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

ADMINISTRATIVE APPEALS OFFICE  
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BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

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File: WAC 01 296 54126 Office: California Service Center Date: JUL 03 2003

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted Signature]

**PUBLIC COPY**

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 the Bureau of Citizenship and Immigration Services (Bureau) 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.

*Selen E Crawford*  
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 private club. It seeks to employ the beneficiary permanently in the United States as a baker. 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, 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 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 December 4, 1995. The beneficiary's salary as stated on the labor certification is \$10.00 per hour or \$20,800.00 per annum.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the wage offered. On February 1, 2001,

the director requested additional evidence to establish that the petitioner had the ability to pay the proffered wage.

In response, counsel submitted copies of the petitioner's unaudited financial statements for the years from 1995 through 2001.

The director determined that the 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 [REDACTED], manager of [REDACTED], which states, in pertinent part that:

[REDACTED] is a Business Club. It is a subsidiary of [REDACTED] which has approximately 230 [REDACTED]. These Clubs are located all over the United States as well as internationally since it has subsidiary clubs in Beijing, Singapore, Mexico, Australia and South Africa. [REDACTED] Inc. alone has seventy (70) employees. [REDACTED] has a revenue of approximately \$1.5 Billion for the year 2001. [REDACTED] has been in existence for thirteen (13+) years.

[REDACTED] previously submitted copies of its annual reports to the INS but these were deemed unacceptable because they were not audited. However it is impossible for [REDACTED] to provide copies of its Income Tax Returns because [REDACTED] consolidate all the earnings of its 230 subsidiary clubs. Because all the earnings are consolidated under [REDACTED] there is no way that copies of these earnings can be released to the INS.

The Service understands the petitioner's need for confidentiality. It is however, impossible for the Service to determine a company's ability to pay the proffered wage without some documentation which corroborates the company's solvency at the time of filing the petition.

The petitioner did not submit copies of its federal income tax returns to show that it could pay the proffered wage of \$20,800.00 per year. The petitioner submitted complied financial statements, not audited financial statements, as cited in the regulation. Without sufficient documentary evidence, the Service cannot find that the petitioner has the ability to pay the beneficiary the wage it offered on the initial I-140 petition.

The new evidence submitted with the appeal is not adequate to

demonstrate that the petitioner has sufficient ability to pay the proffered wage. The regulation states that "evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." 8 C.F.R. 204.5(g)(2). Unaudited internal reports are not sufficient to establish ability to pay the beneficiary's salary. In addition, there is nothing in the record which establishes that the petitioner is a subsidiary of [REDACTED]

Accordingly, after a review of the evidence submitted, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing to 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.