

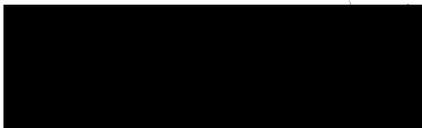


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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 01 129 54059

Office: CALIFORNIA SERVICE CENTER

Date:

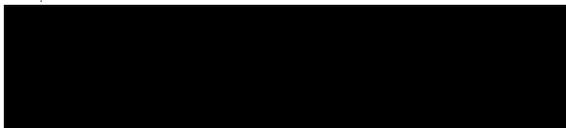
26 Sep 2002

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*  
Robert P. Wiemann, Director  
Administrative Appeals Unit

**DISCUSSION:** The employment-based preference immigrant 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 beauty salon. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established that it had the financial ability to pay the beneficiary's proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a brief.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), 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 or unskilled labor, 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 priority 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 priority date is July 5, 1996. The beneficiary's salary as stated on the labor certification is [REDACTED] per month or [REDACTED] per annum.

Counsel submitted a copy of the petitioner's unaudited Profit or Loss Statement for the period ended August 31, 2001 and copies of the petitioner's 1996 through 2000 Schedule C, Profit and Loss from Business Statement. Schedule C for 1996 reflected gross receipts of \$46,465; gross profit of [REDACTED] wages of \$0; and a net profit of \$15,943. Schedule C for 1997 reflected gross receipts of \$58,137; gross profit of [REDACTED] wages of \$0; and a net profit of

\$18,439.

Schedule C for 1998 reflected gross receipts of [REDACTED] gross profit of [REDACTED] wages of \$0; and a net profit of [REDACTED]

Schedule C for 1999 reflected gross receipts of [REDACTED] gross profit of [REDACTED] wages of \$0; and a net profit of [REDACTED]

Schedule C for 2000 reflected gross receipts of [REDACTED] gross profit of [REDACTED] wages of \$0; and a net profit of [REDACTED]

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

On appeal, counsel submits a copy of an unaudited Profit and Loss Statement for the petitioner for the period ended December 31, 2001 and argues that:

The employer's gross annual income for the year of 2000 was [REDACTED] - with a Gross Profit of [REDACTED] and Net Profit of [REDACTED]. The employer is able to hire a full time Beauty Shop Manager and pay the worker [REDACTED] per month in full time basis. The employer owns properties and has other income and a sufficient bank account which is abling him to comfortably to hire a full time manager to carry on his duties. The employer during all years of 1996 to present time of 2002 has proven his business and increased his business net profit yearly and shown profit all the time.

The petitioner has submitted no persuasive documentation to establish that it had the financial ability to pay the proffered wage as of the priority date of the petition.

The tax return for 1996 federal tax return shows a net profit of \$15,943. The petitioner could not pay a salary of \$25,416.00 a year out of this income.

In addition, the tax returns for 1997 through 2000 continue to show an inability to pay the proffered wage.

The petitioner must show that it had the ability to pay the proffered wage as of the priority date of the petition, July 5, 1996, and continuing until the beneficiary obtains lawful permanent resident status. See 8 C.F.R. 204.5(g)(2).

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 as of the priority date 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.