



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

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

MATTER OF H-H-F-, INC.

DATE: MAR. 2, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a hardwood flooring business, seeks to employ the Beneficiary permanently in the United States as a craft artist under classification as a skilled worker. *See* section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).

The Petitioner filed the Form I-140 petition on February 7, 2012. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is December 15, 2006, which is the date that the labor certification was filed with DOL.

The Director, Nebraska Service Center, denied the visa petition on April 14, 2015, finding that the evidence of record did not establish the Petitioner's ability to pay the proffered wage from the priority date forward. On May 18, 2015, the Petitioner appealed the Director's decision to this office.

On appeal, the Petitioner contends that the Director did not appropriately apply the analysis in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967) when considering its ability to pay the Beneficiary the proffered wage. It seeks to amend the instant Form I-140 to reflect a 35-hour rather than a 40-hour work week, which, it asserts, will negate the Director's finding that its inability to pay the proffered wage was not limited to the single period of economic duress, as was the case in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). It further asserts that the Director erred in finding that it had not demonstrated the sound business standing and outstanding reputation of the petitioner in *Sonogawa*. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

The Petitioner has filed three employment-based visa petitions on behalf of the Beneficiary in this matter. The most recent petition is before us following a remand by the U.S. District Court, Central District of California to the Director, Nebraska Service Center. However, as we find the complex

¹ *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

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processing history of these petitions to be relevant in the present matter, we will review the history of all three prior to addressing the issues raised by the Petitioner on appeal.

On July 9, 2007, the Petitioner filed the first Form I-140 on behalf of the beneficiary [REDACTED]. On December 26, 2008, the Director issued a request for evidence (RFE) and the Petitioner responded on February 5, 2009. On February 26, 2009, the Director denied the Form I-140, finding that the Petitioner had not established its ability to pay the proffered wage. The Petitioner filed a motion to reopen (MTR) on March 30, 2009 [REDACTED] which was denied by the Director on April 17, 2009.

On August 26, 2009, the Petitioner filed a second Form I-140 for the Beneficiary [REDACTED]. The Director issued an RFE on November 2, 2009, to which the Petitioner responded on January 22, 2010. The Director denied the Form I-140 on January 29, 2010, again finding that the Petitioner had not established its ability to pay the proffered wage. The Petitioner appealed the Director's decision to this office on March 9, 2010 [REDACTED]. On August 9, 2010, we rejected the appeal as untimely filed and returned it to the Director for consideration as a motion to reopen. Although the record contains a January 25, 2013, statement from the Petitioner claiming that this decision was never received, the record reflects that the decision was mailed to the Petitioner at his address of record at the time, as well as to the Petitioner's counsel. Thereafter, the Director reopened the matter, but finding that the record on motion did not establish the Petitioner's ability to pay the proffered wage, he again denied the visa petition on August 19, 2013.

On February 7, 2012, the Petitioner filed the third Form I-140 petition [REDACTED] with the Nebraska Service Center. The Director denied this petition on August 2, 2012, indicating that he did not find the record to establish the Petitioner's ability to pay the proffered wage. On February 12, 2013, the Petitioner filed a Form I-290B appeal [REDACTED], which the Director accepted as a motion. On August 19, 2013, the Director, having considered the record, again denied the petition based on his determination that the Petitioner had not demonstrated its ability to pay.

Prior to U.S. Citizenship and Immigration Services' (USCIS) issuance of its August 19, 2013, decisions, the Petitioner had filed a civil action in the U.S. District Court, [REDACTED] of California challenging the decisions in [REDACTED] (the Form I-140 filed on August 26, 2009) and [REDACTED] (the Form I-140 filed on February 7, 2012) as arbitrary and capricious. On May 12, 2014, the court denied USCIS' motion for summary judgment and remanded the cases to USCIS for further consideration of the Petitioner's ability to pay, specifically its ability to pay based on the totality of its circumstances. On June 20, 2014, the Director reopened [REDACTED] and issued an RFE to the Petitioner; the Petitioner submitted its RFE response on September 12, 2014. On April 14, 2015, the Director again denied the third Form I-140. On May 18, 2015, the Petitioner appealed the Director's decision.

On December 10, 2015, we issued a notice of intent to dismiss and request for evidence (NOID/RFE), informing the Petitioner that we intended to dismiss its appeal as the evidence of record on appeal did not establish its continuing ability to pay the proffered wage. Specifically, the NOID/RFE indicated that the record did not demonstrate that the Petitioner had employed the

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Beneficiary at a salary equal to or greater than the proffered wage throughout the specified period and that its tax returns also did not report net income or net current assets that equaled or exceeded the proffered wage for all relevant years, even when added to the wages paid to the Beneficiary. The notice further informed the Petitioner that we did not find the record to establish that, like the employer in *Matter of Sonogawa*, its ability to pay was demonstrated by the totality of its circumstances. The Petitioner was given 30 days in which to respond to these findings.

On January 13, 2016, the Petitioner submitted its response to the NOID/RFE, which included a brief; statements attesting to the Petitioner's outstanding reputation in the building and interior design industry; materials reflecting its "A" rating on [REDACTED] a printout of "Contractor's License Detail for License [REDACTED] to establish its license as current and active; and a copy of training materials on surety bonds from the [REDACTED]. It asserts that the submitted statements and its rating on [REDACTED] offer real evidence of its reputation. The Petitioner further contends that it has been in business for nearly 17 years and that this is a "significant and unambiguous fact as to [its] prospects of operating a successful business." Finally, the Petitioner points to its license, which, it asserts, demonstrates its litigation/claims free history, and which, it contends, should also serve as a serious consideration of its reputation within its industry.

II. ABILITY TO PAY – BASED ON FINANCIAL EVIDENCE

As indicated by the Director in his April 14, 2015, denial of the visa petition, the single issue in this case is whether or not the Petitioner has the ability to pay the proffered wage from the priority date forward.

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 In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

A petitioner must establish that its job offer to a beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any subsequently filed immigrant visa petition, a petitioner must establish that a job offer is realistic as of the priority date and that the offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. Where a petitioner has filed petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each sponsored worker. *See Matter of Great Wall*, at 144-145; *see also* 8 C.F.R. § 204.5(g)(2).

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In the present case, the priority date of the visa petition is December 15, 2006. Part G.1. of the labor certification indicates a proffered wage of \$26.08 per hour or \$54,246.40 per year. Accordingly, to establish its ability to pay in this matter, the Petitioner must establish a continuing ability to pay the Beneficiary the proffered annual wage of \$54,246.40 from December 15, 2006, until January 13, 2016, the date on which the record before us closed with our receipt of the Petitioner's response to the NOID/RFE.

The record contains the following evidence relating to the Petitioner's ability to pay: copies of its Form 1120S, U.S. Income Tax Return for an S Corporation (tax return) for each year of the period 2006 through 2013; copies of the Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, issued to the Beneficiary in 2007, 2008 and 2009; Forms 941, Employer's Quarterly Tax Returns, reflecting the wages paid by the Petitioner from 2009 through the first two quarters of 2014; copies of the Forms 1040, U.S. Individual Income Tax Returns, filed by the Beneficiary in 2007 and 2008; and the Forms 1040 filed the Petitioner's President in 2007 and 2009; copies of January 13 and March 24, 2010, letters from [REDACTED] analyzing [REDACTED] ability to pay the proffered wage in 2007; copies of online testimonials and ratings for [REDACTED] from [REDACTED] for the period 2006 through 2010; statements, dated March 3, 2010, and March 23, 2010, from the Petitioner's President indicating his willingness to forego part of his 2007 compensation to pay the proffered wage; 2008 and 2009 earnings statements for the Beneficiary; several statements from interior designers and a real estate agent, all from October 2012, regarding the Petitioner's standing in its industry; and the aforementioned evidence submitted in response to the NOID/RFE.

To determine a petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner was employing the beneficiary as of the date on which the labor certification was accepted for processing by DOL and whether it continues to do so. If a petitioner documents that it has employed a beneficiary at a salary equal to or greater than the proffered wage, that evidence may be considered *prima facie* proof of the petitioner's ability to pay pursuant to 8 C.F.R. § 204.5(g)(2). If a petitioner does not demonstrate that it employed and paid the beneficiary at an amount at least equal to the proffered wage during the required period, USCIS then examines the net income figure reflected on the petitioner's federal income tax returns, 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).² If a petitioner's net income during the required time period does not equal or exceed the proffered wage or if when added to any wages paid to the beneficiary, does not equal or exceed the proffered wage, USCIS reviews the petitioner's net current assets.

² 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 cases where neither a petitioner's net income nor its net current assets establishes its ability to pay the proffered wage during the required period, USCIS may also consider the overall magnitude of its business activities. *Matter of Sonogawa*, at 612. In assessing the totality of the petitioner's circumstances, USCIS may look at such factors as the number of years it has been in business, its record of growth, the number of individuals it employs, abnormal business expenditures or losses, its reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence it deems relevant.

In the present case, the Forms W-2 in the record reflect the Beneficiary's income from the Petitioner as follows:

- \$7,302.40 in 2007;
- \$50,073.60 in 2008; and
- \$13,561.60 in 2009;

Accordingly, the record does not demonstrate that the Petitioner paid the Beneficiary at or above the proffered wage in any year of the relevant period and cannot establish its ability to pay on this basis.

The Petitioner's tax returns report its net income³ for the relevant period as follows:

- \$155,598.00 in 2006;
- -\$69,600.00 in 2007;
- \$133,079.00 in 2008;
- \$30,808.00 in 2009;
- \$118,457.00 in 2010;
- \$48,524.00 in 2011;
- \$55,715.00 in 2012; and
- \$60,765.00 in 2013.

Therefore, the Petitioner's tax returns establish that it had sufficient net income to pay the annual proffered wage of \$54,246.40 in 2006, 2008, 2010, 2012, and 2013; they do not demonstrate sufficient net income to pay the difference between the wages it paid the Beneficiary and the proffered wage in 2007 and 2009, or to cover the entirety of the proffered wage in 2011.

As indicated above, when a petitioner's net income does not establish its ability to pay the proffered wage, its net current assets, the difference between its current assets and current liabilities,⁴ will be

³ 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 23 (1997-2003), line 17e (2004-2005) or line 18 (2006-2011) of Schedule K.

⁴ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in

considered. A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 of its tax return. Its year-end current liabilities are shown on lines 16 through 18. During the years 2006 through 2013, the Petitioner's tax returns reported the following net current assets:

- Relevant page missing from 2006 return;
- -\$21,149.00 in 2007;
- \$19,540.00 in 2008;
- -\$58,170.00 in 2009;
- -\$15,981.00 in 2010;
- -\$18,931.00 in 2011;
- \$5,022.00 in 2012; and
- \$27,334.00 in 2013.

Accordingly, the net current assets reported by the Petitioner's tax returns also do not establish its ability to pay in 2007, 2009, and 2011 of the relevant period.

Based on the above analysis of the wages paid to the Beneficiary, and the Petitioner's net income and net current assets, the record establishes the Petitioner's ability to pay the proffered wage in the years 2006, 2008, 2010, 2012, and 2013 of the relevant period, but not in 2007, 2009, and 2011. Accordingly, the record does not establish that the Petitioner's financial resources provided it with the ability to pay the Beneficiary the proffered wage from the December 15, 2006, priority date forward.

On appeal, the Petitioner acknowledges its inability to pay the proffered wage in 2007 and 2009 based on its tax returns, but asserts that its ability to pay in 2011 may be established by amending the hours of employment reflected on the Form I-140 petition. In a May 13, 2015, letter submitted with the appeal, the Petitioner's President asks that the Form I-140 be amended to reflect that the Beneficiary will work 35 rather than 40 hours per week, thereby reducing the proffered wage to \$47,365.60 per year, an amount exceeded by the \$48,524.00 in net income reported in its 2011 tax return. In its appeal brief, the Petitioner asserts that this reduction in hours does not violate the terms of the labor certification as a 35-hour work week is accepted by DOL as full-time employment and does not change the proffered wage of \$26.08 per hour required by the labor certification. However, as we indicated in the NOID/RFE issued on December 10, 2015, a petitioner may not amend a Form I-140 on appeal. It may not make material changes to a petition in an effort to make that petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Eligibility must be established at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Nothing in the record demonstrates that the Petitioner advertised the offered position to potentially qualified U.S. workers as 35 hours per week. Such evidence should be submitted with any further filings. Additionally, even if we accepted that the Petitioner intended the

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.

position to be 35 hours per week, it has not demonstrated its ability to pay a 35 hour per week salary in 2007 or 2009.

As the Petitioner's response to our December 10, 2015, NOID/RFE provides no further discussion of this issue, we will not address it further, but will focus on the Petitioner's assertion on appeal that, like the petitioner in *Sonegawa*, its ability to pay the proffered wage is established by the totality of its circumstances.

III. ABILITY TO PAY – BASED ON TOTALITY OF CIRCUMSTANCES

On appeal, the Petitioner contends that in 2007 and 2009, its business was subject to economic duress resulting from the impact of the 2008 U.S. recession on the wood flooring industry, and that its 2007 and 2009 tax returns do not, therefore, adequately reflect its ability to pay the proffered wage going forward. It asserts that the letters it has submitted from interior design professionals and individuals in the construction industry suggest that it has a "reasonable expectation of [a] continued increase in business." The Petitioner further maintains that the media reports and economic data from the U.S. Census Bureau it has provided for the record point to an increase in its business and profits. It asserts that the "application of the *Sonegawa* test [will resolve] this matter in [its] favor."

In *Sonegawa*, the petitioner had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *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 a petitioner's net income and net current assets. We may consider such factors as the number of years a 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, a petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that we deem relevant to a petitioner's ability to pay the proffered wage.

In his August 19, 2013, decision, the Director concluded that the record did not demonstrate that the Petitioner's inability to pay the proffered wage in 2007, 2009 and 2011 was temporary and/or attributable to the effects of the 2008 U.S. recession. Instead, he found the record to reflect a "pattern of recurring periods of weakened financial condition, during which the petitioner was unable to pay the

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proffered wage, that is likely to continue.” The Director further noted that although the Petitioner had submitted letters to establish its standing within the wood flooring industry, this evidence was not comparable to that submitted in *Matter of Sonogawa*, which the Regional Commissioner had found to demonstrate that the petitioner’s “expectations of continued increase in business and increasing profits [were] reasonable expectations.” *Matter of Sonogawa*, at 15.

On appeal, the Petitioner has sought to establish the negative impacts of the 2008 recession on its business operations by submitting the following evidence: a printout of

printout of

a printout of a

report on

excerpts from

, prepared by

printout of

; a printout of

printouts from website of the U.S.

Bureau of Labor Statistics reporting on housing-related expenditures; and forecasts relating to the U.S. construction industry, Federal Reserve Economic Data (FRED) at fred2/series/PRRESCONS. However, as we previously indicated in the NOID/RFE, although the preceding documentation demonstrates the impacts of the 2008 recession on the U.S. economy, including the construction and wood flooring industries, we do not find it to establish the 2008 recession as the reason that the Petitioner was unable to pay the proffered wage in 2007 and 2009.

The NOID/RFE also questioned the reliability of an October 1, 2012, statement signed by the Petitioner’s President in which he asserted that, in 2007, his company experienced significant business losses as a result of the global economic crisis. In this same statement, the Petitioner maintained that many of its clients had been unable to pay for work that had been done and that it owed money to its suppliers for construction materials that had been purchased at inflated prices. It also indicated that, between 2006 and 2007, its rent had increased by \$45,534.00. The Petitioner further contended that, although it had received “many new orders” in 2008 and was able to collect money from clients for whom it had performed work in 2007, 2008 was not a good year for its business, and that its financial problems continued until 2010.

However, as stated in the NOID/RFE, the above business history is inconsistent with the information that the Petitioner’s President provided in two statements submitted in support of the Form I-140 filed on behalf of the Beneficiary on August 26, 2009. In these statements, dated March 3 and March 23, 2010, the Petitioner’s President did not indicate that his business was struggling financially during the 2007-2009 time period. Instead, his March 23, 2010, statement indicates that from November 2007 through April 2009, his company’s total income “increased dramatically,” raising questions regarding the reliability of the Petitioner’s claims concerning the impact of the 2008 recession on its financial situation. While we note that in an August 19, 2009, statement that

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was submitted with the Form I-140, the Petitioner indicates that his earlier employment of the Beneficiary “had to stop because [his] company didn’t meet the appropriate wage request and [he] had to get a partner temporarily at [his] business,” he also states that “[t]oday my business is doing very well again.” Accordingly, we find the Petitioner’s inconsistent claims regarding its recent financial history to be of limited evidentiary value in this matter. Doubt cast on any aspect of a petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The NOID/RFE also notified the Petitioner that its claims regarding the impact of the U.S. economic downturn on its business were also inconsistent with its federal tax returns for the years 2006 through 2008. In his October 2, 2012, statement, the Petitioner’s President describes 2006 as a successful year in which it had experienced significant growth, but that, in 2007, it had suffered significant losses as a result of the recession. However, the Petitioner’s 2006 and 2007 tax returns reflect that its gross income increased from \$976,430.00 in 2006 to \$991,789.00 in 2007. We also find that the officer compensation reported on the Petitioner’s tax returns increased from \$25,000.00 in 2006 to \$65,711.00 in 2007, and that the salaries and wages paid to employees rose from \$125,900 in 2006 to \$205,522.00 in 2007. The Petitioner’s tax return for 2008 reflects yet another increase in gross income to \$1,013,825.00, the highest income total reported in any of the tax returns that the Petitioner submitted for the record. We also note that the Petitioner reported positive net income of \$133,079.00 in 2008, allowing it to meet the proffered wage. Accordingly, the Petitioner’s tax returns for 2007 and 2008 do not appear to reflect the “rough years” the Petitioner has claimed it experienced as a result of the “global economic crisis, which hurt U.S. real estate and construction companies.”

While the NOID/RFE noted that the Petitioner’s 2009 tax return had reported a decline in its gross income to \$754,453.00, we indicated that it was not sufficient to establish the Petitioner’s claim that its inability to pay the proffered wage in 2007 and 2009 resulted from financial losses created by the 2008 recession. The NOID/RFE further observed that the Petitioner in its October 1, 2012, statement, had asserted that the financial problems that it experienced in 2007 and 2008 had continued into 2009. However, the record, as discussed above, does not establish that the Petitioner had business problems in 2007 and 2008, and, therefore, that these business problems extended into 2009.

Finally, the NOID/RFE informed the Petitioner that we did not find the record to support a finding that it had resumed successful business operations as of 2010, as claimed in its President’s October 1, 2012, statement. While the record establishes that the Petitioner’s gross income in 2010 rose to \$958,124.00, it also reflects that it dropped again in 2011 to \$658,568.00, a year in which the documentary evidence submitted by the Petitioner indicates that the U.S. construction industry surged.⁵ The NOID/RFE also found that, although the Petitioner’s gross income had increased since

⁵ Printout of [REDACTED]

[REDACTED], printout of [REDACTED]

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2011, its gross income in 2012 and 2013 had not again reached the \$976,430.00 reported in 2006, and, further, that the net income reported in the Petitioner's 2011, 2012 and 2013 tax returns had also not returned to that reported in 2006. In 2011, the \$48,524.00 in net income reported by the Petitioner represented 31 percent of the \$155,598.00 reported in 2006; the \$55,725.00 in net income reported in 2012 was slightly less than 36 percent of the 2006 total; and the \$60,765.00 in net income for 2013, represented only 39 percent of the Petitioner's 2006 net income.

The NOID/RFE also informed the Petitioner that we had reviewed the Forms 941, Employer's Quarterly Tax Returns, that it had submitted for the record and that they also did not demonstrate its resumption of successful business operations as of 2010. The NOID/RFE noted that the Forms 941 submitted for 2009 indicated that the Petitioner had begun the year with three employees, which dropped to two employees in the second quarter before rising to five employees in the fourth quarter. In 2010, we observed that the Petitioner had started the year with six employees, but in the third and fourth quarters, this total had dropped to two. In 2011, our review found that the Petitioner's Forms 941 reflected that it had employed no more than two individuals during the year, while, in 2012, that number had risen to three during the second quarter and remained there for the rest of the year. In 2013, we noted that the Petitioner's Forms 941 had reported four employees, and that it had also reported four employees during the first quarter of 2014, but that this total had decreased to three employees in the second quarter of 2014, the same number of employees reported on its Form 941 for the first quarter of 2009, a time when the Petitioner had asserted it was continuing to experience business losses as a result of the 2008 recession. In that the submitted Forms 941 did not reflect any sustained expansion of the Petitioner's workforce, the NOID/RFE informed the Petitioner that we did not find them to offer proof of its successful resumption of business operations.

The NOID/RFE invited the Petitioner to submit additional evidence in support of its claim that that its inability to pay the proffered wage in 2007 and 2009 was the result of the 2008 recession. However, the Petitioner's January 13, 2016, response to the NOID/RFE offers no additional evidence to clarify its financial circumstances during the 2007 through 2009 period, and does not rebut or otherwise address the above evidentiary inconsistencies in its January 13, 2015, response to the NOID/RFE. Therefore, for the reasons set forth in the NOID/RFE, the record does not demonstrate that, like the employer in *Sonegawa*, the Petitioner's inability to pay the proffered wage in 2007 and 2009 was the result of uncharacteristic business expenditures or losses.

The record also does not demonstrate that, like the employer in *Sonegawa*, the Petitioner's reputation in its industry may serve as an indicator of its ability to operate successfully in the future.

On appeal, the Petitioner, which has been licensed in California as a flooring and floor covering contractor since 1999, initially submitted the following evidence to establish its reputation within the wood-flooring industry:

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- An October 11, 2012, letter from interior designer [REDACTED] who states that the Petitioner is an asset to its field and is set apart by its creativity, resourcefulness and ability to see a project through to its completion;
- October 8 and October 20, 2012, statements from interior designer [REDACTED] who reports that she has worked with the Petitioner on several upscale projects and that the company is well-known in the interior design industry for its creations;
- An October 10, 2012, statement from [REDACTED] a real estate agent, who states that she is submitting a recommendation on behalf of the Beneficiary, rather than the Petitioner;
- A September 9, 2014, letter from [REDACTED], President of [REDACTED] who states that he has worked with the Petitioner on multiple projects for 13 years, that the company is known among [REDACTED] builders as a company with “extremely high standards and a collective of true artists,” and that it is the only company he recommends to his customers;
- October 1, 2012, and September 4, 2014, statements from the Petitioner’s President asserting that his company has a reputation for quality work in the [REDACTED] community and that proof of its standing is reflected in the fact that it has done work for well-known interior designers, actresses, musicians, TV personalities and a former governor of California; and
- Printouts of online recommendations and ratings for the Petitioner from [REDACTED] dated 2006 through 2010.

The NOID/RFE issued on December 10, 2015, informed the Petitioner that the above evidence did not establish that its reputation within its industry guaranteed its future successful business operations, as the above statements did not demonstrate that the Petitioner had the recognition enjoyed by the employer in *Sonegawa*, a clothing designer whose work had been featured in national magazines, whose clients included well known celebrities, and who lectured on fashion design at design and fashion shows throughout the United States, and at colleges and universities in California. The NOID/RFE further informed the Petitioner that, in the absence of any evidence establishing the authority of the above individuals to speak for their respective industries, their statements did not demonstrate the Petitioner’s reputation within [REDACTED] interior design community or among [REDACTED] builders. It also notified the Petitioner that the statements from its President regarding his company’s success, were not, in the absence of supporting documentary evidence, proof of its standing in the wood flooring business. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

In response to the NOID/RFE, the Petitioner asserts that it should not be asked for the type of evidence provided by the employer in *Sonegawa*, as the “reputation of a given profession or trade depends on the industry and its segment.” The Petitioner contends that it is mostly large franchise companies who are active in trade shows or symposiums and that the real evidence of a small building company’s reputation would come from [REDACTED] and construction professionals. In support of this claim, the Petitioner has submitted eight statements from interior designers and individuals in the construction business; additional printouts from [REDACTED] and a printout of online information relating to its business license to confirm its outstanding business reputation. For the reasons discussed below, we do not find the statements or the other submitted evidence to

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demonstrate that the Petitioner enjoys the level of recognition demonstrated by the clothing design business in *Sonegawa*, which, in part, led the Regional Commissioner to conclude that it had demonstrated its ability to pay the proffered wage.

While the eight additional statements submitted by the Petitioner attest to its standing in the wood-flooring industry, these statements are identically-worded, with blanks left for the person signing the statement to fill in the name of his or her company, the nature of his or her business, its date of incorporation, and the year in which he or she first worked with the Petitioner. Blanks are also left for the person to sign his or her name and date the statement. In at least three cases, where statements are signed by interior design professionals, this uniform language is problematic as it includes a statement that the signer is a “professional and experienced builder.”

Further, although we find two of the statements to have been signed by interior designers, [REDACTED] (see above statements from these individuals), the signatures on the six other statements are illegible, raising questions regarding the identities of the signers and whether they are authorized to represent the company indicated at the top of each statement. We also note that the company listed on one of the statements, [REDACTED] describes itself as specializing in “General Construction.” However, based on the license number listed on the statement, [REDACTED] is licensed in California as a General Building Contractor, Electrical, and specializes in electrical services, not construction, thereby raising additional questions regarding its reliability. Accordingly, for the reasons discussed, we find the statements submitted in response to the NOID/RFE to be of limited evidentiary value. Doubt cast on any aspect of a petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the deficiencies noted above, the newly submitted statements, like those previously provided by the Petitioner, are not supported by evidence demonstrating that the individuals who signed them have the stature or authority to judge the Petitioner’s standing in their respective industries. Although each statement includes the language, “After years of experience and excellent work our company (or myself) has achieved recognition in the community,” the Petitioner has submitted no documentation to demonstrate that the business or individual has achieved the status claimed, although, as previously discussed, the December 10, 2015, NOID/RFE informed the Petitioner of the need for such evidence. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *Matter of Soffici*, at 165. For this reason as well, the eight statements submitted in response to the NOID/RFE do not establish the Petitioner’s standing within its industry.

The additional printouts from [REDACTED] and the information relating to the Petitioner’s business license also do not distinguish the Petitioner’s business operations or reputation from other wood-flooring companies in the [REDACTED] area. Although the printouts from [REDACTED] reflect that the Petitioner has been listed on the site since July 26, 2006, and that it has an overall “A” rating, this information offers evidence of the quality of the work performed by the Petitioner, rather than the extent to which its business is known across its industry. Similarly, the printout relating to the

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Petitioner's business license, which, it asserts, reflects its "litigation/claims free history," also offers proof of its professionalism, not the type of recognition demonstrated by the petitioner in *Sonegawa*.

As indicated above, the Petitioner in response to the NOID/RFE contends that it is not realistic to expect that a business in the wood-flooring industry can provide the same type of evidence to establish its reputation as that provided by the clothing designer in *Sonegawa*. It asserts that small building companies do not participate in trade shows or symposiums and that "[i]t is reasonable to admit that a person who wants to hire a hardwood floor specialist would rely on [redacted] or the reference of his/her contractor rather than [an] illustrated magazine discussing awards or trade shows." In lieu of awards or examples of its work in interior design magazines or web sites, the Petitioner asks for a more "down to earth practical approach" in assessing its reputation, i.e., a decision based on its "A" rating in [redacted] and its business history. However, while we acknowledge the Petitioner's request, we do not find the fact that the Petitioner is a wood-flooring business to prevent it from providing any evidence of its reputation beyond the materials it has already submitted for the record.

The fact that the Petitioner may not attend trade shows or symposiums does not mean that it, therefore, cannot have received awards or other types of recognition for its work, including acknowledgements from the celebrity clients who, the Petitioner indicates, have used its services since 2010. We also do not find it unreasonable to expect that an established wood-flooring business that is recognized within its industry would be able to submit evidence that its floors have been featured in print or online interior design or trade magazines, or in advertisements appearing in such publications. In the absence of such proof, we cannot conclude that the Petitioner enjoys the level of recognition that the Regional Commissioner in *Sonegawa* found to establish that petitioner's prospects for the resumption of successful business operations.

Accordingly, for the reasons discussed above, the evidence of record on appeal also does not establish that the totality of the Petitioner's circumstances demonstrate its ability to pay the Beneficiary the proffered wage in the years 2007, 2009, and 2011.

A petitioner must establish the elements for the approval of a petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). In the present case, the record does not establish the Petitioner's continuing ability to pay the proffered wage from the December 15, 2006, priority date forward. For this reason, the appeal will be dismissed.

In visa petition proceedings, it is a 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.

Cite as *Matter of H-H-F-, Inc.*, ID# 14939 (AAO Mar. 2, 2016)