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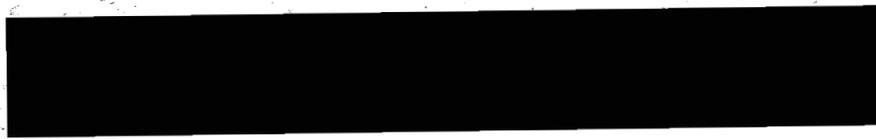
U.S. Department of Homeland Security

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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 21 2003

File: WAC 02 113 51270 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, 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 martial arts studio. It seeks to employ the beneficiary permanently in the United States as a martial arts instructor. As required by statute, 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 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 continuing ability to pay the wage offered 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 April 25, 2001. The proffered salary as stated on the labor certification is \$21.81 per hour which equals \$45,364.80 annually.

With the petition, counsel submitted its 1999 and 2000 Form 1120S tax return of an S corporation. The 1999 return shows that the petitioner declared \$3,764 in ordinary income during that year and that at the end of that year its current liabilities exceeded its current assets. The 2000 return shows that the petitioner declared \$10,676 in ordinary income during that year and that at the end of that year its current liabilities exceeded its current assets.

Because those tax returns do not relate to the period after the priority date, the California Service Center requested evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. That request stipulated, consistent with the requirement of 8 C.F.R. § 204.5(g)(2), that the evidence should be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In response, counsel submitted a Form 7004 application for automatic extension of time to file corporation income tax return and an unaudited profit and loss statement for the 2001 calendar year. In an accompanying letter, dated June 20, 2002, counsel stated that he believed the Service had all the information necessary to approve the petition.

On July 16, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

On appeal, counsel asserted that the decision of denial was based on the petitioner's 1999 and 2000 tax returns, although the priority date is April 25, 2001. With the brief, counsel submitted the petitioner's unaudited Profit and Loss Budget Overview statements for 2001 and 2002. Counsel asserted that the evidence clearly establishes the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

As is stated above, 8 C.F.R. § 204.5(g)(2) requires that the petitioner demonstrate its continuing ability to pay the proffered wage beginning on the priority date with either copies of annual reports, federal tax returns, or audited financial statements. Because the petition was submitted with no such evidence pertinent to the period after the priority date, the Service Center specifically requested that the petitioner provide that evidence.

To date, the petitioner has never provided copies of annual reports, federal tax returns, or audited financial statements pertinent to the period after the priority date. As that is the only evidence which will satisfy the requirement of 8 C.F.R. §

204.5(g) (2), the petitioner has submitted no evidence competent to demonstrate its ability to pay the proffered wage.

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.