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

FILE: LIN-02-219-51567 Office: NEBRASKA SERVICE CENTER Date: APR 28 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

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 dismissed.

The petitioner is an information technology consulting business. It seeks to employ the beneficiary permanently in the United States as a consultant/software engineer at an annual salary of \$65,000. 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.

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 December 4, 2001. The beneficiary's salary as stated on the labor certification is \$65,000 annually.

The petitioner has submitted Form 1120 U.S. Corporation Income Tax Returns for the tax years ending 2001 and 2002 that contained the following information:

	2001	2002 ¹
Net income (loss)	\$9,170	(\$10,558)
Current assets	\$9,056	\$1,205
Current liabilities	\$1,440	\$2,144

The petitioner also submitted a first quarter 2002 quarterly employer federal tax return reflecting that the petitioner employed 19 workers and corporate bank statement for the period ending October 31, 2002, reflecting a balance of \$93,033.75. Despite the director's specific request for the Forms W-2 issued by the petitioner to the beneficiary if he was already working for the petitioner (as indicated on the Form ETA-750B), the petitioner failed to submit any Forms W-2. The director denied the petition, noting that the petitioner's net income for 2001 was only \$9,170, that a single bank statement for one month cannot establish a consistent ability to pay the

¹ We note that the Schedule L attached to the 2002 tax return, submitted on appeal, has reduced credibility due to inconsistencies between the beginning tax year numbers on this Schedule L and the end of tax year numbers on the Schedule L for 2001, which should be the same.

proffered wage, that the quarterly returns did not differentiate wages to the beneficiary, and the petitioner's failure to submit the requested Forms W-2.

On appeal, counsel argues that the net income is sufficient to pay the proffered wage for the final month of 2001. Counsel further argues that the petitioner's bank statements reflect sufficient funds to continuously pay the proffered wage. The petitioner submits its 2002 tax return, its December 2001 bank statement reflecting a balance of \$9,700 on December 31, 2001 and statements for 2002 through 2003 reflecting balances between \$1,167.58 (June 1, 2002) and \$91,368.97 (March 31, 2002). The petitioner has still not submitted the Forms W-2 issued to the beneficiary.

While the beneficiary claims to have worked for the petitioner since November 1999, the petitioner has failed to submit evidence of any wages paid to the beneficiary. Thus, the petitioner must establish its ability to pay the full proffered wage. We reject counsel's argument that because the priority date is December 2001 the petitioner need only demonstrate its ability in 2001 to pay a single month of the proffered wage. Thus, we concur with the director that the petitioner's net income and net current assets in 2001 cannot account for the full annual proffered wage. In addition, the bank statements are not persuasive because they are already reflected on the petitioner's Schedule L as a current asset. To consider the petitioner's cash without considering its current liabilities is not an accurate reflection of its ability to pay the proffered wage.

Even if we accepted evidence that the petitioner had demonstrated its ability to pay one month of the proffered wage in 2002, it must demonstrate its ability to pay the proffered wage through the time of adjustment. In 2002, the petitioner had a net loss and negative net current assets. Once again, that the petitioner occasionally had large amounts of cash during 2002 is not persuasive. As stated above, considering the petitioner's cash without considering its current liabilities is not an accurate reflection of its 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 sustained that burden. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

ORDER: The appeal is dismissed.