

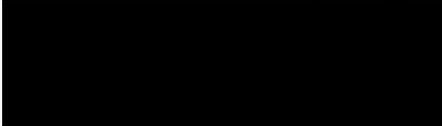
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U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to  
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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, Rm 3042  
425 Eye Street, N.W.  
Washington, D.C. 20536



File: WAC 02 075 50581 Office: California Service Center

Date: DEC 08 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 preference 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 is an automobile repair facility. It seeks to employ the beneficiary permanently in the United States as an auto mechanic. 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 submits a brief 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 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 April 24, 1997. The proffered salary as stated on the labor certification is \$17.81 per hour which equals \$37,044.80 annually.

With the petition, counsel submitted a copy of the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation for the 2000 calendar year. That return indicates that the petitioner declared \$30,609 in ordinary income during that year. The accompanying Schedule L states that, at the end of that year, the petitioner had \$13,452 in current assets and \$2,454 in current liabilities, which yields net current assets of \$10,998.

Because insufficient evidence was submitted to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on March 18, 2002, requested evidence pertinent to that ability. Specifically, the Service Center requested evidence of that ability from April 24, 1997 to the present and specified, in accordance with 8 C.F.R. § 204.5(g)(2), that the evidence of should be either in annual reports, federal tax returns, or audited financial statements.

The Service Center also requested the petitioner's California Form DE-6 quarterly wage reports for each of the previous four quarters, and the company's W-2 and W-3 forms.

In response, counsel submitted the petitioner's DE-6 forms for the second, third, and fourth quarters of 2001 and the first quarter of 2002. Counsel also submitted the petitioner's 2001 W-2 and W-3 forms. Those forms indicate that the petitioner did not employ the beneficiary during that period.

Still further, counsel submitted the petitioner's Form 1120S U.S. S-corporation tax returns for 1998 and 2001, and an IRS printout pertinent to the petitioner's 1120S tax return for the 1999 calendar year.

The 1998 return shows that the petitioner declared \$31,571 in ordinary income during that year. The accompanying Schedule L shows that, at the end of that calendar year, the petitioner had \$4,079 in current assets and \$3,661 in current liabilities, which yields \$418 in net current assets.

The 1999 IRA printout indicates that the petitioner declared \$19,226 in ordinary income during that calendar year. The petitioner's net current assets cannot be computed from the information on that printout.

The 2001 return shows that the petitioner declared \$37,474 in ordinary income during that year. The accompanying Schedule L shows that, at the end of that calendar year, the petitioner had \$13,441 in current assets and \$2,312 in current liabilities, which

yields net current assets of \$11,129.

In a cover letter sent with those submissions, counsel stated that the petitioner was attempting to obtain a copy of his 1997 tax return. Although that letter stated that counsel was submitting a copy of the petitioner's 1999 tax return, that tax return is not in the file.

On July 17, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate the petitioner's ability to pay the proffered wage during 1997.

Subsequently, counsel submitted a copy of the petitioner's 1997 Form 1120S tax return. That return shows that the petitioner declared ordinary income of \$27,514 during that year. The accompanying Schedule L indicates that the petitioner's current liabilities at the end of that year exceeded its current assets.

On appeal, counsel submitted another copy of the petitioner's 1997 return. Counsel stated that the file is now complete and asked that the petition be approved.

The 1997 return indicates that the petitioner was unable to pay the proffered wage out of income and had no net current assets. The 1998 return shows that the petitioner was unable to pay the proffered wage out of income, assets, or the combination of both. The 1999 printout indicates that the petitioner was unable to pay the proffered wage out of income, and provides no information from which the petitioner's net current assets may be computed.

The evidence is insufficient to demonstrate the petitioner's ability to pay the proffered wage during 1997, 1998, or 1999. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered salary beginning on the priority date.

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.