets the terms of the labor certification for classification as a skilled worker, and the Petitioner has not established its continuing ability to pay the proffered wages to the Beneficiary and its other sponsored workers.

I. LAW AND ANALYSIS

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A. Beneficiary's Qualifications

The first issue on motion is whether the petition may be approved in the skilled worker classification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least 2 years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least 2 years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least 2 years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

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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 *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 Mass., Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the Form ETA 750, Application for Alien Labor Employment Certification (labor certification), states that the offered position has the following minimum requirements:

EDUCATION

College: 4 years.

College Degree Required: B.S. or equivalent.

Major Field of Study: CIS or Computer Eng.

TRAINING: None Required.

EXPERIENCE: Two years in the job offered or in the related occupation of software engineer.

OTHER SPECIAL REQUIREMENTS: None.

The Beneficiary possesses a bachelor of arts degree from [REDACTED] completed in 1984, and a master's degree in business administration from [REDACTED] India, completed in 1997. The Beneficiary also passed Sections A and B of the [REDACTED] Examinations in the Electronics and Communication Engineering Branch in Summer 1988 and Winter 1993, respectively.² Because the labor certification requires a bachelor's degree or equivalent in computer information systems (CIS) or computer engineering, the question at issue is whether the Beneficiary's education meets the terms of the labor certification.

The record contains several evaluations of the Beneficiary's educational credentials. The Petitioner submitted an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] Ph.D., for [REDACTED] dated December 17, 2003. The

² The record contains a certificate dated August 12, 1994, from [REDACTED] indicating that the Beneficiary passed Sections A and B of the [REDACTED] Examinations, but does not contain any evidence that he attained associate membership in [REDACTED]. In addition to passing the [REDACTED] examinations, as set forth in the materials submitted by the Petitioner to the record, associate membership in [REDACTED] requires meeting a certain age requirement, being engaged in the engineering occupation, and having received certain engineering training.

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evaluation stated that the Beneficiary “has the equivalent of a Bachelor’s degree in Computer Information Systems from an accredited college or university in the United States of America” based on his passage of the [REDACTED] examinations, his master of business administration degree from [REDACTED] and his certificates from [REDACTED] USA, and [REDACTED] USA.

In response to the director’s May 19, 2014, request for evidence, the Petitioner submitted a new evaluation from [REDACTED] concluded that the Beneficiary’s certificate from the [REDACTED] is equivalent to a “Bachelor of Science Degree in Electronics and Communications Engineering with a concentration in Computer Engineering (27 credits for a major in Computer Engineering) from an accredited college or University in the United States of America.”

In a March 11, 2015, evaluation, [REDACTED] of [REDACTED] concluded that the Beneficiary “has attained the equivalent of a Bachelor of Science degree in Electronics Engineering and a Master of Business Administration Degree from an accredited institution of higher education in the United States.” [REDACTED] stated that his conclusion is based on “[t]he course of studies undertaken, the number of credit units earned, the number of years of coursework, the grades earned for coursework and the final diploma.”

In a March 13, 2015, evaluation, [REDACTED] for the [REDACTED] summarized that based on “the number of years of coursework, the nature of the coursework, the grades attained in the courses, and passage of the [REDACTED] Section A and B Examinations, it is the judgment of [REDACTED] that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Electronic Engineering and a Bachelor of Administration Degree from an accredited college or university in the United States.”

On June 19, 2015, we issued the Petitioner a request for evidence (our RFE) in connection with its earlier appeal in this matter. We indicated in our RFE that we have 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 professionals who represent approximately 2,600 institutions in more than 40 countries.” *About AACRAO*, <http://www.aacrao.org/home/about> (last visited July 29, 2016). EDGE is “a web-based resource for the evaluation of foreign educational credentials.” *AACRAO EDGE*, <http://edge.aacrao.org/info.php> (last visited July 29, 2016). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³

³ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Sunshine Rehab Servs., Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary’s 3-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.

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According to EDGE, a bachelor of arts degree from India is comparable to 2 to 3 years of university study in the United States. EDGE also confirms that [REDACTED] Associate Membership upon passing the [REDACTED] Final Examination represents attainment of a level of education comparable to a bachelor's degree in the United States. However, [REDACTED] is not an academic institution that can confer an actual degree with an official college or university record. Nothing in the record shows that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree in CIS or computer engineering issued by a college or university in accordance with the terms of the labor certification. Additionally, the record does not establish that the Beneficiary has obtained [REDACTED] Associate Membership. Instead, the record shows only that he passed the [REDACTED] Final Examinations.

Further, nothing in the record indicates that the Petitioner intended to accept a 2- or 3-year bachelor's degree or associate membership following examinations from a professional organization in lieu of a bachelor's degree in CIS or computer engineering. The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the Beneficiary. Nonetheless, we issued our RFE to provide the Petitioner an opportunity to demonstrate its intent regarding the educational requirements of the labor certification as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.⁴

In response to our RFE, the Petitioner submitted copies of the advertisements for the position offered, a recruitment report, and the resumes received. However, the copies of the advertisements are not legible due to the very small size of the print. On motion, the Petitioner states that after using a magnifying glass to try to ascertain the wording used, it is "reasonably certain" that it advised potential U.S. workers that a bachelor's degree or equivalent was acceptable. The Petitioner cannot meet the burden of proof simply by claiming a fact to be true or "reasonably certain," without supporting documentary evidence. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); see also *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. The illegible advertisements are not probative or credible evidence of the Petitioner's claim that it advised potential U.S. workers that a bachelor's degree or equivalent was acceptable.

⁴ In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of a petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would be contrary to Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. See *Id.* at 14.

The recruitment report states that in order “to do the work of a programmer analyst, a bachelor’s degree in [CIS], or related discipline is generally required as a minimum for entry into the field.” The recruitment report further states, in part:

It has been our experience that in order to perform the duties of the position held by [the Beneficiary], an individual would require a minimum of two years of progressively responsible experience in VB, Dot Net, ASP and RDBMS following the completion of a baccalaureate degree in computer engineering, or related engineering or scientific discipline. Accordingly, these are the minimum requirements set forth in our petition. We are unable to consider applicants with less than two years of progressively responsible experience following completion of a baccalaureate degree because our experience has been that such individuals lack the ability to perform the work required by a programmer analyst in [the Beneficiary’s] position.

The recruitment report specifically states that a bachelor’s degree in computer engineering, or related engineering or scientific discipline, is required, and does not provide for equivalency alternatives to a bachelor’s degree. The Petitioner indicated that it interviewed the six applicants who responded to the advertisements. The resumes are included in the record. The Petitioner stated that five of the applicants were found to be “deficient in their abilities and experience” and, therefore, were not hired, and one individual who “had the required education and skills” was given a technical interview and was not hired following that interview because he was deemed unqualified due to his lack of technical knowledge. It is not clear from the record which applicant had the “required education and skills” and whether the “required education” included an equivalency alternative to a 4-year bachelor’s degree in CIS or computer engineering.⁵

Further, while our RFE specifically requested the Petitioner to submit “copies of the prevailing wage determination, all online, print and additional recruitment conducted for the position, the job order, [and] the posted notice of the filing of the labor certification,” the Petitioner stated that the remainder of the requested information (other than the illegible print advertisements, recruitment report, and resumes it provided) was unavailable because of the passage of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The Petitioner did not submit any additional evidence of recruitment on motion.

⁵ Regarding education, one applicant’s resume listed a combined bachelor and master of science in computer networks from a Moroccan university; one listed an associate of science degree in applied chemistry from a college in China, together with college computer courses at a U.S. college and computer training courses; one listed 112 credits toward a bachelor of science degree in management from a U.S. college, an associate’s degree from a U.S. college, and computer training courses; one listed a bachelor’s degree and master’s degree in computer science; one listed a bachelor of science degree in computer networking/computer science from a U.S. college; and one listed a bachelor of engineering degree from India, together with a master of computer science degree from a U.S. university.

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The Petitioner has not demonstrated the recruitment evidence stated that the educational requirements for the job may be met through anything less than a 4-year bachelor's degree in CIS or computer engineering. Nothing in the record indicates that the Petitioner advised the DOL that the educational requirements for the job may be met through a combination of lesser degrees or other defined equivalency.

On motion, the Petitioner cites one of our non-precedent decisions⁶ from 2008 in which we sustained the appeal of a denied petition filed in the skilled worker category on behalf of a beneficiary who had a 3-year bachelor's degree from India and associate membership in the [REDACTED] where the labor certification required 4 years of college and a bachelor of science degree or equivalent.⁷ In that case, the petitioner submitted a printed advertisement listing the full labor certification job description and section 15 requirements from the Form ETA 750, as well as specifying "B.S. in Comp. Sci., Engr'g or Sci. (or equiv.); a second advertisement also listing the full labor certification job description and section 15 requirements, as well as specifying "B.S. in Comp. Sci., Engr'g or Sci. (or equiv.); a posting notice listing the requirements as "B.S. in Computer Science, Engineering, or Science (or equiv.)," as well as all other requirements. The advertisements and posting notice specifically stated that the petitioner would accept candidates with an equivalent degree. Based on the recruitment completed and position as it was advertised to U.S. workers, we concluded that the petitioner's intent concerning the actual minimum requirements of the proffered position would include equivalency alternatives to a 4-year bachelor's degree and that the petitioner would have considered candidates with an equivalent degree. The instant case differs from the 2008 case. Here, the Petitioner has not submitted legible advertisements, or a posting notice, job order, or prevailing wage determination, specifically stating that it would accept candidates with an equivalent degree.

While a bachelor's degree or the foreign equivalent degree is not required for classification as a skilled worker, the Beneficiary must meet the terms of the labor certification. USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. In this case, the labor certification requires 4 years of college and a bachelor of science degree or equivalent. There are no alternate requirements indicated. No specific terms are set out on the Form ETA 750 to define the term "equivalent." The terms of the labor certification do not allow for a 3-year bachelor's degree, or a 3-year degree and associate membership following examinations in a professional organization.⁸

⁶ 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).

⁷ A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. C.F.R. § 103.5(a)(3).

⁸ The DOL has provided the following field guidance: "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from Anna C. Hall, Acting Reg'l Adminstr'r, U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to

The Petitioner has not indicated on the labor certification that it would allow for a 3-year bachelor's degree and associate membership in a professional organization or other alternative requirements. Therefore, it is concluded that the terms of the labor certification require a 4-year U.S. Bachelor's degree or a foreign equivalent degree in CIS or computer engineering. The Beneficiary does not possess such a degree. The Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

The petition may not be approved in the skilled worker classification pursuant to section 203(b)(3)(A)(i) of the Act.

B. Ability to Pay the Proffered Wage

The second issue on motion is whether the Petitioner has demonstrated its continuing ability to pay the proffered wage.

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 March 15, 2004. The proffered wage as stated on the labor certification is \$74,800 per year.

On the petition, the Petitioner claimed to have been established in 2000 and to currently employ 29 workers. On the Form ETA 750, signed by the Beneficiary on March 5, 2004, the Beneficiary did not claim to have worked for the Petitioner.⁹

The Petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an labor certification application establishes a priority date for any immigrant petition later based on the

mean the employer is willing to accept an equivalent foreign degree.” *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

⁹ On the Beneficiary’s Form G-325A, Biographic Information Form, the Beneficiary claimed to have started working for the Petitioner as a programmer/analyst in January 2004.

Form 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. In the instant case, the Petitioner has established that it paid the Beneficiary the following wages on his IRS Forms W-2, Wage and Tax Statement:

- \$53,369.51 in 2004;
- \$65,499.16 in 2005;
- \$61,168.15 in 2006;
- \$88,622.00 in 2007;¹⁰
- \$92,351.00 in 2008;
- \$73,798.00 in 2009;
- \$75,399.00 in 2010;
- \$88,998.00 in 2011;
- \$79,651.00 in 2012;
- \$100,149.00 in 2013; and
- \$109,471.00 in 2014.

Thus, the Petitioner has established that it paid the Beneficiary more than the proffered wage in 2007, 2008, 2010, 2011, 2012, 2013, and 2014. The Petitioner must demonstrate that it can pay the difference of \$21,430.49, \$9300.84, \$13,631.85, and \$1002.00 between wages actually paid to the Beneficiary and the proffered wage in 2004, 2005, 2006, and 2009, respectively.

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 Haw., Ltd. v. Feldman*, 736 F.2d

¹⁰ The Petitioner issued the Beneficiary two IRS Forms W-2 in 2007, one for \$18,735 and one for \$69,887.

1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. 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).

The evidence in the record of proceeding shows that the Petitioner was structured as a C corporation in 2004 and 2005, and was structured as an S corporation from 2006 to 2014. For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the IRS Form 1120, U.S. Corporation Income Tax Return. The Petitioner's tax returns demonstrate its net income for 2004 and 2005 as \$7947 and \$16,577, respectively. Therefore, for the year 2004, the Petitioner did not have sufficient net income to pay the difference of \$21,430.49 between wages actually paid to the Beneficiary and the proffered wage. For the year 2005, the Petitioner had sufficient net income to pay the difference of \$9300.84 between wages actually paid to the Beneficiary and the proffered wage.

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 a petitioner's IRS Form 1120S, U.S. Income Tax Return for an S Corporation. 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 18 of Schedule K in tax years 2006 through 2014. *See* Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed July 29, 2016) (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). For the year 2006, the Petitioner had net income of \$23,616 shown on line 18 of its Schedule K. Thus, the Petitioner has established that it can pay the difference of \$13,631.85 between wages actually paid to the Beneficiary and the proffered wage in 2006.

The Petitioner submitted only the first page of its IRS Form 1120S for tax year 2009. Therefore, we are unable to determine the Petitioner's net income, because we cannot determine if the Petitioner had additional income, credits, deductions, and/or other adjustments shown on its Schedule K for 2009. Therefore, for the year 2009, the Petitioner did not establish that it had sufficient net income to pay the difference between the wages paid to the Beneficiary and the proffered wage.

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.¹¹ 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

¹¹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

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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 2004 Form 1120 shows net current assets of \$37,731. Thus, for the year 2004, the Petitioner had sufficient net current assets to pay the difference of \$21,430.49 between wages actually paid to the Beneficiary and the proffered wage.

The Petitioner submitted only the first page of its IRS Form 1120S for tax year 2009. It did not submit its Schedule L. Therefore, we are unable to determine the Petitioner's net current assets for 2009. For the year 2009, the Petitioner did not establish that it had sufficient net current assets to pay the difference between the wages paid to the Beneficiary and the proffered wage.

Our RFE and appeal decision stated that according to USCIS records, the Petitioner has filed Form I-140 petitions on behalf of 13 other beneficiaries. We noted that the Petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977); 8 C.F.R. § 204.5(g)(2). The Petitioner must demonstrate its ability to pay the combined proffered wages from the instant petition's priority date until the other beneficiaries obtained lawful permanent residence, or until their petitions were denied, withdrawn, or revoked. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries).

In response to our RFE, the Petitioner listed the priority dates for six workers (in addition to the current Beneficiary) for whom it had filed Form I-140 petitions. The Petitioner provided copies of Forms W-2 issued to each of these workers. The Petitioner stated that it is not offering employment to any beneficiaries of Form I-140 petitions except the current Beneficiary and the six beneficiaries named on this list. However, the evidence in the record does not document the wage proffered to each of those six beneficiaries, so we are unable to determine if the Petitioner met its wage obligations to those six beneficiaries in each relevant year. Further, the Petitioner has not provided any information regarding the approved Form I-140 petitions on behalf of the remaining seven beneficiaries, including the proffered wages, whether any of the beneficiaries have obtained lawful permanent residence, and whether the petitions have been withdrawn or the approvals have been revoked.¹² The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The Petitioner has not established that it has the ability to pay the proffered wages to the Beneficiary and the other sponsored workers.

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 Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). 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

¹² The receipt numbers for the remaining seven petitions are as follows:

and

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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 was established in 2000. While it showed substantial gross receipts and wages paid each year from 2004 to 2014, we cannot adequately determine the Petitioner's ability to pay the proffered wages to the Beneficiary and its other sponsored workers based on the information contained in the record.

The evidence submitted does not establish that the Petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

II. CONCLUSION

In summary, the Petitioner has not demonstrated that the Beneficiary met the terms of the labor certification for classification as a skilled worker. Further, the Petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-, Inc.*, ID# 16959 (AAO Aug. 8, 2016)