



U.S. Citizenship  
and Immigration  
Services

**TO:**

Sanpro Technologies, Inc.  
51 South Main Ave. Suite 309  
Clearwater, FL 33765  
Attention: Siddaiah Thota

**DATE:** DEC 12 2014

**Petition:** Form I-140

**File Number:**  
SRC1390295292/  
A201256503

**Premium Processing**

**Beneficiary:**

Srinivasulu Parepalli

**REQUEST FOR EVIDENCE**

This office is unable to complete the processing of your petition without further information. Please read and comply with the request below, then submit the evidence to the above address. Include a copy of this letter and place the attached gold sheet on top of your documents.

The petitioner has filed Form I-140 for a skilled worker.

The labor certification, or ETA 9089, specifies the job offered as that of software engineer. Further, the labor certification requires the beneficiary have an associate's degree in "Computer Science, Business Administration, Math, or related." In addition, the beneficiary must have 24 months experience in the job offered as a software engineer or, in the alternative, 24 months' experience as a computer/engineering professional. The proffered wage is \$71,000 per year. The priority date for this petition is June 1, 2012; the petition was filed on May 23, 2013.

***Bona Fide Job Offer***

The petitioner states on Form I-140, Part 5, Additional Information About the Petitioner, Question 2.c. the number of U.S. employees employed by the company is 17. However, USCIS records show the petitioner has filed 129 immigrant and non-immigrant worker petitions. As the petitioner claims only 17 United States employees, this raises questions as to whether a bona fide job offer actually exists for the beneficiary.

The petitioner must establish that it has made a bona fide job offer to the beneficiary, and that the petitioner desires and intends to employ the beneficiary in the offered position. USCIS evaluates all of the evidence to determine whether the petitioner has made a *bona fide* job offer to the beneficiary; there is no one factor that is decisive for all cases.

Please submit evidence to establish that job offer the petitioner has made to the beneficiary is bona fide. This evidence should consist of the petitioner's statement addressing each of the following questions.

- Will the petitioner offer the beneficiary a bona fide full time, permanent position as a software engineer?

- Will the petitioner have the authority to hire or fire the beneficiary?
- Will the petitioner set the rules and regulations of the beneficiary's work?
- Will the beneficiary report to someone in the petitioning organization?

The petitioner's statement must be from an authorized official of the petitioner on official letterhead and must list the petitioner's name and address, the date, and the signer's name and title. Any statement must be supported by documentary evidence. Simply going on the record without supporting evidence is not sufficient for the purpose of meeting the burden of proof. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (R.C. 1972). Furthermore, in visa petition proceedings the burden of proof establishing eligibility for the benefit sought rests with the petitioner. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

Therefore, in support of the above statements, the petitioner should:

- Identify the location and exact address of the beneficiary's intended employment;
- Submit copies of any contracts under which the beneficiary will be employed. These contracts should include:
  - The proposed rate of pay for the beneficiary;
  - The name of the contracting employer who will provide employment for the beneficiary;
  - The length of the employment;
  - The hours of work;
  - Who will pay the beneficiary; and
  - The address where the beneficiary will actually work.
- Identify whether the salary is set by the contract or is regular and ongoing;
- Identify which entity will pay the beneficiary, and include the entity's tax identification number;
- Identify by tax identification number which entity will supervise, assign and control the work of the beneficiary;
- Identify by tax identification number which entity owns the work equipment that the beneficiary will use to perform the duties set forth on the labor certification;
- Include any other evidence to demonstrate that the petitioner has made a *bona fide* job offer, and that the petitioner desires and intends to employ the beneficiary in the offered position.

#### *Ability to Pay the Proffered Wage*

To determine the job offer is bona fide, USCIS also looks to the petitioner's ability to pay the proffered wage.

In this case the proffered wage is \$71,000 per year or \$5197 per month.

The petitioner has submitted the beneficiary's IRS Form W2 for the year 2012 showing the petitioner SanPro Technologies, paid the beneficiary \$39,588. The ETA 9089 shows the beneficiary began working for the petitioner on May 1, 2012. Thus the petitioner paid the beneficiary less than the proffered wage in 2012.

To demonstrate the ability to pay the proffered wage, 8 C.F.R. Section 204.5(g)(2) requires the petitioner submit one of the following three types of initial evidence:

- The petitioner's federal income tax returns;
- Annual reports; or
- Audited financial statements.

USCIS will examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expense. 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. See *Elatos Restaurant Corp v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatuapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305 (9<sup>th</sup> 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 (7<sup>th</sup> Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, the court held that legacy Immigration and Naturalization Service (now USCIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service (now USCIS) should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." See *Chi-Feng Chang v. Thornburgh*, F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

The petitioner submitted Internal Revenue Service Form 1120S for the year 2012. However, the form is not signed. Unsigned documents do not carry any probative or demonstrable evidentiary value. *Minton v. Commissioner*, 562 F.3d730 n 3 (5<sup>th</sup> Cir. 2009). Black's Law Dictionary, 598 (8<sup>th</sup> Ed. 2004), defines probative evidence as evidence that tends to prove or disprove a point in issue. See *Nix v. Hedden*, 149 U.S. 304, 306 (1893) (holding that while dictionaries are not of themselves evidence, they may be referred to as aids to the memory and understanding of the courts).

On Form 1120S, Line 21, Ordinary Business Income, is shown as \$301,767. As the petitioner has multiple petitions for immigrant and non-immigrant workers pending, USCIS cannot determine this amount is sufficient without further information.

USCIS will also review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, USCIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities. 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 a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

Schedule L of the petitioner's tax returns reflect the following:

	2012
Current Assets	\$ 48,401
Current Liabilities	\$ 44,900
Net Current Assets	\$ 3,501

The petitioner's net current assets are not equal to or greater than the proffered wage.

USCIS records show as of this date the petitioner has filed 129 petitions for permanent and non-permanent immigrant workers with the company. Therefore, the petitioner must establish the ability to pay the proffered wage to each of the proposed beneficiaries.

Please submit the following evidence:

- A transcript of the petitioner's U.S. Corporation Income Tax Return (Form 1120) for the year 2012;
- A transcript of the petitioner's U.S. Corporation Income Tax Return (Form 1120) for the year 2013;
- A copy of the petitioner's U.S. Corporation Income Tax Return (Form 1120) as submitted to the U.S. Internal Revenue Service for 2013; and
- A chart showing:
  - A list of the receipt numbers for all petitions (I-129 and I-140) filed by the petitioner from the priority date forward, the proffered wage of each beneficiary, the amount of wages paid to each beneficiary, the number of hours worked by each beneficiary, and each beneficiary's priority date; and
  - Whether each petition is pending, approved, or denied, and whether any beneficiary has obtained lawful permanent residence based upon a petition submitted by the petitioner.
- Any evidence of any wages paid to each beneficiary for each of the years in question until the date of this notice.

### *Eligibility of the beneficiary*

The petitioner must establish that the beneficiary has an associate's degree in computer science, business administration, math, or related as of the priority date. The petitioner submitted the beneficiary's degree certificate from Osmania University documenting the beneficiary has a three year Bachelor of Commerce degree in Cost accounting and Income Tax and a Provisional Certificate and Memorandum of Marks from the same University. The petitioner also submitted an evaluation of the beneficiary's degree from Park Evaluations & Translations which states the beneficiary was awarded a Bachelor of Commerce degree in May of 1992. However, the beneficiary's degree certificate is dated April 9, 1994. The petitioner should submit additional evidence to resolve this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner should also submit evidence to show the beneficiary's degree meets the requirements of the labor certification. Finally, the petitioner should submit the beneficiary's official academic record including transcripts.

### *Conclusion*

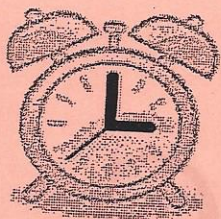
You must submit the requested information within eighty four (84) days from the date of this letter (87 days) if this notice was received by mail). Failure to do so may result in the denial of your petition.

Please note the required deadline for providing a response to this Request for Evidence (RFE). The deadline reflects the maximum period for responding to this RFE. However, since many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible but no later than the date provided on the request.

Officer # XM0446

cc: Eunhae Bae, Esq.  
 Law Office of Keshab Raj Seadie, PC  
 146 West 29<sup>th</sup> Street, 10<sup>th</sup> Floor  
 New York, NY 10001





OFFICER # 0446

DATE RFE SENT DEC 12 2014

# Premium Processing

SRC # \_\_\_\_\_

APP I140

SRC1390295292

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**PREMIUM PROCESSING SERVICE**

**PLEASE ATTACH THIS RED COVER  
SHEET TO YOUR RESPONSE**

**PLEASE EXPEDITE**

**SEND RESPONSE TO THE REQUEST FOR EVIDENCE TO  
THE ADDRESS GIVEN BELOW:**

**DEPARTMENT OF HOMELAND SECURITY  
U.S. CITIZENSHIP AND IMMIGRATION SERVICE**

**TEXAS SERVICE CENTER**

**ATTN: PREMIUM PROCESSING**

**P.O. BOX 279030**

**DALLAS, TX 75227**

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