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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 00 263 54069 Office: CALIFORNIA SERVICE CENTER Date: AUG 22 2002

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: SELF-REPRESENTED

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is a wilderness outfitter. It seeks to employ the beneficiary permanently in the United States as a packer/wrangler. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the petition's filing date. The director further determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the filing date of the visa petition.

On appeal, the petitioner submits a statement. The petitioner further requests 60 days in which to submit a brief and/or additional evidence to the AAO. No further documentation, however, has been received. Therefore, a decision will be made based on the record as it is presently constituted.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), 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 labor (requiring at least two years training or experience), 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 September 15, 1995. The beneficiary's salary as stated on the labor certification is \$10.19 per hour or \$21,195.20 per annum.

The petitioner initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. On October 26, 2000, the director requested additional evidence to establish that the petitioner had the ability to pay the proffered wage.

The petitioner failed to respond. The director determined that the petitioner had not established that it had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, the petitioner fails to address the issue, stating only that she is arranging for an attorney and will need additional time for said attorney to review the petition.

No additional evidence has been received to date. Accordingly, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered at the time of filing of the petition and continuing to present.

The other issue to be considered in this proceeding is that to be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, supra. Here, the petition's filing date is September 15, 1995.

The Application for Alien Employment Certification (Form ETA 750) indicated that in order to perform the duties of the position, the beneficiary must possess a high school diploma and one year of college.

The director determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered.

It is noted that the ETA-750 does not list any experience required for the position. The determination of whether a worker is a skilled worker or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. 8 C.F.R. 204.5(1)(4). Based on the above-cited regulations governing classification as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, the proffered position is not one which requires the services of a skilled worker.

On appeal, the petitioner again states that she is in the process of arranging for representation by an attorney and will need additional time. No evidence of the beneficiary's work experience has been submitted to date. Therefore, the petitioner has not