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



File: WAC 02 032 56827 Office: California Service Center

Date:

JUL 21 2003

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: SELF-REPRESENTED

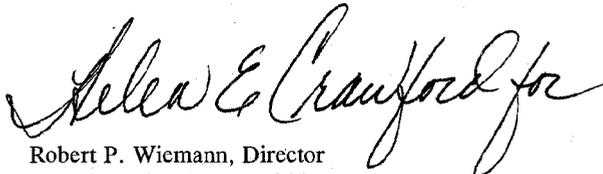
INSTRUCTIONS:

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 talent agency. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification. 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. The director also determined that the petitioner had failed to demonstrate that the beneficiary has the five years of experience which the ETA 750 states is a requirement of the job.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who 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 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 September 15, 1997. The proffered salary as stated on the labor certification is \$18.00 per hour which equals \$37,440 annually.

With the petition, the petitioner submitted no evidence of its

ability to pay the proffered wage. The only evidence of the beneficiary's employment history submitted with the petitioner was the petitioner's résumé. That résumé states that the beneficiary worked as a financial analyst for Rhone-Poulenc Philippines, Inc. of Manila, Philippines from July 1991 to September 1993, as an accountant for Rahimi, Levy and Company of Santa Monica, California from October 1993 to October 1995, and as an accountant for Car Park Corporation, of Beverly Hills, California, from November 1995 to "present."

Because the evidence submitted with the petition was insufficient to demonstrate that the beneficiary is qualified for the position and that the petitioner has the ability to pay the proffered wage, the California Service Center issued a Request for Evidence on February 21, 2002. The Service Center requested that the petitioner submit evidence of the beneficiary's prior experience in letter form, on the previous employer's letterhead. The request specified that the evidence should state the **"dates of employment/experience and number of hours worked per week."** (Emphasis in the original.)

The Service Center also requested that the petitioner submit evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Consistent with 8 C.F.R. § 204.5(g)(2), the request stipulated that the evidence should be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In response, the petitioner submitted copies of its 1998, 1999, and 2000 Form 1065 U.S. Partnership Return of Income. The 1998 return shows that the petitioner declared \$19,840 in ordinary income. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of \$16,312 and current liabilities of \$6,870, yielding net current assets of \$9,442.

The 1999 return shows an ordinary income of \$30,024. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of \$22,812, and current liabilities of \$10,746, yielding net current assets of \$12,066.

The 2000 return shows ordinary income of \$57,905, current assets of \$80,482, and current liabilities of \$35,848, yielding net current assets of \$44,634.

The petitioner also submitted three employment verification letters. The first, dated January 20, 1995, from Rhone-Poulenc Philippines, states that the beneficiary worked for that firm from July 15, 1991 to October 31, 1993 as a financial analyst. The

second letter, dated May 5, 1998, from Car Park, Beverly Hills, California, states that the beneficiary worked for that company from an unstated date in 1996 until "present." The third letter, dated August 11, 1989, states that the beneficiary is "presently employed as a tax auditor I for SGV & Co." That letter does not state either a beginning or an ending date for that employment. None of the letters state the number of hours the beneficiary worked per week, as the Request for Evidence specified that they should.

On her résumé, the beneficiary did not mention the employment she now seeks to document as a tax auditor I for SGV & Company. The dates of employment stated on the letters from Rhone Poulenc and Car Park differ from those the beneficiary claimed on her résumé. Although the beneficiary claimed on her résumé to have worked as an accountant for Rahimi, Levy and Company of Santa Monica, California from October 1993 to October 1995, the petitioner provided no evidence of that claim and no explanation of its absence.

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, the petitioner is obliged to resolve any inconsistencies in the record by independent objective evidence. 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).

On April 5, 2002, the California Service Center issued another Request for Evidence in this matter. Again, the Service Center requested that the petitioner provide evidence that since the priority date the petitioner has had the continuing ability to pay the proffered wage and that the petitioner provide evidence to verify that the beneficiary has the requisite five years of experience. That request also specified that the employment verification should state the "**dates of employment/experience and number of hours worked per week.**" (Emphasis in the original.)

In response, the petitioner's Chief Executive Officer submitted a letter, dated June 18, 2002. In that letter, the CEO noted that the petitioning company had changed hands during 1998 and stated that the petitioner's current owners are therefore unable to provide a copy of the petitioner's 1997 tax return. The CEO stated that the petitioner has demonstrated that the beneficiary has five years of experience. Counsel noted that the letter from Rhone-Poulenc evinces two years, three months, and 16 days of experience; and that the letter from Car Park evinces over a year of experience.

As to the beneficiary's employment for SGV & Co., counsel provided a "Certification of SSS Premium Payments" from SGV & Co. purporting to show that the beneficiary was employed by that company from January 1989 to October 1991. The CEO argued that the evidence submitted clearly shows that the beneficiary possesses more than the requisite five years of experience.

The CEO submitted Form W-2 wage and tax statements showing that the petitioner paid \$22,613.72 to the beneficiary during 1998, \$35,049.79 during 1999, \$43,680 during 2000 and \$50,000 during 2001.

The CEO also submitted 1997 and 1998 W-2 forms showing that Carpark Corporation paid the beneficiary \$21,346.21 and \$2,769.24 in wages during those years, respectively. The record contains no evidence, however, to demonstrate any relationship between Carpark Corporation and the petitioner in this case. As such, the relevance of those W-2 forms to any issue in this case has not been established.

The CEO provided the requested quarterly wage reports for all four quarters of 2001. Those reports confirm that the petitioner paid the beneficiary \$50,000 during that year, as was stated on the 2001 Form W-2.

On July 22, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not show that the beneficiary had the requisite five years of experience and did not demonstrate the petitioner's ability to pay the proffered wage during 1997.

On appeal, the petitioner's CEO provided additional evidence pertinent to the beneficiary's employment history but no additional evidence pertinent to the petitioner's ability to pay the proffered wage.

The evidence which the CEO submitted pertinent to the beneficiary's employment history consisted of letters from Rhone Poulenc, Car Park, and SGV & Company. The letter from Rhone Poulenc confirms the dates of employment that company previously reported and states that during that time the petitioner worked full-time.

The letter from Car Park states that the petitioner worked full-time for that company from March 1, 1996 to December 31, 1997 and worked part-time, 15 hours per week, from January 1, 1998 to May 15, 1998.

The letter from SGV & Co. states that the petitioner worked 44

hours per week for that company from November 24, 1988 to September 16, 1991.

The CEO observed that together the letters allege more than five years of experience, but offered no explanation for the discrepancies between the employment history shown on those letters and those the beneficiary claimed on her résumé.

As was stated above, 8 C.F.R. § 204.5(g)(2) requires that the petitioner demonstrate the continuing ability to pay the proffered wage beginning on the priority date. Copies of annual reports, federal tax returns, or audited financial statements are the types of competent evidence which the petitioner may use to demonstrate that ability.

The CEO states that the petitioning company changed hands during 1998 and that, therefore, the present owners are unable to provide copies of the petitioner's tax returns for 1997. That the petitioner was sold during 1998 does not excuse the petitioner from the requirements of 8 C.F.R. § 204.5(g)(2).

The evidence does not demonstrate that the petitioner was able to pay the proffered wage during 1997. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered salary beginning on the priority date. In view of that finding, this decision need not address the issue of the beneficiary's previous employment.

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.