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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE:



Date: **JUL 22 2008**

LIN-07-009-53120

BENEFICIARY:



Request for Evidence

Dear Mr. 

On October 10, 2006, you filed a Form I-140, Immigrant Petition for Alien Worker, seeking the beneficiary's services as a computer programmer pursuant to section 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1153(b)(3)(A)(i) or (ii).¹ The Nebraska Service Center director denied the

¹ Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides:

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 individual labor certification, meets the requirements for Schedule A designation, or meets

petition on August 27, 2007 because the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree in computer science required by the terms of the labor certification application. You have appealed this decision to the Administrative Appeals Office (AAO).

An issue on appeal in this case is whether your organization has demonstrated that the beneficiary is qualified to perform the duties of the proffered position as you have set forth on your ETA Form 9089, Application for Permanent Employment Certification (ETA Form 9089 or labor certification application).²

At the outset, we emphasize that federal circuit courts have upheld our authority to inquire as to whether the alien is qualified for the classification sought.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. See *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977).

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). See also *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984). A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

In Part H of the ETA Form 9089, your organization requires a bachelor's degree in "equivalent to computer science" and five years of experience in the job offered. The ETA Form 9089 indicates that your organization would accept a foreign educational equivalent and an alternate combination of education and experience. However, it is noted that the alternate combination (consisting of a bachelor's degree and five years of experience) set forth in Item 8 of Part H is exactly same with the basic requirements set forth in items 4 and 6. The ETA Form 9089 does not reflect any specific skills or other requirements in Item 14.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is a Bachelor's degree in mathematics from Saurashtra University in India. In corroboration of the ETA Form 9089, your organization provided the beneficiary's Bachelor of Science in mathematics from Saurashtra University, transcripts from Shree Manibhai Virani & Smt. Navalben Virani Science College, Higher Diploma in Software Engineering and Certificate of Accomplishment of a course in MCSE Training from APTECH Computer Education, certificates from Microsoft, and evaluations from _____ of Pace University (Dr. _____), _____ of Career Consulting International (CCI), and Marquess Educational Consultants Limited (MEC).

the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

² The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current Department of Labor (DOL) regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. See 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Since the instant labor certification application was filed after March 28, 2005 and is governed by the PERM regulations.

On appeal, you assert that the beneficiary's three-year bachelor's degree is equivalent to a U.S. bachelor's degree according to private credential evaluations from Dr. ████████ CCI and MEC. While Dr. ████████ evaluates the beneficiary's bachelor degree as equivalent to three years college study towards a U.S. bachelor's degree, evaluations from CCI and MEC claim that the beneficiary's three-year bachelor degree is equivalent to a U.S. four-year bachelor's degree and the CCI report even evaluates the beneficiary's three-year bachelor of science degree in mathematics from Saurashtra University in India as the equivalent of a bachelor's degree in computer science from an accredited institution of higher education in the United States. However, a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's three-year bachelor's degree from India cannot be considered a foreign equivalent degree. The evaluation from Dr. ████████ used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In determining whether the beneficiary possessed a U.S. bachelor's degree in equivalent to computer science or a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials." EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. The record in the instant case does not contain any evidence showing that the beneficiary holds a U.S. Bachelor's degree in equivalent to computer science or a foreign equivalent degree.

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is competition of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provide:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

In the instant case, the record does not contain any evidence showing that either the higher diploma from APTECH Computer Education or certificate from Microsoft is a postgraduate diploma from a program its entrance requirement is the three-year bachelor's degree. Nor does the record contain any evidence showing that either APTECH Computer Education or Microsoft is an accredited university or institution approved by AICTE in India. Therefore, you are requested to submit evidence showing that the beneficiary's higher diploma from APTECH Computer Education or certificate from Microsoft is a postgraduate diploma issued by an accredited university or institution approved by AICTE and its entrance requirement is the three-year bachelor's degree.

The record does not contain any evidence showing that your organization actually used the alternate combination of education and experience requirements in the petitioner's labor market test.³ Therefore, the AAO is issuing this RFE to obtain evidence of your organization's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed to the U.S. Department of Labor (DOL) while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application. Such intent may have been illustrated through correspondence with DOL, amendments to the labor certification application initiated by DOL and your organization, results of recruitment, or other forms of evidence relevant and probative to illustrating your organization's intent about the actual minimum requirements of the proffered position and that those minimum requirements were clear to potential qualified candidates during the labor market test.

On the ETA Form 9089 Part I, DOL requested "recruitment information" and DOL's regulations requested the petitioner to give notice of the filing of the application for permanent employment certification⁴, to

³ 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 ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from Anna C. Hall, Acting Regl. Adminstr., 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). DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [Citizenship and Immigration Services (CIS)] to accept the employer's definition" and SESAs should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to 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.

⁴ The regulation at 20 C.F.R. § 656.10(d) states that:

(d) Notice. (1) In applications filed under Sec. Sec. 656.15 (Schedule A), 656.16 (Shepherders), 656.17 (Basic Process), 656.18 (College and University Teachers), and 656.21 (Supervised Recruitment), the employer must give notice of the filing of the Application for Permanent Employment Certification and be able to document that notice was provided, if requested by the Certifying Officer, as follows:

(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment. Documentation may consist of a copy of the letter and a copy of the Application for Permanent Employment Certification form that was sent to the bargaining representative.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include locations in the immediate vicinity of the wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a). In addition, the employer must publish the notice in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization. The documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions within the employer's organization.

(2) In the case of a private household, notice is required under this paragraph (d) only if the household employs one or more U.S. workers at the time the application for labor certification is filed. The documentation requirement may be satisfied by providing a copy of the posted notice to the Certifying Officer.

(3) The notice of the filing of an Application for Permanent Employment Certification must:

(i) State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;

(ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;

(iii) Provide the address of the appropriate Certifying Officer; and

(iv) Be provided between 30 and 180 days before filing the application.

(4) If an application is filed under Sec. 656.17, the notice must contain the information required for advertisements by Sec. 656.17(f), must state the rate of pay (which must equal or exceed the prevailing wage entered by the SWA on the prevailing wage request form), and must contain the information required by paragraph (d)(3) of this section.

(5) If an application is filed on behalf of a college and university teacher selected in a competitive selection and recruitment process, as provided by Sec. 656.18, the notice must include the information required for advertisements by Sec. 656.18(b)(2), and must include the information required by paragraph (d)(3) of this section.

(6) If an application is filed under the Schedule A procedures at Sec. 656.15, or the procedures for shepherders at Sec. 656.16, the notice must contain a description of the job and rate of pay, and must meet the requirements of this section.

conduct required pre-filing recruitment including placing job order and advertisements in newspaper⁵, and to

⁵ The regulation at 20 C.F.R. §§ 656.17(e) and (f) state that:

(e) Required pre-filing recruitment. Except for labor certification applications involving college or university teachers selected pursuant to a competitive recruitment and selection process (Sec. 656.18), Schedule A occupations (Sec. Sec. 656.5 and 656.15), and shepherders (Sec. 656.16), an employer must attest to having conducted the following recruitment prior to filing the application:

(1) Professional occupations. If the application is for a professional occupation, the employer must conduct the recruitment steps within 6 months of filing the application for alien employment certification. The employer must maintain documentation of the recruitment and be prepared to submit this documentation in the event of an audit or in response to a request from the Certifying Officer prior to rendering a final determination.

(i) Mandatory steps. Two of the steps, a job order and two print advertisements, are mandatory for all applications involving professional occupations, except applications for college or university teachers selected in a competitive selection and recruitment process as provided in Sec. 656.18. The mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application.

(A) Job order. Placement of a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application shall serve as documentation of this step.

(B) Advertisements in newspaper or professional journals. (1) Placing an advertisement on two different Sundays in the newspaper of general circulation in the area of intended employment most appropriate to the occupation and the workers likely to apply for the job opportunity and most likely to bring responses from able, willing, qualified, and available U.S. workers.

(2) If the job opportunity is located in a rural area of intended employment that does not have a newspaper with a Sunday edition, the employer may use the edition with the widest circulation in the area of intended employment.

(3) The advertisements must satisfy the requirements of paragraph (f) of this section. Documentation of this step can be satisfied by furnishing copies of the newspaper pages in which the advertisements appeared or proof of publication furnished by the newspaper.

(4) If the job involved in the application requires experience and an advanced degree, and a professional journal normally would be used to advertise the job opportunity, the employer may, in lieu of one of the Sunday advertisements, place an advertisement in the professional journal most likely to bring responses from able, willing, qualified, and available U.S. workers. Documentation of this step can be satisfied by providing a copy of the page in which the advertisement appeared.

(ii) Additional recruitment steps. The employer must select three additional recruitment steps from the alternatives listed in paragraphs (e)(1)(ii)(A)-(J) of this section. Only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the application. None of the steps may have taken place more than 180 days prior to filing the application.

... ..

(2) Nonprofessional occupations. If the application is for a nonprofessional occupation, the employer must at a minimum, place a job order and two newspaper advertisements within 6 months of filing the application. The steps must be conducted at least 30 days but no more than 180 days before the filing of the application.

prepare a recruitment report⁶ as part of such pre-filing recruitment effort in order to allow DOL to determine whether your organization put forth good faith efforts to recruit U.S. workers which meet the regulatory attestations found at 20 C.F.R. §§ 656.10(c)(8) and (9)⁷. We have found no document in the record addressing

(i) Job order. Placing a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application serve as documentation of this step.

(ii) Newspaper advertisements. (A) Placing an advertisement on two different Sundays in the newspaper of general circulation in the area of intended employment most appropriate to the occupation and the workers likely to apply for the job opportunity.

(B) If the job opportunity is located in a rural area of intended employment that does not have a newspaper that publishes a Sunday edition, the employer may use the newspaper edition with the widest circulation in the area of intended employment.

(C) Placement of the newspaper advertisements can be documented in the same way as provided in paragraph (e)(1)(i)(B)(3) of this section for professional occupations.

(D) The advertisements must satisfy the requirements of paragraph (f) of this section.

(f) Advertising requirements. Advertisements placed in newspapers of general circulation or in professional journals before filing the Application for Permanent Employment Certification must:

(1) Name the employer;

(2) Direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

(3) Provide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought;

(4) Indicate the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity;

(5) Not contain a wage rate lower than the prevailing wage rate;

(6) Not contain any job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089; and

(7) Not contain wages or terms and conditions of employment that are less favorable than those offered to the alien.

⁶ The regulation at 20 C.F.R. §§ 656.17(e) and (f) state that:

(g) Recruitment report. (1) The employer must prepare a recruitment report signed by the employer or the employer's representative noted in Sec. 656.10(b)(2)(ii) describing the recruitment steps undertaken and the results achieved, the number of hires, and, if applicable, the number of U.S. workers rejected, categorized by the lawful job related reasons for such rejections. The Certifying Officer, after reviewing the employer's recruitment report, may request the U.S. workers' resumes or applications, sorted by the reasons the workers were rejected.

(2) A U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training. Rejecting U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training is not a lawful job-related reason for rejection of the U.S. workers.

⁷ The regulation at 20 C.F.R. §§ 656.10(c) states in pertinent part that:

these efforts. Because this document could illustrate your organization's intent about the actual minimum requirements of the proffered position and that it tested the U.S. labor market with those actual minimum requirements, this office specifically requests a complete copy of your organization's recruitment efforts, including the notice of the filing, job order, advertisements in newspaper or professional journals and additional recruitment efforts for a professional job, and recruitment report to establish that your organization intended to accept a combination of any degree less than a U.S. bachelor's degree and experience in lieu of the bachelor degree requirement set forth in Part H of the ETA Form 9089 as the actual minimum requirement in the instant labor certification application during the labor market test.

In addition, it is noted that your organization has been employing the beneficiary in a specialty occupation since November 26, 2002 under H-1B status. Submit a complete copy of the I-129 nonimmigrant petitions (EAC-02-033-54484, EAC-04-203-53751 and EAC-07-189-53122) your organization filed on behalf of the beneficiary.

Furthermore, a petitioner must establish that it had the continuing ability to pay the proffered wage beginning on the priority date until the beneficiary obtains lawful permanent residence. Here, the ETA Form 9089 was accepted on December 2, 2005. Therefore, your organization must establish its continuing ability to pay the proffered wage from 2005 to the present.

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

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 ETA Form 9089 states the proffered wage of \$35.86 per hour (\$74,588.80 per year). In determining the petitioner's ability to pay the proffered wage during a given period, Citizenship and Immigration Services (CIS) will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. Your organization submitted the beneficiary's paystubs and W-2 form for 2006, which show that your organization paid the beneficiary \$71,907 in 2006. You did not submit W-2 forms or other payment records for other relevant years despite the fact that both the beneficiary and your organization

(c) *Attestations.* The employer must certify to the conditions of employment listed below on the *Application for Permanent Employment Certification* under penalty of perjury under 18 U.S.C. 1621 (2). Failure to attest to any of the conditions listed below results in a denial of the application.

... ..

(8) The job opportunity has been and is clearly open to any U.S. worker;

(9) The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.

claimed that the beneficiary had worked for your organization since 2002. Please submit the beneficiary's W-2 forms for 2005 and 2007 and the beneficiary's paystubs for the pay periods in 2008.

The record contains bank statements for your organization's checking account for months from December 2004 to August 2006. However, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. In addition, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage.

Your organization also submitted unaudited financial statements for 2006. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

The record contains your organization's tax returns for 2003 through 2005. However, the tax returns for 2003 and 2004 are not necessarily dispositive since the priority date is in 2005. The 2005 tax return shows that your organization failed to establish its ability to pay the proffered wage for 2005 because neither its net income of \$7,356 nor its net current assets of \$67,525 were sufficient to pay the proffered wage of \$74,588.80 that year. The record does not contain your organization's tax returns for 2006 and 2007. Therefore, the AAO cannot determine whether your organization had sufficient net income or net current assets to pay the difference of \$2,681.80 between wages actually paid to the beneficiary and the proffered wage in 2006 and to pay the full proffered wage in 2007. Submit annual reports, federal tax returns, or audited financial statements of your organization for 2005 through the present.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been approved or pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its approved and pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. See *Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). See also 8 C.F.R. § 204.5(g)(2).

CIS records indicate that your organization filed 259 immigrant and nonimmigrant petitions. You filed 16 I-140 immigrant petitions in 2005, 8 immigrant petitions in 2006 and 11 in 2007. Therefore, you are requested to submit evidence to demonstrate that your organization had the ability to pay beneficiaries of all these petitions in 2005 through 2007. In addition, it is also noted that you filed 37 I-129 nonimmigrant petitions in 2005, 40 in 2006, 42 in 2007 and 52 in 2008. While it is doubtful that your organization with 24 employees filed all the petitions in bona fide, it is your organization's responsibility to pay the all these H-1B employees

under the terms of labor condition applications. Without establishing that you have fulfilled your H-1B payment obligations, the AAO will not find your ability to pay the proffered wage for immigrant petitions you filed.

You are hereby afforded 12 weeks to respond to this request for evidence. *See* 8 C.F.R. § 103.2(b)(8). If you choose to respond, please submit your response to the address shown on the first page of this letter. Also, please attach a copy of this letter on top of any such submission.

A handwritten signature in black ink, appearing to read "R. P. Wiemann". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Robert P. Wiemann, Chief
Administrative Appeals Office