

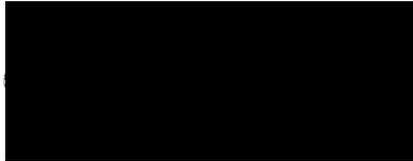
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**B6**

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invasion of personal privacy**

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



File: WAC 02 024 51769 Office: California Service Center

Date: **DEC 13 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 a roofing contractor. It seeks to employ the beneficiary permanently in the United States as a roofing supervisor. 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 documentation submitted demonstrates the petitioner's ability to pay the proffered wage.

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 December 31, 1996. The proffered salary as stated on the labor certification is \$18.14 per hour,

which equals \$37,731.20 annually.

With the petition, counsel submitted an unaudited statement of profit and loss for the 2000 calendar year, but no other evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Therefore, the California Service Center, on May 13, 2002, requested evidence pertinent to that ability. Specifically, the Service Center requested the petitioner's federal income tax returns for 1998, 1999, and 2000.

In response, counsel submitted the petitioner's 1120S U.S. Income Tax Return for an S Corporation for 1998, 1999, and 2000. The 1998 return shows that the petitioner suffered a loss during that year of \$3,961. The associated Schedule L shows that the petitioner's current assets at the end of that year were \$76,640 and its current liabilities were \$63,982, which yields net current assets of \$12,658.

The 1999 return shows that the petitioner suffered a loss during that year of \$14,766. The associated Schedule L shows that, at the end of that year, the petitioner's current assets were exceeded by its current liabilities.

The 2000 return shows that the petitioner earned an ordinary income during that year of \$42,001. The associated Schedule L shows that the petitioner's current assets were \$157,583 and its current liabilities were 118,571, which yields net current assets of \$39,012.

On July 8, 2002, the Director, California Service Center, denied the petition, finding that the petitioner had failed to demonstrate the ability to pay the proffered wage during 1998 and 1999.

On appeal, counsel provided a statement from the petitioner's president stating that the losses suffered during 1998 and 1999 were atypical and resulted from the need to hire subcontractors. The president further stated that the amounts paid to subcontractors would easily have paid the beneficiary's salary.

The president provided no evidence of the amounts paid to subcontractors during those years, or that any subcontractors were utilized at all during those years. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage during 1998 and 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.