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U.S. Department of Homeland Security

Bureau of Citizenship Services 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



File: WAC 02 073 52012 Office: California Service Center

Date:

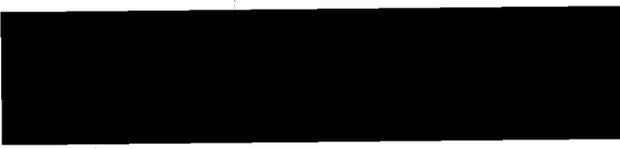
MAY 28 2003

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:



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 fabricator of cable trays and instrument supports. It seeks to employ the beneficiary permanently in the United States as a welder. 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 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 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 November 13, 1997. The proffered salary as stated on the labor certification is \$18.63 per hour which equals \$38,750.40 annually.

With the petition, counsel submitted no evidence of the petitioner's ability to pay the proffered wage. Therefore, the California Service Center, on May 8, 2002, requested evidence pertinent to that ability. Specifically, the Service Center requested that the petitioner, pursuant to the requirements of 8 C.F.R. § 204.5(g)(2) submit copies of annual reports, federal tax returns, or audited financial statements to demonstrate its ability to pay the proffered wage.

In response, counsel submitted what purports to be the first page of the petitioner's 2001 Form 1120 U.S. corporation tax return with all of the financial data beyond line one redacted. Line one of that return reports that the petitioner reported gross receipts of \$25,856,944. Counsel also submitted a letter from the petitioner's operations manager stating that the petitioner declined to submit financial information other than that figure. The operations manager further stated that the petitioner is listed in Dun & Bradstreet, which source will report that the petitioner is financially very healthy.

On May 10, 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 consistent with the requirements of 8 C.F.R. § 204.5(g)(2).

Counsel submits a Form I-290 appeal but makes no assignments of error. With the appeal, counsel submits an unsigned copy of the petitioner's Form 1120 corporate income tax return covering the period from January 1, 2000 to September 30, 2001. That return states that the petitioner's taxable income before net operating loss deduction and special deductions during that period was \$641,399. Counsel also submits a letter from the petitioner's executive vice president/chief financial officer stating that the petitioner has been in business for 50 years and has 105 employees. The CFO appears also to imply that the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2), states, in pertinent part, that in a case where the prospective employer employs 100 or more workers, the director **may** (Emphasis supplied.) accept the statement of a financial officer of the organization that the employer is able to pay the proffered wage.

The petitioner stated on the Form I-140 petition, however, that it employs only 72 employees. 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).

In view of the discrepancy between the number of employees stated on the petition and the number stated in the letter from the petitioner's CFO, the petitioner shall not be accorded the optional benefit of 8 C.F.R. 204.5(g)(2). The petitioner is obliged to demonstrate the continuing ability to pay the proffered wage since the priority date pursuant to 8 C.F.R. § 204.5(g)(2). The petitioner submitted no annual reports, federal tax returns, or audited financial statements to demonstrate that it had that ability during 1997, 1998, 1999, or 2000.

The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage during those four years. 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.