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U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536



File: WAC-02-151-50341 Office: California Service Center

Date:

DEC 03 2003

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)

ON BEHALF OF PETITIONER



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 Bureau of Citizenship and Immigration Services (Bureau) 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.


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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a jewelry manufacturer. It seeks to employ the beneficiary permanently in the United States as a plater. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On appeal, counsel argues that the evidence demonstrates the petitioner's ability to pay the proffered wage and that the beneficiary has the required two years of experience.

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.

Regulations at 8 C.F.R. § 204.5(g) (2) state 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 continuing ability to pay the wage offered beginning on the priority date, 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 request for labor certification was accepted for processing on January 14, 1998. The proffered

salary as stated on the labor certification is \$2,138.93 per month which equals \$25,667 annually.

With the petition, the petitioner submitted two employment letters. One letter, dated January 8, 1998, indicated that the beneficiary "is an employee at our company ONYX INDUSTRIES, INC. from 1990 to [the] present." The letter is signed by Maria Piz, production supervisor. The second letter, dated April 27, 1999, signed by Fred Safford, corporate counsel, indicated that the beneficiary was employed as a specialized plater for Onyx Industries, Inc.

The petitioner initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated May 30, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date, January 14, 1998 and continuing. The director also requested evidence regarding the beneficiary's experience. The RFE exacted the petitioner's federal income tax returns, annual reports or audited financial statements for the period from January 14, 1998, until May 30, 2002.

Counsel submitted the petitioner's 2000 Form 1120 U.S. Corporation Income Tax Return for the period from November 1, 2000, until October 31, 2001. The federal tax return for 2000 reflected taxable income of \$56,262. Counsel also submitted additional evidence of the beneficiary's employment for Onyx Industries, Inc.

On August 22, 2002, the director denied the petition, finding that the petitioner had not demonstrated its ability to pay the proffered wage. The director emphasized that the petitioner had failed to submit any evidence of the petitioner's ability to pay the proffered wage for the years 1998, 1999, and 2001.

On appeal, counsel argues that the evidence submitted demonstrates the petitioner's ability to pay the proffered wage and that the beneficiary has the required two years of experience. Counsel does not submit any additional tax or earnings documents in support of the petitioner's claim.

The record upon review contained sufficient evidence to establish that the beneficiary has the necessary two years experience required for eligibility. Therefore, the petitioner has overcome that portion of the director's objections.

The petitioner is obliged, by 8 C.F.R. § 204.5(g)(2), to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted demonstrates that the petitioner was able to pay the

proffered wage during the period November 1, 2000, until October 31, 2001. There is nothing in the record to cover the period from January 14, 1998, to October 31, 2000.

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.