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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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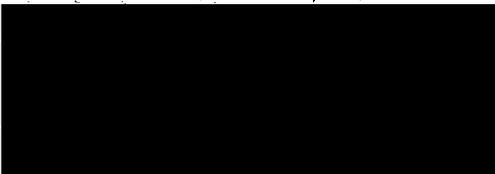


File: [Redacted] Office: TEXAS SERVICE CENTER Date: MAR 12 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Weimann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a jeweler. It seeks to employ the beneficiary permanently in the United States as a graphic designer. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established that he had the financial ability to pay the beneficiary the proffered wage as of the filing date of the petition.

On appeal, counsel submits a brief and additional documentation.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

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.

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 filing date is June 21, 1996. The beneficiary's salary as stated on the labor certification is \$30,000 annually.

With the original petition, the petitioner submitted copies of unaudited financial statements for [REDACTED] Inc. and [REDACTED] Inc. for the first part of 1997.

On June 30, 1998, the Service requested evidence of the petitioner's ability to pay the proffered wage as of June 21, 1996.

In response, counsel furnished a copy of an unaudited annual report for [REDACTED] Inc. and [REDACTED] Inc. as of May 31, 1998. The

director noted that:

The annual report submitted is another unaudited financial statement. It also combines the petitioner's assets and liabilities with another company, Chanco, Inc. Since the statements are unaudited and, in addition, are combined with another company's statements, the petitioner has not demonstrated that it can pay the offered wage as required by regulation.

On appeal, counsel asserts that the Service should consider the financial support the petitioner receives from its affiliated company, Chanco, Inc. Counsel further contends that Chanco, Inc. owns 80% of the common stock of Guarani. Finally, counsel indicates that "Chanco has further promised that if the need arises for financial support to pay the beneficiary's offered wage of \$30,000, Chanco will provide such support."

In support of his argument, counsel submits W-2 Wage and Tax Statements for 1994 through 1998. In 1994, [REDACTED] Inc. paid the beneficiary \$10,687.79. In 1995, [REDACTED] Inc. paid the beneficiary \$14,800, and [REDACTED] Inc. paid the beneficiary \$5,950. In 1996, [REDACTED] Inc. paid the beneficiary \$13,200, and Chanco, Inc. paid the beneficiary \$10,200. In 1997, [REDACTED] Inc. paid \$12,100, and [REDACTED] Inc. paid \$10,722. In 1998, [REDACTED] Inc. paid \$13,200, and [REDACTED] Inc. paid \$13,759. Counsel further submits a copy of the petitioner's 1995 U.S. Corporation Income Tax Return which reflects gross profit of \$24,038, salaries or wages paid of \$13,200, depreciation of \$82, and a taxable income before net operating loss deduction and special deductions of -\$17,707.

Counsel's argument that another company could pay part of the proffered wage is not persuasive. A corporation is a separate and distinct legal entity from its owners or stockholders. Consequently, any assets of its stockholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See Matter of M, 8 I&N Dec. 24 (BIA 1958; AG 1958); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980); and Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980).

In this case, the petitioner declared a net operating loss deduction of -\$17,707 for fiscal year 10/1/95-9/30/96. Accordingly, in this case, the petitioner has submitted insufficient documentation to establish that he had the financial ability to pay the proffered wage at the time of filing and continuing to present.

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.