

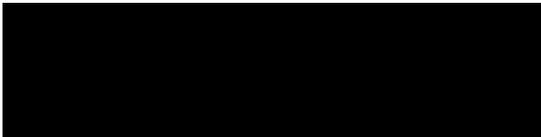


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U.S. Department of Justice  
Immigration and Naturalization Service

**PUBLIC COPY**

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



File: WAC 01 029 50112 Office: CALIFORNIA SERVICE CENTER Date: **DEC 06 2002**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:  
[Redacted]

*Identifying data which to  
prevent clearly unwarranted  
invasion of personal privacy*

**INSTRUCTIONS:**

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a computer software and systems engineering firm. It seeks to employ the beneficiary permanently in the United States as a software engineer at an annual salary of \$75,151. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the petitioner had not established that it had the financial ability to pay the beneficiary's proffered wage as of the filing date of the visa petition. The director also found that "the beneficiary is ineligible for classification as an outstanding professor or researcher."

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The labor certification submitted with the petition shows that the position requires a master's degree in electrical engineering, computer science, computer engineering "or related field." Because the director adjudicated the petition under the wrong classification, the decision contains no finding as to whether the beneficiary's master's degree in mechanical engineering from the University of Louisiana qualifies as a degree in a related field. The director must make the initial determination in this regard.

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.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's filing 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. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the application for labor certification was accepted on August 15, 2000. The beneficiary's salary as stated on the labor certification is \$75,151 per year.

Materials submitted with the original petition indicate that the beneficiary has worked for the petitioner as a software engineer since May 2000. The petitioner had submitted a Form 1120 U.S. Corporation Income Tax Return for the tax year ending March 31, 1999, which contained the following information:

Assets	\$1,556,345.00
Salaries	242,422.00

Net income (loss)	(7,340.00)
Current Assets	1,396,243.00
Current liabilities	554,315.00

On December 8, 2000, the Service requested additional evidence of the petitioner's ability to pay the proffered wage. In response, the petitioner submitted another copy of the aforementioned tax return.

The director denied the petition, stating that the petitioner's net loss of \$7,340 for its 1998-1999 tax year calls into question the petitioner's ability to pay the beneficiary's \$75,151 salary.

Counsel argues on appeal that the director failed to take into account the petitioner's gross receipts in excess of \$1.5 million. Counsel's figure is erroneous; the tax return cites exactly one million dollars in gross receipts. Even so, gross receipts are poor evidence of ability to pay because gross receipts are calculated before expenses. If other expenses consume all or most of the gross receipts, then the petitioner may not have sufficient remaining funds to pay the proffered wage. Nevertheless, the tax return also shows substantial current assets, including over one million dollars in cash, more than sufficient to pay the proffered annual wage.

The petitioner submits evidence showing that, in December 2000, the petitioner received a substantial infusion of capital – over \$24 million – through the purchase of shares, thus further increasing the cash on hand to pay the beneficiary's proffered wage and demonstrating that the petitioner not only had sufficient assets before it hired the beneficiary, but that those assets have only grown. Given the petitioner's substantial cash reserves, it is difficult to conclude that the petitioner has lacked the resources to pay the petitioner's proffered wage since August 2000.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.