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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



JUL 16 2003

File: WAC 01 254 61605 Office: California Service Center

Date:

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 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.

Robert P. Wiemann

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 professional services and vocational training center. It seeks to employ the beneficiary permanently in the United States as an accountant. 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 submits a letter arguing in support of the petitioner's position.

Section 203(b)(3)(A)(ii) 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 hold baccalaureate degrees and 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 continuing ability to pay the proffered wage 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 May 7, 1998. The proffered salary as stated on the labor certification is \$25.06 per hour which equals \$52,124.80 annually.

With the petition, counsel submitted the 1998, 1999, and 2000 Form 1040 U.S. individual tax returns of the petitioner's owner. The

1998 return shows that the petitioner's owner declared an adjusted gross income of \$18,358.64 during that year, which includes all of the petitioner's income, shown on the accompanying Schedule C profit or loss from business (sole proprietorship), adjusted by deductions.

The 1999 return shows that the petitioner's owner declared an adjusted gross income of \$19,196.87. Again, the petitioner's owner's income during that year was derived solely from the petitioner's profit. The 2000 return shows an adjusted gross income of \$22,329.84, derived solely from the petitioner's profit.

Because the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on December 10, 2001, requested additional evidence pertinent to that ability.

In response, counsel submitted a statement of the petitioner's assets and liabilities as of December 31, 2001. The accountant's report which accompanied that financial statement clearly indicates that it was produced pursuant to a compilation of data provided by the petitioner, rather than pursuant to an audit.

On March 21, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate the petitioner's ability to pay the proffered wage.

On appeal, counsel argues that the ability of the beneficiary to produce income must be considered in the calculation of the petitioner's ability to pay the proffered wage. Counsel, however, submitted no evidence from which this office might calculate the amount by which the petitioner's profits would increase by hiring the beneficiary as its accountant.

The tax returns submitted in this matter appear to indicate that the petitioner was unable to pay the proffered wage. The accountant's report submitted with the petitioner's financial statement emphasizes that it is a compilation report, not an audit report. The accountant specified that she had compiled information submitted by the petitioner and presented it in the form of a financial statement, but that she had not audited or reviewed the financial statements and that she expressed no opinion or any other form of assurance pertinent to the accuracy of the information. As such, the unaudited balance sheet merely restates the petitioner's representations, and is not evidence of their veracity.

The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage during 1998, 1999, and 2000.

Therefore, the petitioner has not established that it has 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.