

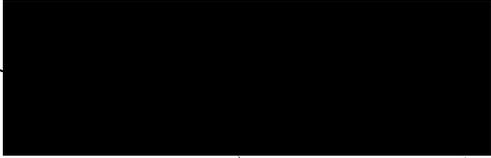


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 99 165 51830 Office: CALIFORNIA SERVICE CENTER Date: 25 MAR 2002

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:
[Redacted]

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

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a wholesaler and retailer of beauty products. It seeks to employ the beneficiary permanently in the United States as a market research analyst. 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 it had the financial ability to pay the beneficiary the proffered wage as of the filing date of the visa petition.

On appeal, counsel submits a statement 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 June 26, 1995. The beneficiary's salary as stated on the labor certification is \$2,500.00 per month or \$30,000.00 per annum.

Counsel initially submitted insufficient evidence of the

petitioner's ability to pay the proffered wage. On June 19, 2000, the director requested additional evidence to establish the petitioner's ability to pay the proffered wage as of June 26, 1995.

In response, counsel submitted copies of the petitioner's 1995, 1996, 1997 and 1998 Schedule C, profit and Loss from Business Statement. The petitioner's 1995 Schedule C reflected gross receipts of \$436,974; gross profit of \$106,005; depreciation of \$3,704; wages of \$3,229; and a net profit of -\$69,760. The petitioner's 1996 Schedule C reflected gross receipts of \$751,852; gross profit of \$233,473; depreciation of \$10,393; wages of \$34,766; and a net profit of \$1,727.

The petitioner's 1997 Schedule C reflected gross receipts of \$824,251; gross profit of \$255,258; depreciation of \$6,016; wages of \$59,494; and a net profit of -\$15,087. The petitioner's 1998 Schedule C reflected gross receipts of \$892,497; gross receipts of \$300,675; depreciation of \$2,738; wages of \$74,699; and a net profit of \$125.

The director determined that the documentation was insufficient to establish the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits unaudited financial statements for the petitioner and a letter from the petitioner which states, in pertinent part:

Over the years our sales has increased and keeps on increasing, so does our inventory of stocks. In fact just recently we moved to a bigger office and store to keep up with our growing inventory and personnel. Aside from the beauty product retail and wholesale, we also maintain a beauty salon. As part of our expansion program in the last four years I've been setting up a marketing and distribution center. In the next 90 days I intent (sic) to infuse an additional investment and part of this is intended for marketing and staffing.

In an unincorporated association or sole proprietorship, the assets and income of the owner can be considered in determining the petitioning business' ability to pay the wages offered. In this case, however, the record does not contain any evidence of the petitioner's personal expenses nor does it show that the petitioner had other income or assets with which to pay the proffered wage. Therefore, it is impossible to determine if the petitioner had income sufficient to pay the beneficiary and meet any expenses incurred by the petitioner and his family.

A review of the 1995 federal tax return shows that the total of the net profit and the depreciation is -\$66,056, less than the amount required to meet any expenses incurred by the petitioner and his family.

A review of the 1996 federal tax return shows that if one adds the net profit and the depreciation, the total is \$12,120, less than the amount required to meet any expenses incurred by the petitioner and his family.

A review of the 1997 federal tax return shows that if one adds the net profit and the depreciation, the total is -\$9,071, less than the amount required to meet any expenses incurred by the petitioner and his family.

A review of the 1998 federal tax return shows that if one adds the net profit and the depreciation, the total is \$2,863, less than the amount required to meet any expenses incurred by the petitioner and his family.

Accordingly, after a review of the federal tax returns, 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.

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.