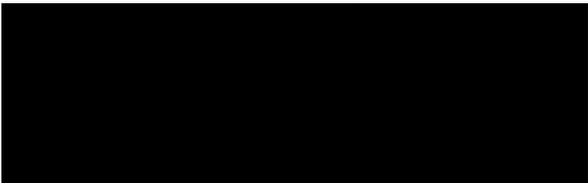


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

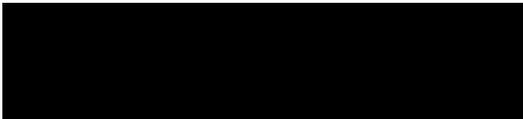


U.S. Citizenship  
and Immigration  
Services



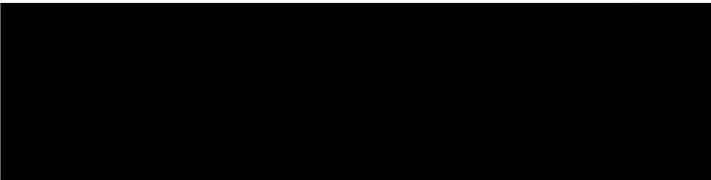
FILE: WAC-02-196-53732 Office: CALIFORNIA SERVICE CENTER Date: APR 12 2004

IN RE: Petitioner:  
Beneficiary:



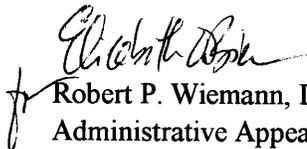
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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

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Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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 an architecture company. It seeks to employ the beneficiary permanently in the United States as a project animation designer at an annual salary of \$66,830.40. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the petitioner had not established that its predecessor-in-interest 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 director should have accepted the information provided on the predecessor sole proprietor's Schedule C.

Section 203(b)(2) 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.

The priority date is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. 8 C.F.R. § 204.5(d). Here, the petition's filing date is November 30, 1998. The beneficiary's salary as stated on the labor certification is \$32.13 per hour that equates to \$66,830.40 annually.

With the original petition, the petitioner submitted Form 1120 U.S. Corporation Income Tax Returns for the tax year ending 2000 and 2001. These forms reflect net income of \$68,604 in 2000 and \$101,308 in 2001. In response to the director's request for additional documentation and intent to deny, the petitioner, a corporation, submitted evidence relating to its February 7, 2000 assumption of William R. Pauli Architects (WRP), a sole proprietorship. The director did not contest that the petitioner is the successor-in-interest to WRP. The petitioner also submitted the tax documentation for WRP for 1998 and 1999. This information was provided on the sole proprietor's Schedules C for those years. Those schedules provide that WRP had a net income of \$44,678 in 1998 and \$72,314 in 1999. Forms W-2 in the record reflect that WRP paid the beneficiary \$42,270 in 1998 and \$51,976.67 in 1999.

The director denied the petition, concluding that without the sole proprietor's complete tax returns for 1998 and 1999, Citizenship and Immigration Services (CIS) cannot determine whether the sole proprietor of WRP had the ability to pay the beneficiary the difference between the wages earned and the proffered wage in 1998 and 1999.

On appeal, counsel asserts that the sole proprietor's wife refuses to provide the complete tax return and that all the business information is contained on the Schedule C. Counsel notes that the net income for WRP was greater than the difference between the wage paid to the beneficiary and the proffered wage in both 1998 and 1999.

Counsel is not persuasive. In examining whether a sole proprietorship has the ability to pay the proffered wage, CIS consistently evaluates whether the sole proprietor can sustain himself and his dependents after paying the proffered wage. Without the full and complete tax return for the sole proprietor, we cannot determine the number of his dependents or whether he or his dependents had any additional income such that the sole proprietor could have sustained himself and his dependents had he paid the proffered wage in 1998 and 1999.

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.