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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: EAC 00 229 50753 Office: VERMONT SERVICE CENTER Date: 11 JAN 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 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Weimann, Director
Administrative Appeals Office

In response, counsel furnished a letter from the petitioner and copies of some of the petitioner's employee's pay stubs, including one for the beneficiary for the period from December 30, 2000 to January 12, 2001.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly. The director noted that payroll statements are not sufficient evidence of the ability to pay the proffered wage.

On appeal, counsel submits payroll statements for the beneficiary for the following periods:

January 13, 2001 - January 26, 2001
January 28, 2001 - February 10, 2001
February 25, 2001 - March 10, 2001
March 11, 2001 - March 24, 2001

Counsel's states:

That the petitioner is qualified to pay the salary.
That the attached pay stubs clearly show this capability.
That the petition needs to be reopened and approved ASAP.
That no other explanations are needed.

Despite counsel's assertion that no additional explanation is needed, the record does not contain sufficient evidence to establish that the petitioner has the ability to pay the proffered wage as of the filing date of the petition.

The payroll statements which were submitted as proof of the petitioner's ability to pay the proffered wage are in the record. 8 C.F.R. 204.5(g)(2), already quoted above in part, states that:

Evidence of this ability [to pay the proffered wage] shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence . . . may be submitted by the petitioner.

This regulation neither states nor implies that payroll statements may be submitted in lieu of annual reports, federal tax returns, or audited financial statements.

Accordingly, after a review of the documentation furnished, it is concluded that the petitioner has failed to establish that it had sufficient available funds to pay the salary offered since the filing date of the petition.

Additionally, it is noted that the petitioner has not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.