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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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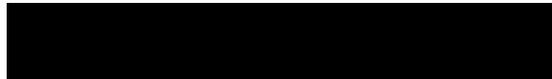


File:

Office: CALIFORNIA SERVICE CENTER

Date: AUG 19 2002

IN RE: Petitioner:
Beneficiary:



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 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 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a health care practice. It seeks to employ the beneficiary permanently in the United States as a medical assistant. As required by statute, the petition was accompanied by certification from the Department of Labor. The district director revoked the approval on the basis that the petitioner did not have the ability to pay the proffered wage.

The petition was approved on September 18, 2000. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on March 27, 2000.

In the notice of intent to revoke, the director stated, in pertinent part:

The petitioner has copies of their Forms 1120 U.S. Corporation Income Tax Return for the 1996, 1997, 1998 and 1999 tax years. A review of the 1996 federal tax return shows that when one adds the depreciation and the taxable income, the result is \$908.00, or \$20,032.00 less than the proffered wage.

The director further noted that the income tax returns for 1997 through 1999 continued to show an inability to pay the wage offered.

On appeal, counsel reiterates his argument that "Dr. Wesley S. Woo and the medical corporation are the two sides of one coin."

Counsel's argument is not persuasive. The Service may not pierce the corporate veil and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners or stockholders. Consequently, any assets of the individual stockholders including ownership of shares in 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).

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in her decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and the petition may not be approved.

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.