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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 183 50133

Office: NEBRASKA SERVICE CENTER

Date: 09 APR 2002

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is allegedly engaged in communications consulting and the production of documentaries and radio broadcasts. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner could not establish that it had the ability to pay the proffered wage of \$52,000 per year to the beneficiary.

On appeal, the petitioner submits a statement and additional evidence. The petitioner states that it can pay the beneficiary's salary and requests oral argument before the Administrative Appeals Office (AAO).

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 a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. 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.

The director found that the petitioner did not have the ability to pay the proffered wage because a copy of the petitioner's corporate income tax returns for the 1998 and 1999 calendar years did not show that it had paid the beneficiary's \$52,000 per year salary even though the beneficiary had been employed during those years. Additionally, the director found that the petitioner did

not have sufficient assets or a sufficient net income to pay the proffered wage. The director, therefore, denied the petition on this basis.

On appeal, the petitioner states that its former attorney failed to present copies of bank statements to show that it had more than \$200,000 at its disposal to pay the beneficiary's proffered wage. In support of this claim, the petitioner submits copies of two bank statements for its parent company to show that it has sufficient funds to pay the beneficiary's salary. The petitioner also states that in addition to having access to the parent company's cash, it has real estate valued at \$500,000, assets of \$300,000, and business contracts that are worth \$800,000. The petitioner believes that the evidence it has submitted on appeal shows that it has the ability to pay the proffered wage. However, as the record is presently constituted, the Service does not concur with the petitioner's conclusions.

The record contains a copy of the petitioner's corporate income tax return (Form 1120) for the 1999 calendar year, and a copy of the beneficiary's 1999 wage and tax statement (Form W-2). The petitioner filed the petition on May 24, 2000; therefore, the petitioner's financial position (e.g., its assets, liabilities and salaries paid) during the 1999 calendar year is relevant.

According to the Form 1120, the petitioner paid the beneficiary \$7,500 as a "compensation to officer" (Line 12) in 1999. The beneficiary's 1999 W-2 Form shows that he also received \$5,000 in wages from the petitioner. The \$12,500 that the beneficiary received from the petitioner as compensation for his services is far below the proffered wage of \$52,000 that he should have received. As the petitioner was unable to pay the beneficiary the proffered wage during the 1999 calendar year, it has not established that it could pay the same proffered wage as of the date of filing the petition.

The petitioner's Form 1120 for the 1999 calendar year also shows that its net (taxable) income was \$-2,486 (Line 30) and its net assets were \$-76,962 (assets minus liabilities). The petitioner could not pay a proffered wage of \$52,000 per year out of a negative income or negative net assets. Therefore, the petitioner has not established its ability to pay the proffered wage based upon its net income or its net assets.

On appeal, the petitioner submits copies of two monthly bank statements for the parent company to show that it has access to cash and states that it has sufficient assets to cover the cost of the beneficiary's salary.

Regarding the bank statements, the submission of such evidence does not persuade the Service that the petitioner, itself, has

the ability to pay the proffered wage. In Elatos Restaurant Corp., etc. v. Sava, 632 F. Supp. 1049 (S.D.N.Y. 1986), the court held that the Service could rely on income tax returns as a basis for determining a petitioner's ability to pay the proffered wage. Further, in K.C.P. Food Co., Inc. v. Sava, 623 F. Supp. 1080 (S.D.N.Y. 1985), the court held that the Service had properly relied on the petitioner's corporate income tax returns in finding the petitioner could not pay the proffered wage. It is the financial position of the petitioner, not the financial position of the parent company, which determines whether the petitioner can pay the beneficiary's wage both at the time of filing and until the beneficiary adjusts his status to that of a lawful permanent resident. Furthermore, two bank statements are not persuasive evidence of a company's overall financial position.

Regarding the petitioner's claim that it has sufficient assets such as real estate and business contracts to cover the cost of the beneficiary's salary, the petitioner has not submitted documentary evidence to support its stated financial position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, if the petitioner wants the Service to take this evidence into account, it must provide more than mere statements of its financial position.

Accordingly, the director's decision to deny the petition on the basis that the petitioner has not established its ability to pay the proffered wage will not be reversed. Although the petitioner requests oral argument before the AAO pursuant to 8 C.F.R. 103.3(b), such a request is denied because the issues of law in this case can be adequately addressed in writing.

Beyond the decision of the director, the petitioner has not established that the proffered position involves work in either a primarily executive or managerial capacity. The petitioner does not adequately detail the beneficiary's proposed job duties, provide any information about the petitioner's staff, if any, or submit an organizational chart to show the hierarchy of positions. However, as the appeal will be dismissed on another ground, this issue will not be examined further.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.