

ImmiCore Law

A Professional Law Corporation

Ability to Pay in PERM Cases

A. When must ability to pay be established?

Petitioner must demonstrate the ability to pay the proffered wage at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. 8 CFR 204.5(g)(2)

Where the petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that the petitioner has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence.

See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977).

B. According to 8 CFR 204.5(g)(2), Evidence of the ability to pay shall be in the form of:

- a. Copies of annual reports;
- b. Federal tax returns;
- c. Audited financial statements; or
- d. Where the US employer employs 100 or more workers, a statement from financial officer may be accepted.
- e. Additional evidence, such as
 - i. Profit / Loss statements;
 - ii. Bank account records; or
 - iii. Personnel records

May be submitted by the Petitioner or requested by the Service.

C. 3 common ways for establishing ability to pay include:

- 1) Petitioner's net income as on the tax return is equal to or greater than the proffered wage;
- 2) The Petitioner's net current assets are equal to or greater than the proffered wage; or
- 3) There is credible verifiable evidence that the Petitioner not only is employing the beneficiary but also has paid or currently is paying the proffered wage.

See, Memo, Yates Assoc. Dir. Of Operations, USCIS, HQOPRD 90/16.45) (May 4, 2004), *published on* AILA InfoNet at Doc. No. 04051262 (May 12, 2004).

D. Evidence of above can be shown as follows:

1) Net Current Assets

a) Form 1120:

Net current assets are calculated from Schedule L by adding lines 1 through 6 of column (d) and subtracting lines 16 through 18

b) Balance Sheet:

Total Current Assets – Total Current Liabilities = Net Current Assets

2) Proof of Payment of the proffered wage

- a. Last 3 months pay stubs (which should have year to date figures)
- b. W-2
- c. 941 Quarterly Tax Returns (this does not have employee name listed)
- d. DE-6 (This is a California form (this does have employee name).