

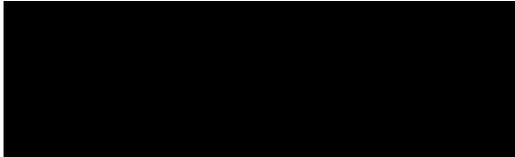
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: WAC 01 295 52287 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:



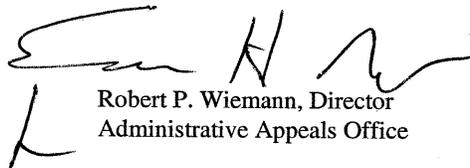
INSTRUCTIONS:

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 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 dismissed.

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. The petitioner is a residential care home. It seeks to employ the beneficiary permanently in the United States as a mental retardation aide. 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, the petitioner¹ submits additional information and asserts that it has established the 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.

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 August 18, 1997. The beneficiary's salary as stated on the approved labor certification is \$7.58 per hour or \$15,766.40 annually.

¹ The co-owner of the petitioning business filed the appeal. As no withdrawal of representation has been submitted, counsel of record will be provided a copy of this decision.

The petitioner initially submitted insufficient evidence of its ability to pay the beneficiary's proposed wage. On May 17, 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 August 18, 1997 to the present. The petitioner responded by sending copies of its federal tax returns.

The information presented in the sole proprietor owner's 1997 Form 1040 U.S. Individual Income Tax Return indicates that the sole proprietor had an adjusted gross income of -\$658 including a business income of -\$21,779 as reflected on Schedule C.

The sole proprietor owner's 1998 Form U.S. Individual Income Tax Return shows that she had an adjusted gross income of \$20,540 including a business income of \$12,990 as set forth on Schedule C.

The sole proprietor owner's 1999 Form U.S. Individual Income Tax Return shows that she claimed \$5,412 in adjusted gross income including a business income of \$1,643.

The petitioner incorporated in January 2000 and filed a Form 1120 U.S. Corporation Income Tax Return for the year 2000. This tax return shows that it had gross receipts/sales of \$227,358, no officers' compensation, salaries and wages of \$45,000, and a taxable income before net operating loss deduction (NOL) of \$9,711. Schedule L of this tax return reflecting net current assets was not provided.

The petitioner's 2001 Form 1120 U.S. Corporation Income Tax Return shows that the petitioner had \$273,796 in gross receipts/sales, no officers' compensation, \$48,751 in salaries and wages, and a taxable income before the NOL deduction of \$12,483. Schedule L of the tax return shows that the petitioner had -0- in net current assets.

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 note that 1998 was the only year that the sole proprietor's adjusted gross income could cover the beneficiary's offered wage of \$15,766.40. None of the remaining years indicate that either the sole proprietor's adjusted gross income or the petitioning corporation's net income before the NOL deduction, or net current assets were sufficient to meet the beneficiary's offered wage.

On appeal, the petitioner provides another copy of its 2001 corporate tax return which now shows that the taxable income before NOL deduction is \$34,121 with \$52,932 claimed as net current assets. Petitioner does not attempt to clarify the changes in figures on this tax return. It is incumbent upon a petitioner to resolve any inconsistencies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner also submits an unaudited balance sheet purporting to describe its financial status as of August 31, 2002. It shows that the petitioner had a net income of \$36,178.

We note that the priority date was established as of August 18, 1997. Pursuant to the regulatory

requirements of 8 C.F.R. § 204.5(g)(2), the petitioner must show its ability to pay the offered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence status. As the evidence submitted relating to every year except 1998, and possibly 2001, was insufficient to conclude that the petitioner had a continuing ability to meet the beneficiary's proffered wage, we cannot find that the director erred in denying the petition based on the petitioner's ability to pay.

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.