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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

BH



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 09 2004**

IN RE:

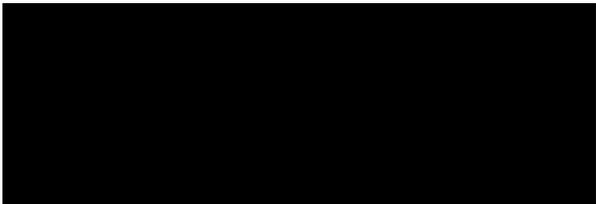
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: the Director, California Service Center, initially approved the preference visa petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore. Approval of the petition was ultimately revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an ocean freight forwarding company. It seeks to employ the beneficiary permanently in the United States as an operations manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanies the petition.

The petition was approved on October 20, 2000. Following the beneficiary's filing of an I-485, Application to Register Permanent Residence or Adjust Status, the director notified the petitioner on October 4, 2002 of his intent to revoke the approval of the petition, stating that the petitioner had failed to establish its ability to pay the proffered wage. The petitioner was given 30 days from the date of the notice to submit additional evidence. Approval of the petition was subsequently revoked based on the petitioner's failure to submit sufficient evidence to establish its ability to pay the proffered wage.

On appeal, counsel claims that the petitioner is a part of a group of companies that collectively have sufficient assets to enable the petitioner to pay the proffered wage.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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 or seasonal nature, for which qualified workers are not available in the United States.

Regulations at 8 C.F.R. § 204.5(g)(2) state 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.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. The petition's priority date in this instance is March 12, 1996. The beneficiary's salary as stated on the labor certification is \$2,871 per month or \$34,452 per year.

Prior to approval, the director requested that the petitioner submit tax documents for the years 1996 through 2001, inclusive as well as payroll information in the form of Form DE-6, Quarterly Wage Statements..

In response to the Notice of Intent to Revoke, counsel submitted the petitioner's 1996 through 2001 Form 1120 U.S. Corporation Income Tax Returns. The federal tax return for 1996 reflected taxable income before operating loss deduction and special deductions of -\$27,348. Schedule L of the return reflected current assets of \$44,779; current liabilities of \$95,683; and, net current assets of -\$50,904. The federal tax return for 1997 reflected taxable income before operating loss deduction and special deductions of \$13,994. Schedule L of the return reflected current assets of \$17,780; current liabilities of \$49,874; and, net current assets of -\$32,094. The federal tax return for 1998 reflected

taxable income before operating loss deduction and special deductions of \$8,189. Schedule L of the return reflected current assets of \$23,776; current liabilities of \$53,087; and, net current assets of -\$29,311.

The federal tax return for 1999 reflected taxable income before operating loss deduction and special deductions of \$25,639. Schedule L of the return reflected current assets of \$45,808; current liabilities of \$55,583; and, net current assets of -\$9,775. The federal tax return for 2000 reflected taxable income before operating loss deduction and special deductions of \$25,799. Schedule L of the return reflected current assets of \$46,527; current liabilities of \$35,777; and, net current assets of \$10,750. The federal tax return for 2001 reflected taxable income before operating loss deduction and special deductions of \$30,669. Schedule L of the return reflected current assets of \$59,316; current liabilities of \$30,656 and, net current assets of \$28,660.

In addition counsel submitted the petitioner's Form 1040 U.S. Individual Income Tax Returns for the years 1996 through 2001, inclusive.

On October 4, 2002, the director issued a notice of intent to revoke (NOIR), asserting that the petitioner's taxable income plus depreciation was not sufficient to establish the petitioner's ability to pay the proffered wage. In response, the petitioner submitted the profile of its parent corporation, FastPak Global Express Corporation, and audited financial statements of Fastpak Global Express Corporation reflecting hundreds of thousands of dollars in net operating income and millions of dollars in net current assets for 1997 through 2001.

The director determined that the petitioner had not established its ability to pay the proffered wage and revoked the approval of the petition on January 24, 2003.

On appeal, counsel asserts that the petitioner is part of a group of companies with over 2,000 employees and as such has available to it abundant resources with which to pay the proffered wage. Counsel states that the Fastpak group of companies has over \$40,000,000 in assets with revenues of nearly \$28,000,000 per year. Counsel further states that sufficient evidence to establish the petitioner's ability to pay was submitted in response to the Notice of Intent to Revoke. Counsel submits financial documents for Fastcargo Logistical Corporation as well as Fastpak Global Express Corporation.

A corporation is a separate entity unto itself and as such may not draw upon the resources of other corporations in order to satisfy its burden of proof to eligibility. Although claimed, the petitioner has not credibly demonstrated that it is a member of a "group" of corporations with a common board of directors and a consolidated financial status. The fact that the petitioner has filed its taxes as a separate corporation as evidence by the submitted Form 1120's demonstrates that it is an independent entity that stands primarily alone with regard to both its operation and financial accountability. While counsel claims, on appeal, that Fastcargo Logistical Corporation has the ability to pay the proffered wage, Fastcargo Logistical Corporation's financial reports for 1998, 1999, 2000, although providing for loan accommodations to and from affiliates or stockholders, do not reflect that any such loans were made to the petitioner. Further, Schedule's L of the petitioner's tax returns do not reflect the infusion of cash or other assets from any source. Therefore, while counsel's conclusion that Fastcargo Logistical Corporation is capable of paying the proffered wage for the petitioner, the record reflects that it has not done so and its commitment to do so is questionable in light of the fact that the petitioner's financial records reveal that it has borrowed money at interest rates up to 20 percent. Simply going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California* 14 I&N Dec. 190 (Reg Comm. 1972).

Further, Citizenship and Immigration Services (CIS), formerly the Service or CIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of

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its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. CIS will not consider the financial resources of individuals or entities who have no legal obligation to pay the wage. See *Sitar Restaurant v. Ashcroft*, 2003 WL 22203713, *3 (D. Mass. Sept. 18, 2003).

The federal tax returns for the years 1996 through 2001, reflect taxable income of -\$27,348, \$13,994, \$8,189, \$25,639, \$25,799, and \$30,669, respectively. The petitioner could not pay the proffered wage of \$34,452 out of these amounts. The petitioner's net current assets for the years 1996 through 2001 range from -\$50,904 to \$28,660. The petitioner could not pay the proffered wage out of these assets.

After a review of the tax records it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent residence.

The burden of proof in these proceedings rests solely 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.