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

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



JUL 17 2003

File: WAC 02 076 52866 Office: California Service Center Date:

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:



**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 an electrical contracting company. It seeks to employ the beneficiary permanently in the United States as a electrician/supervisor. 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.

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 November 14, 1997. The beneficiary's salary as stated on the labor certification is \$26.50 per hour or \$55,120.00 per annum.

Counsel initially submitted insufficient evidence of the

petitioner's ability to pay the wage offered. On March 13, 2002, the director requested additional evidence of the petitioner's ability to pay the proffered wage.

In response, counsel submitted copies of the petitioner's 1997, 1998, 1999, and 2000 Schedule C, Profit and Loss from Business Statement. Schedule C for 1997 reflected gross receipts of \$40,202; gross profit of \$40,202; wages of \$9,811; and a net profit of \$14,914. Schedule C for 1998 reflected gross receipts of \$93,940; gross profit of \$34,768; wages of \$0; and a net profit of \$24,145. Schedule C for 1999 reflected gross receipts of \$133,388; gross profit of \$39,702; wages of \$0; and a net profit of \$28,821.

Counsel also asserts that the employment of the beneficiary will help expand the business and eliminate the use of independent contractors. Counsel's assertion that the funds paid to independent contractors could be used to pay the beneficiary's salary is not persuasive. These funds were not retained by the petitioner for future use. Instead, these monies were expended on compensating the contractors, and therefore, not readily available for payment of the beneficiary's salary in 1997.

Further, counsel does not explain the basis for the conclusion that the beneficiary will help expand the business. For example, the petitioner has not demonstrated that the beneficiary will replace less productive workers, transform the nature of the petitioner's operation, or increase the number of customers on the strength of his reputation. Absent evidence of these savings, this statement can only be taken as the petitioner's personal opinion. Consequently, the Bureau is unable to take the potential earnings to be generated by the beneficiary's employment into consideration.

The director determined that the documentation was insufficient to establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly. The director noted that the Schedule C's did not contain a signature.

On appeal, counsel argues that:

The Service, in its denial, goes on a dissertation that the schedule C is incomplete without an accompanying 1040 Form. This is not logical. This petition is filed by ENT Electric, a business. The schedule C contains the relevant information on the business. The 1040 Form merely carries over the schedule C income to business income (reflected on line 12 of the current 1040 Form for the year 2001), which is part of the owners adjusted gross income. The owner's 1040 Form then reflects a

whole host of personal tiems (sic) of itemized deductions (mortgage interest, elderly credits, education credits; the list goes on and on ) that are of no relevance to the petitioning business.

The tax return for calendar year 1997 shows a net profit of \$14,914.00. The petitioner could not pay a salary of \$55,120.00 a year from this figure.

In addition, the tax returns for 1998, 1999, and 2000 continue to show an inability to pay the wage offered.

Accordingly, after a review of the federal tax returns, 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.