

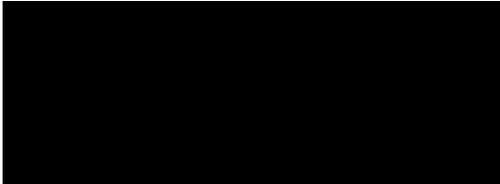
U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: WAC 02 148 50963 Office: CALIFORNIA SERVICE CENTER

Date: DEC 05 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:



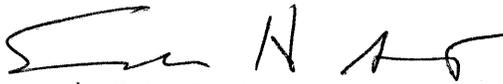
INSTRUCTIONS:

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 of Citizenship and Immigration Services (CIS) 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 employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or member of the professions. The petitioner is a landscape architecture firm. It seeks to employ the beneficiary permanently in the United States as a landscape designer. 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 priority date of the visa petition.

On appeal, counsel submits additional information and asserts that the evidence has established that the petitioner has established its ability to pay the beneficiary's proffered wage.

Section 203(b)(3)(A)(i) of 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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), further provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The regulation at 8 C.F.R. § 204.5(g) also provides in pertinent part:

(2) *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. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The sole issue on appeal is whether the petitioner has established its ability to pay the beneficiary's offered wage. Eligibility in this case rests upon 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 April 27, 2001. The beneficiary's salary as stated on the approved labor certification is \$38,300 per year. The evidence contained in the record indicates that the petitioner has employed the

beneficiary since August 2000. The beneficiary's W-2 submitted with the petition shows that the petitioner paid the beneficiary \$35,531.57 in wages in 2001.

The petitioner initially submitted insufficient evidence supporting its ability to pay the beneficiary's proposed wage. It submitted a portion of its 2001 Form, 1120S U.S. Income Tax Return for an S Corporation. On May 21, 2002, the director instructed the petitioner to submit evidence of its ability to pay pursuant to the regulatory requirements of 8 C.F.R. § 204.5(g)(2), from the priority date of April 27, 2001 to the present.

The petitioner included the remaining attachments of its 2001 corporate tax return in its response. Together with the evidence submitted previously, this return indicates that the petitioner had gross receipts/sales of \$1,716,448, \$139,718 as officers' compensation, salaries and wages of \$878,355, and an ordinary income of - \$13,587. Schedule L reflects that the petitioner's net current assets were \$491,870.

As noted above, the director denied the petition, determining that the petitioner had not established its ability to pay the proffered wage as of the priority date of the visa petition and continuing until the present. We do not concur. The difference between the proffered wage of \$38,300 and the wages paid to the beneficiary in 2001 is \$2,768.43. This sum was available from the petitioner's substantial 2001 net current assets of \$491,870. We further note that counsel submitted copies of the beneficiary's most recent pay stubs on appeal. They reflect that the petitioner was paid \$1666.67 bi-monthly through July 17, 2002. This indicates that the petitioner is employing the beneficiary at a yearly salary of \$40,000 a year, exceeding the offered wage.

Based on the evidence contained in the record, we find that the petitioner has persuasively established that it had the financial ability to pay the proffered wage as of the priority date of April 27, 2001 and continuing until the present.

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.