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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 02 174 53366 Office: CALIFORNIA SERVICE CENTER

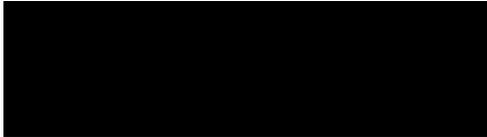
Date **DEC 23 2003**

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:



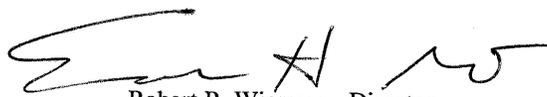
INSTRUCTIONS:

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 case will be remanded to the director for further proceedings consistent with this opinion.

The petitioner is a wholesale importer and distributor of textiles. It seeks to employ the beneficiary permanently in the United States as a staff accountant. 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 filing date of the visa petition and continuing.

On appeal, counsel submits a brief and additional evidence.

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

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 in accordance with the above regulation. Here, the petition's priority date is June 15, 1999. The beneficiary's salary as stated on the labor certification is \$2,808 per month which equates to \$33,696.00 per annum.

With the initial filing of the petition, counsel submitted copies of the petitioner's Internal Revenue Service (IRS) Forms 1120 for fiscal years from October 1, 1999, through September 30, 2000, and from October 1, 2000, through September 30, 2001. The Forms 1120 showed taxable incomes of \$10,404 and -\$154,524 respectively.

These tax returns were filed under the name of the petitioner which counsel asserts is an affiliate and successor-in-interest to Prattison (U.S.A.), Inc., the entity to which the approved labor certification was issued. No documentation, other than counsel's covering letter, was submitted to establish the relationship between the petitioner and Prattison (U.S.A.), Inc.

On May 1, 2002, the director requested that the petitioner provide further evidence of the petitioner's ability to pay the wage, requiring that such evidence should be in the form of copies of annual reports, signed federal tax returns, or audited financial statements, and should cover the years 1999, 2000, and 2001. The director did not request documentation relating to the relationship between the petitioner and Prattison (U.S.A.), Inc.

The director denied the petition, noting that the petitioner had not demonstrated the ability to pay the proffered wage. Although the labor certification and CIS records show that the beneficiary has worked for the petitioner or Prattison (U.S.A.), Inc. since at least 1997, the director made no mention of this in his request for evidence or decision to deny the petition.

On appeal, counsel submits, among other things, a copy of IRS Form 1120 for fiscal year from August 1, 1998 through July 31, 1999 for Prattison (U.S.A.) Inc. which shows a taxable income of \$54,390, a copy of the petitioner's IRS Form 1120 for fiscal year from October 1, 2001 through September 30, 2002 which shows a taxable income of \$18,271, and copies the beneficiary's W-2 Wage and Tax Statements for 2000 and 2001 showing that the petitioner paid the beneficiary \$33,600 in 2000 and \$38,400 in 2001.

The petitioner paid the beneficiary more than the proffered wage in 2001. The wage paid the beneficiary in 2000 was \$96 under the proffered wage; however, the petitioner's fiscal year tax return for the period from October 1, 1999, to September 30, 2000, shows a taxable income of \$10,404 from which the petitioner could have extracted \$96.

Counsel has not provided a 1999 W-2 for the beneficiary when, presumably, he was working for Prattison (U.S.A.), Inc. The 1998 fiscal year Form 1120 for Prattison (U.S.A.) covering the period from August 1, 1998 to July 31, 1999, shows taxable income of \$54,390 from which a salary of \$36,000 could have been paid.

With the initial filing of the petition, counsel furnished a letter written by himself which states that the business operations of Prattison (U.S.A.) were transferred to the petitioner on January 1, 2002. On appeal, he states that this

transfer took place on January 1, 2000. Tax documents in the record indicate that Prattison (U.S.A.) was incorporated on August 7, 1990 while the petitioner was incorporated on October 27, 1999. The pertinent dates need to be clarified.

As noted above, the petitioner has not provided, nor did the director ask for, evidence to establish that the petitioner is a successor-in-interest to Prattison (U.S.A.), Inc. Such documentation should show that the petitioner has assumed all the rights, duties, obligations, and assets of its predecessor. This evidence should be legal documentation and not simply the representations of the petitioner or counsel. If it is established that the petitioner is a true successor-in-interest to its predecessor, then the issue of the ability to pay the wage would not be a basis for denial as both Prattison (U.S.A.), Inc. and the petitioner had the ability to pay the wage. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N, Dec. 481 (Comm. 1986).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issue stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.