U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: LIN 01 258 53956 Office: Nebraska Service Center Date: FEB 27 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

IN BEHALF OF PETITIONER: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which 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, Nebraska Service Center, and is now before the Administrative Appeals Offfice on appeal. The appeal will be dismissed.

The petitioner is a garment manufacturer and seeks to employ the beneficiary permanently in the United States as a sample maker. 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.

On appeal, counsel submits 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 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 filed on January 18, 2001. The beneficiary's salary as stated on the labor certification is $22,200 per year

With the petition, the petitioner also submitted a copy of the petitioner's 2000 Form 1120-A U.S. Corporation Short Form Income

Tax Return. That tax return, which covers the 2000 calendar year, reflects gross receipts of $324,007; gross profit of $238,989; no compensation of officers; salaries and wages paid of $165,808; and taxable income before net operating loss deduction and special deductions of ($13,441).

Because the tax return submitted is for a period prior to the certification filing date, and no evidence was presented of the petitioner's financial condition on or after that filing date, the director found that the petitioner had submitted insufficient evidence of the petitioner's ability to pay the proffered wage. On October 29, 2001, the director requested additional evidence to establish that the petitioner had the ability to pay the proffered wage as of January 18, 2001, and that the petitioner continued to have that ability.

In response, counsel submitted a copy of the petitioner's 2001 Form 1120-A U.S. Corporation Short Form Income Tax Return. That tax return reflected gross receipts of $226,747; gross profit of $186,864; compensation of officers of $35,080; salaries and wages paid of $90,441; and a taxable income before net operating loss deduction and special deductions of $11,775.

The director determined that the submitted evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits a letter from an accountant. That letter states that the petitioner's business suffered as a result of the terrorist acts of September 11, 2001, but that the petitioner would have no difficulty paying the proffered wage to the beneficiary.

Counsel also provided a letter, dated March 12, 2002, from an officer of the petitioner's bank, stating that the petitioner, "has maintained an account with our bank since 1991, with a collected balance in the low five figures." That bank officer further stated that he was sure the petitioner would have no difficulty paying the beneficiary the proffered wage.

Counsel argued that those letters are from experts who are familiar with the financial condition of the petitioner, and that the decision of denial should therefore be reversed and the petition granted.

The letter from the bank officer appears to state that the petitioner has maintained in excess of $10,000 in its account since it opened the account more than a decade ago. This is difficult to

reconcile with the information from the 2001 Schedule L submitted by Counsel. That form states that the petitioner had $546 in cash at the beginning of that calendar year, and $70 at the end.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The accountant's letter implies that the petitioner's business troubles are the result of the terrorist attacks of September 11, 2001 and are temporary. If those attacks resulted in uncharacteristic losses in an otherwise profitable business, some allowance would be appropriate to offset those uncharacteristic losses in determining the petitioner's ability to pay the proffered wage. *Matter of Sonegwa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

Here, however, counsel has presented no information pertinent to how those attacks could have affected the petitioner's business, or how much higher the petitioner's profits would likely have been, absent the September 11, 2001 attacks. Further, the 2000 tax return reflects that the petitioner could not have paid the proffered wage during that year, which could not possibly have been caused by the subsequent attacks of September 11, 2001. The evidence offered by counsel to show that the September 11, 2001 terrorist attacks were responsible for the petitioner's low profits is insufficient and unconvincing, especially in view of the petitioner's previous losses.

The petitioner failed to submit sufficient evidence that the petitioner had the ability to pay the proffered wage as of January 18, 2001. Accordingly, after a review of the federal tax return, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered at the time of filing of the petition and continuing to the present.

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.