



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



26 JUL 2002

File: [Redacted] Office: California Service Center Date:

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

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 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 employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I485), the director served the Petitioner with notice of intent to revoke the approval of the petition. The director ultimately revoked approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a Presbyterian Church which seeks to employ the beneficiary permanently in the United States as the director of religious education at an annual salary of \$26,956.80. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The petition was approved on September 20, 2001. When the beneficiary filed Form I485, the director determined that the petitioner did not have the ability to pay the proffered wage and the petition had been approved in error. The approval of the petition was revoked on April 3, 2002.

On appeal, counsel for the petitioner provides a brief and additional evidence.

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 11, 2000. The beneficiary's salary as stated on the labor certification is \$12.96 per hour or \$26,956.80 annually.

On appeal, counsel states:

Notwithstanding the fact that the petitioning church was exempt from filing Form 990 under federal tax law, the Service demanded in the March 8, 2002 - Notice of Intent to Revoke that the petitioning church submit completed Form 990 for tax years 2000 and 2001 to show the petitioner's excesses and deficits for both tax years. Although the church was not legally required to file Form 990, the church complied in good faith with the Service's request and immediately prepared and filed Form 990 for tax years 2000 and 2001 for the purpose of verifying the church's ability to pay the proffered wage.

Although the petitioning church fully and voluntarily complied with the Service's request, the Service issued a Notice of Revocation of this I-140 petition on April 3, 2002. The Service claims that there was insufficient proof that Form 990 for tax years 2000 and 2001 were submitted to the IRS. As a result, we have enclosed copies of the petitioning church's Form 990 for tax years 2000 and 2001 stamped by the *Internal Revenue Service* which certifies that the church has formally filed the annual information returns for your review under Exhibit "C".

Because the petitioning church has submitted considerable evidence which shows that it had more than sufficient financial resources to pay the beneficiary's yearly salary of \$26,956.80 from the time the priority date was established to the present, we believe the Director's decision to revoke this I-140 petition was in error and respectfully request that an appeal be granted in this matter.

A review of the federal tax return for 2000 reflected total revenue of \$362,526; total expenses of \$224,108; and excess for the year of \$138,418. This excess is more than enough to pay the proffered wage of \$26,956.80.

A review of the federal tax return for 2001 reflected total revenue of \$282,788; total expenses of \$212,177; and excess for the year of \$70,611. Again, this excess is more than enough to pay the proffered wage of \$26,956.80.

Furthermore, the record of proceeding shows that the petitioner had an average balance in its checking account of \$45,777.73 for the



nine-month period between August 30, 2000 through May 29, 2001. The evidence submitted adequately demonstrates that the petitioner has had the ability to pay the wage offered since the filing date of the visa petition.

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 met that burden.

ORDER: The appeal is sustained.