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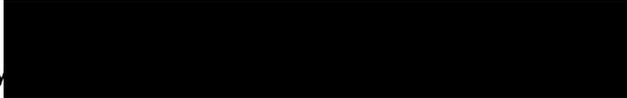
Office: VERMONT SERVICE CENTER

Date: **JUN 01 2004**

IN RE:

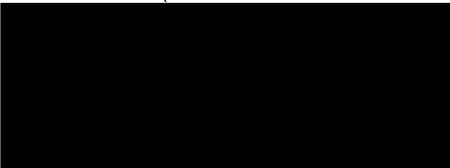
Petitioner:

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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a computing consulting business. It seeks to employ the beneficiary permanently in the United States as a network (LAN) administrator at an annual salary of \$70,013. 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, counsel asserts that the director should have considered the petitioner's ability to pay only for the portion of the year after the petition was filed.

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 April 28, 2001. The beneficiary's salary as stated on the labor certification is \$70,013 annually.

The petitioner submitted a Form 1120 U.S. Corporation Income Tax Return for the tax year ending September 30, 2001 that contained the following information:

Net income (loss)	\$3,683
Current assets	\$66,330
Current liabilities	\$23,856
Net current assets	\$42,474

The director denied the petition, concluding that the petitioner had not established its ability to pay the proffered wage in 2001.

Counsel argues on appeal that the petitioner only had to demonstrate its ability to pay the proffered wage on a prorated basis: from April 28, 2001 through September 30, 2001. Counsel relies on a non-precedent decision issued by this office. The petitioner submits its tax return for the tax year ending September 30, 2002. The newly submitted tax return, which begins after the filing date, reflects a net income of \$4,942, current assets of \$84,673, and current liabilities of \$34,572. Thus, net current assets would be \$50,101. This information does not support counsel's implied argument that the petitioner had the ability to pay the proffered wage as of April 28, 2001 but

that this was not reflected on the October 1, 2000 through September 30, 2001 tax return because it covered a period prior to April 28, 2001. Rather, the petitioner's tax return for October 1, 2001 through September 30, 2002 also fails to reflect the petitioner's ability to pay the full proffered wage. Thus, the petitioner has not overcome the director's conclusion that the petitioner does not have the ability to pay the beneficiary 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.