

**DRAFT TEMPLATE FOR COMMENT**

Posted: 05-11-2015

Comment period ends: 05-31-2015

**REQUEST FOR EVIDENCE****Form I-140, Petition for Immigrant Worker  
Ability to Pay**

Your organization, (insert name of petitioner) filed a Petition for an Immigrant Worker (Form I-140) with the U.S. Citizenship and Immigration Services (USCIS), seeking to classify the beneficiary, (insert beneficiary name), as an immigrant worker.

Documentation submitted with your petition indicates that your organization provides (insert type of service claimed in Part 5 of the Form I-140) services. You seek to employ the beneficiary as a/an (insert position title).

Petitions which require job offers must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. Such evidence shall be in the form of copies of annual reports, Federal tax returns, or audited financial statements.

In a case where the prospective U.S. employer employs 100 or more workers, a statement from a financial officer of the organization that establishes ability to pay the wage may be submitted. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted.

To process your petition and determine if your organization and the beneficiary are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Please note that you are responsible for providing evidence which best shows your organization and the beneficiary meet all requirements and are eligible for the requested benefit. The U.S. employer must show the ability to pay the proffered wage from the date of filing of the labor certification, or in cases where no labor certification is required, from the date of filing of the petition, also referred to as the priority date, until the beneficiary becomes a lawful permanent resident.

Also, note that statements made in cover letters should be supported with additional evidence.

**General Petitioner Requirements**

**Ability to Pay Wage:** You must show you have the ability to pay the beneficiary's offered wage of ([insert offered wage]) from the priority date of [insert priority date], and continue to have the ability to pay the beneficiary's offered wage until the beneficiary obtains lawful permanent residence.

You did not submit evidence of your ability to pay the offered wage.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to one of the following types of required initial evidence: (Delete any of the following items that were already provided by the petitioner and listed in this subsection.)

- A statement from a financial officer of your organization which establishes your ability to pay the offered wage, if you employ 100 or more workers;
- A complete copy of your [insert years in question] annual reports;
- A complete copy of your [insert years in question] audited financial statements; or
- A complete copy of your [insert years in question] Corporate/Individual [select one] U.S. federal income tax returns, with all accompanying schedules.

In addition to the above, you may submit any other additional evidence which includes, but is not limited to:

- Documentary evidence which shows you have paid the beneficiary the offered wage from the priority date onwards if you currently employ the beneficiary. (Please note that you may submit evidence of the wages you have paid to the beneficiary, even if the wages were/are below the offered wage if you would like that evidence to be considered along with your other financial evidence for the relevant time period.) Evidence of wages paid to the beneficiary may include:
  - The beneficiary's Form W-2, Wage and Tax Statements;
  - The beneficiary's Form 1099-MISC, Miscellaneous Income;
  - The beneficiary's pay vouchers, which specify the length of the pay periods and show the beneficiary's gross or net pay, year-to-date income, income tax deductions, and tax withheld; and

- Your Form 941, Employers Quarterly Federal Tax Form, and your state's unemployment compensation report form for [insert quarters]. Also submit the accompanying supplement that identifies all employees by name and social security number. Your organization may redact the employees' addresses and all but the last four digits of their social security numbers.

- Your profit/loss statements;
- Your bank account records;
- Your personnel records.

Note: You may not submit additional evidence in place of initial evidence unless you demonstrate that initial evidence does not exist or that you cannot obtain it.

**Sole Proprietorship/ Individual Employer.** You appear to be a sole proprietorship OR an individual employer. As part of the requirement that you have the continuing ability to pay the offered wage to the beneficiary, you must also show you have the continuing ability to meet your personal/household expenses and sustain yourself and your dependents.

You did not submit evidence of your ability to pay the offered wage.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A statement listing your personal liquid assets and monthly household living expenses, with supporting documentary evidence, for [insert years in question]. These expenses include, but are not limited to:
  - Housing (rent or mortgage);
  - Food;
  - Car payments (whether leased or owned);
  - Insurance (auto, homeowner, health, life, etc.);
  - Utilities (electric, gas, cable, phone, internet, etc.);
  - Credit cards;
  - Student loans;
  - Clothing;

- School and daycare;
- Gardener, house cleaner, and nanny; and
- Any other recurring expenses.

These assets include, but are not limited to:

- Your individual bank statements;
- Your individual checking or savings account statements;
- Your individual stock account statements; and
- Any other personal assets.

**General Partnership.** You appear to be a general partnership. As part of the requirement that you have the continuing ability to pay the offered wage to the beneficiary, you may rely upon your general partner's OR general partners' personal assets (minus liabilities) to meet your expenses.

You did not submit evidence of your ability to pay the offered wage.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A statement listing your general partner's OR general partners' personal liquid assets and monthly personal/household expenses, with supporting documentary evidence, for [insert years in question]. These expenses include, but are not limited to:
  - Housing (rent or mortgage);
  - Food;
  - Car payments (whether leased or owned);
  - Insurance (auto, homeowner, health, life, etc.);
  - Utilities (electric, gas, cable, phone, internet, etc.);
  - Credit cards;
  - Student loans;
  - Clothing;
  - School and daycare;

- Gardener, house cleaner, and nanny; and
- Any other recurring expenses.

These assets include, but are not limited to:

- Your general partner's bank statements;
- Your general partner's checking or savings account statements;
- Your general partner's stock account statements; and
- Any other personal assets.

**Multiple Beneficiaries.** USCIS records indicate that you filed multiple petitions for multiple beneficiaries. As part of the requirement that you have the continuing ability to pay the offered wage to the beneficiary, you must show you have the continuing ability to pay the relevant offered wages to all beneficiaries from each Form I-140's priority date, and until each beneficiary obtains lawful permanent residence.

**NOTE TO ISO:** This section should generally only be used in cases where the beneficiary is either not working for the petitioner, or is working for the petitioner but not being paid the proffered wage. It should not generally be used if the petitioner employs the beneficiary and has already established that it is paying the beneficiary at a rate equal to or greater than the proffered wage, even if the ISO has concerns about the petitioner's ability to pay the wages proffered to the beneficiaries of multiple I-140 petitions.

You did not submit evidence of your ability to pay the offered wages.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A list of all Form I-140 receipt numbers you filed in [insert year(s) in question], including the following information:
  - The name of each beneficiary;
  - The offered wage of each beneficiary;
  - The priority date for each petition;
  - The status of each petition (pending, approved, denied, on appeal, etc.); and

- Whether the beneficiary of each petition obtained lawful permanent residence;
- Documentary evidence which shows you paid the offered wage to each beneficiary as of each petition's priority date (when applicable), such as:
  - The beneficiary's Form W-2, Wage and Tax Statements;
  - The beneficiary's Form 1099-MISC, Miscellaneous Income;
  - The beneficiary's pay vouchers, which specify the length of the pay periods and show the beneficiary's gross or net pay, year-to-date income, income tax deductions, and tax withheld; and
  - Your Form 941, Employers Quarterly Federal Tax Form, and your state's unemployment compensation report form for [insert quarters]. Also submit the accompanying supplement that identifies all employees by name and social security number. Your organization may redact the employees' addresses and all but the last four digits of their social security numbers.

**Wages Paid by Another Business.** You state that you have paid wages to the beneficiary through another business. As part of the requirement that you have the ability to pay the offered wage to the beneficiary, you must show you have a relationship with the business that paid the beneficiary's wages.

You did not submit evidence of your relationship with the business that paid the beneficiary's wages.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- Copies of contracts between you and the business that paid the beneficiary's wages in [insert years in question];
- Documentation to show you transferred funds to that business for the purpose of payment of wages for work completed by the beneficiary performing the duties of the proffered position.

**Totality of the Circumstances.** You state that the totality of the circumstances shows your continuing ability to pay the offered wage to the beneficiary. As part of the requirement that you have the ability to pay the offered wage to the beneficiary, you must demonstrate how the totality of the circumstances shows you have the continuing ability to pay the offered wage.

You did not submit evidence of the circumstances showing your ability to pay.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- Your statement explaining the following information for [insert years in question]:
  - The circumstances which have caused you to be temporarily unable to demonstrate your ability to pay the offered wage;
  - How long you have been in business, your historical growth, number of employees, and total wages paid to employees;
  - Whether the beneficiary will replace former employee(s) or contractor(s);
  - Your profitability prior to and after the uncharacteristically difficult or unprofitable year(s), supported by documentary evidence such as your:
    - Annual reports;
    - Audited financial statements; or
    - Individual or Corporate [select one] U.S. federal income tax returns (a complete copy), with all accompanying schedules;
  - Your reputation and business prospects in your industry, supported by documentary evidence such as:
    - Press releases;
    - Articles or newsletters; or
    - Evidence of your client base.

**Discretionary Officer Compensation.** You state that your officer is willing and able to forego officer compensation to pay the offered wage to the beneficiary. As part of the requirement that you have the continuing ability to pay the offered wage to the beneficiary, you may submit evidence showing your officer’s compensation and his/her willingness to forego compensation to meet your expenses.

You did not submit evidence of your officer’s compensation and his/her willingness and ability to forego compensation.

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed in this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A statement from your officer demonstrating that he or she is willing and able to forego compensation for [insert years in question]; and
- Documentary evidence showing your officer:
  - Received that compensation;
  - Had the ability to forego the compensation; and
  - The compensation was discretionary.

**Replacement of Employee or Outsourced Service.** As part of the requirement that you have the continuing ability to pay the offered wage to the beneficiary, you state that the beneficiary will replace former employee(s) or contractor(s) and the salary of the former employee(s) or contractor(s) will be used to pay the beneficiary of this petition.

You did not submit evidence showing how the beneficiary will replace former employee(s) or contractor(s).

**-OR-**

To satisfy this requirement, you submitted:

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The evidence you submitted is insufficient. [ISO MUST insert the reason(s) why the evidence listed under this subsection is insufficient to establish eligibility.]

**-AND-**

You may still submit evidence to satisfy this requirement. Evidence may include, but is not limited to:

- Your statement which indicates the following:
  - How long the position(s) existed;
  - The job duties of the former employee(s) or contractor(s); and
  - When the former employee(s) or contractor(s) vacated the position(s);
- Evidence of compensation paid to the former employee(s) or contractor(s) for [insert years in question], such as:
  - The employee(s) or contractor(s) Form W-2, Wage and Tax Statements;
  - The employee(s) or contractor(s) Form 1099-MISC, Miscellaneous Income;
  - The employee(s) or contractor(s) pay vouchers, which specify the length of the pay periods and show the beneficiary's gross or net pay, year-to-date income, income tax deductions, and tax withheld; and
  - Your Form 941, Employers Quarterly Federal Tax Form, and your state's unemployment compensation report form for [insert quarters]. Also submit the accompanying supplement that identifies all employees by name and social security number. Your organization may redact the employee(s) or contractor(s) addresses and all but the last four digits of their social security numbers.

#### **General Reminders**

If you are submitting evidence in response to this request, also submit the following:

- An index of the evidence and include corresponding tabs for each section of evidence.
- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- Full English language translation(s) of Evidence submitted to the USCIS containing a foreign language. The translator must certify that: The translations are accurate and complete; and he or she is competent to translate from the foreign language into English.