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

**PUBLIC COPY**

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



MAR 13 2003

File: WAC-01-295-52545 Office: California Service Center Date:

IN RE: Petitioner:  
Beneficiary:



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: SELF-REPRESENTED

**Identifying data deleted to prevent disclosure of 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a public accounting firm. It seeks to employ the beneficiary permanently in the United States as an accountant at an annual salary of \$46,800. 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.

On appeal, the petitioner argues that tax returns are confidential and can not be requested without a subpoena.

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.**

(Emphasis added.) 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 priority date is July 15, 1997. The beneficiary's salary as stated on the labor certification is \$15 per hour, which equates to \$31,200 annually. On the petition, the petitioner indicates an intention to pay the petitioner \$900 per week, or \$46,800 annually.

With the original petition, the petitioner submitted evidence of the beneficiary's eligibility for the position of accountant. On March 5, 2002, the director requested evidence regarding the petitioner's ability to pay the beneficiary. Specifically, the director requested the evidence required by 8 C.F.R. § 204.5(g)(2) quoted above: annual reports, federal tax returns, or audited financial statements. In response, the beneficiary stated that the petitioner refused to provide its tax returns, "a very strictly confidential document." The petitioner submitted the beneficiary's 2001 income tax return filed jointly with her husband and evidence of the beneficiary's assets. The beneficiary argued that this documentation reflects her ability to meet her personal obligations. The tax return, while reflecting joint income of \$221,940, does not reflect how much the beneficiary personally earned. Moreover, a 2001 tax return does not reflect that the beneficiary earned the proffered wage in 1997, the priority date for the petition.

Consequently, the director denied the petition.

On appeal, the petitioner reiterates its claim that company tax returns are confidential and cannot be requested without a subpoena. The petitioner's arguments are not persuasive. As quoted above, the pertinent regulation specifically requires that a petitioner "shall" submit annual reports, federal tax returns, or audited financial statements. Federal courts have upheld the right of the Service (now the Bureau) to rely on these documents absent a subpoena. *See generally Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049, 1054 (S.D.N.Y. 1986) and *K.C.P. Food Co., Inc. v. Sava*, 623 F.Supp. 1080 (S.D.N.Y. 1985).

The statute cited by the petitioner, the Gramm-Leach Bliley Act, 15 U.S.C. §§ 6801-6809 (1999), protects against unauthorized disclosure of personal information provided to financial institutions and tax preparation agencies by those institutions and agencies. Nothing in this statute overrides the pertinent regulation quoted above or the federal cases cited above. The Bureau is not requesting that the petitioner disclose the financial information of its clients or requesting the petitioner's tax returns from a third party. Thus, the Gramm-Leach Bliley Act is not relevant. As such, we reject the petitioner's unfounded assertions that the Service (now the Bureau) is "committing excessive, abusive authority" or "arrogantly practic[ing] bureaucratic ineptness in the exercise of its functions and responsibilities." Enforcing the plain language requirements of our own regulations, which are public material and available for the petitioner's perusal, is within our authority and we would be remiss in our responsibility not to do so.

Moreover, the petitioner has not explained its refusal to submit annual reports or audited financial statements, the alternative evidence allowed by the pertinent regulation. In addition, the Bureau will accept evidence that the beneficiary was receiving the proffered wage as of the priority date and continues to do so. Such evidence includes Forms W-2. The petitioner has not submitted the beneficiary's Forms W-2 since 1997. As such, the petitioner has not demonstrated its ability to pay the beneficiary the proffered wage as of the priority date.

Finally, the beneficiary's personal ability to meet her own financial obligations is not relevant to whether the petitioner had and continues to have the ability to pay the beneficiary the proffered wage. The issue in contention relates to the protection of wage levels for U.S. workers and the viability of the job offer. The issue of the petitioner's ability to pay the proffered wage is not related to the beneficiary's chances of becoming a public charge.

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 sustained that burden. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.