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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

PUBLIC COPY



JUL 03 2003

File: [Redacted] Office: Nebraska Service Center Date:

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)

ON BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

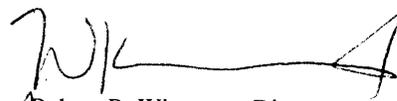
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a medical practice. It seeks to employ the beneficiary permanently in the United States as an internist at an annual salary of \$122,137. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined that 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.

On appeal, counsel argues that the petitioner had the ability to pay the beneficiary the proffered wage because it obtained a salary guaranty from Bi-State Cardiovascular Consultants.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides for the granting of preference classification to members of the professions holding an advanced degree or aliens of exceptional ability.

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 petition's filing date is April 27, 2001. The beneficiary's salary as stated on the labor certification is \$122,137 annually.

The petitioner had submitted the sole proprietor's personal income tax return, including Schedule C, for the tax year ending 2001 reflecting that the medical practice produced a net income of \$145,599 in 2001 and that this was the sole proprietor's only income.

The director denied the petition because the petitioner's net income minus the sole proprietor's personal expenses, estimated by the sole proprietor to be \$56,772 per year, was less than the proffered wage.

On appeal, counsel argues that the petitioner obtained a salary guaranty from Bi-State Cardiovascular Consultants. The petitioner resubmits the letter from Bi-State and submits the sole-proprietor's tax return for 2002 reflecting that the medical practice's net income was \$268,261 that year.

We do not find counsel's argument persuasive. It is the employer that must demonstrate an ability to pay the beneficiary the proffered wage. Nevertheless, the appropriate standard is whether the job employer is making a realistic job offer and has the overall ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). The regulations at 8 C.F.R. 204.5(g)(2) provides that "in appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or considered by the Service [now the Bureau]." In October 2002, the petitioner in this case had a bank account with a balance of \$29,282.44, and investment accounts with balances of \$25,392 and \$10,356.16. These accounts, when considered with the net income of the medical practice, are sufficient to satisfy the proffered wage.¹

Based on the evidence submitted on appeal, it can be found that the petitioner had sufficient funds available to pay the beneficiary the proffered wage at the time of filing the application for alien employment certification as required by 8 C.F.R. § 204.5(g)(2). Therefore, the petition may be approved.

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.

ORDER: The appeal is sustained.

¹ While not decisive, we note that twenty-five percent of the poverty level in 2001 for a household of three was \$18,775. Subtracting \$18,775 from \$145,599 leaves \$126,824, more than the proffered wage. This information supports the overall record in establishing that the job offer is viable.