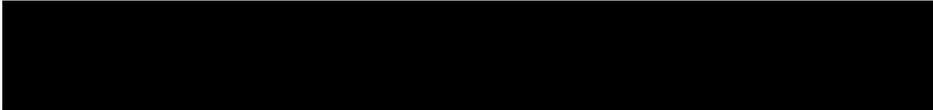


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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



PUBLIC COPY

File: WAC 02 259 51954

Office: California Service Center

Date: DEC 17 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: SELF-REPRESENTED

identifying data deleted to
prevent identity unwarranted
invasion of personal privacy

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, Acting 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 nursery school. It seeks to employ the beneficiary permanently in the United States as a pre-school teacher. 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 petitioner provides a statement 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 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 September 16, 1999. The beneficiary's salary as stated on the

labor certification is \$26,187.20 per annum.

The petitioner initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. On November 8, 2002, the director requested additional evidence of the petitioner's ability to pay the proffered wage at the time of filing, to include federal tax returns, audited financial statements, or certified annual reports for the years 1999 to the present.

In response the petitioner submitted copies of unaudited balance sheets for 1999 to 2001. The petitioner also represented that it is a non-profit pre-school and does not file federal tax returns.

The director concluded that the evidence submitted did not establish that the petitioner had the ability to pay the proffered wage as of the filing date of the petition and denied the petition accordingly.

On appeal, the petitioner submits copies of its bank statements for 1999 through 2002, copies of Internal Revenue Service (IRS) Form DE-6 for the years from 1999 through 2002, copies of IRS Form W-3 for the years 2000 through 2002, and copies of IRS Form 941 for the years from 1999 through 2002.

The petitioner states:

Due to the Religious Exemption Eligibility of Malibu Methodist, the documentation supplied in response to the I-797, was presented in good faith. Based on the decision received, and the remedy proffered, the enclosed documentation has been signed and IRS certified as further demonstration of our ability to pay the proffered wage. This documentation, as well as previously submitted materials should demonstrate the ability of Malibu Methodist at the time the priority date was established to present.

The unaudited income statements which were submitted as proof of the petitioner's ability to pay the proffered wage are in the record. However, they have little evidentiary value as they are based solely on the representations of management. 8 C.F.R. § 204.5(g)(2), already quoted above in part, states that:

Evidence of this ability [to pay the proffered wage] shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional

evidence . . . may be submitted by the petitioner.

The fact that the IRS certified the petitioner's submissions is not evidence that the material was audited, merely that it was received.

In addition, even though the petitioner submitted its commercial bank statements as evidence that it had sufficient cash flow to pay the wage, there is no evidence that the bank statements somehow reflect additional available funds. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, it is noted that the petitioner's quarterly payroll records indicate that the petitioner paid \$4,613.00 in wages to the beneficiary for the first two quarters of the year 2000 and paid \$2,557 in wages in the last two quarters in 1999. Both sums are substantially less than the proffered wage as set forth in the approved labor certification.

Accordingly, after a review of the additional documentation furnished, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered since the filing date of the petition.

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.