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

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

PUBLIC COPY



MAR 19 2003

File:  NEBRASKA 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 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(2) as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner is a chiropractic office. It was established in 1999 and employs a doctor of chiropractic medicine and two staff members. It seeks to employ the beneficiary permanently in the United States as a chiropractor. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits additional evidence and requests reversal of the director's decision.

The regulation at 8 C.F.R. § 204.5(g) provides in pertinent part:

(2) *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 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.

Eligibility in this case rests upon 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. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is June 21, 2000. The beneficiary's salary as stated on the labor certification is \$48,000 per year.

The evidence indicates that the petitioner is a chiropractic clinic organized as a professional corporation. The petitioner initially submitted no evidence of the petitioner's ability to pay the proffered wage. On December 14, 2001, the director requested additional evidence pursuant to the evidentiary requirements of 8 C.F.R. § 204.5(g)(2) to establish that the petitioner had the ability to pay the proffered wage. The director specifically requested a copy of the petitioner's 2000 corporate tax return.

In response, the petitioner submitted a copy of a checking account bank statement indicating that it had a balance of \$27,612.12 as of February 15, 2002, copies of [REDACTED] individual

1999 and 2000 federal tax returns,¹ and a copy of the cover page of the petitioner's federal Form 1120 U.S. Corporation Income Tax Return for the tax year ending 2000. The Form 1120 contained the following information:

Total Assets	\$ 5,773
Gross Receipts or sales	69,198
Officers' compensation	(blank)
Salaries	3,166
Depreciation	1,625
Taxable Income (before Net operating loss)	17,212
Taxable Income (after Net operating loss)	- 0 -

The director concluded that there was insufficient evidence to support the petitioner's ability to pay the proffered wage for a permanent full time position as of the filing date of the petition and denied the petition accordingly.

On appeal, the petitioner asserts that the personal funds of [REDACTED] should be considered when determining the petitioner's ability to pay, because he owns the company and he has used personal funds to operate it. We concur with the director that the personal assets of a sole shareholder of a corporation cannot be considered when determining the ability to pay of a corporation, which is a separate and distinct legal entity from its stockholders or its sole stockholder. *See National Carbide Corp. v. Commissioner*, 336 U.S. 422 (1949); *Matter of M*, 8 I&N Dec. 24 (BIA 1958).

The petitioner must establish its ability to pay the proffered wage as of the priority date. As noted previously, 8 C.F.R. § 204.5(g) requires copies of annual reports, federal tax returns, or audited financial statements. While additional material may be considered, such documentation generally cannot substitute for the evidentiary requirements. The petitioner's checking account balance of \$27,612.12 in 2002 does not establish its ability to pay as of the priority date of June 21, 2000. The information provided in the petitioner's 2000 corporate tax return shows that its taxable income before taking the net operating loss of \$17,212 is only 36 percent of the proffered wage. Similarly, the 2000 total assets of \$5,773 represent only 12 percent of the proffered wage.

We further note that although evidence in the record suggests that the petitioner employed the beneficiary from March 2000 to December 2000, no evidence was submitted showing the salary paid to the beneficiary. If the beneficiary had been paid the proffered wage, this would represent approximately \$40,000. In fact, according to the petitioner's tax return, the total salaries and wages for all the petitioner's employees for 2000 amounted to \$3,166. Additionally, the

¹ [REDACTED] signed the I-140 petition and the labor certification application, and subsequently asserts on appeal that he is the owner of the clinic. The record contains no corporate documents, however, identifying the officers or shareholders of the corporation.

beneficiary's employment history submitted on the Form ETA 750-B completely omits his position with the petitioner and gives a different employer's name for this period of time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the evidence contained in the record, the petitioner has not demonstrated the ability to pay the proffered wage.

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.