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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: WAC 02 041 56580 Office: California Service Center Date: NOV 03 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Citizenship and Immigration Services (CIS) 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 residential care facility. It seeks to employ the beneficiary permanently in the United States as an accountant. 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 statement and indicates that a separate brief and/or evidence would be submitted within thirty days. To date, however, no further documentation has been received. Therefore, a decision will be made based on the record as it is presently constituted.

Section 203(b)(3)(A) 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, or 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 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

April 23, 2001. The beneficiary's salary as stated on the labor certification is $2,500.00 per month or $30,000.00 per annum.

Counsel submitted copies of the petitioner's DE-6 Quarterly Wage Reports for the period from January 31, 2001 to January 31, 2002, copies of the petitioner's bank statements for the period from September 2001 through February 2002, and a copy of the petitioner's 2000 Form 1040 U.S. Individual Income Tax Return including Schedule C, Profit or Loss from Business. Form 1040 reflected an adjusted gross income of $17,833. Schedule C reflected gross receipts of $100,000; gross profit of $100,000; wages of $14,200; and a net profit of $9,249.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel argues that the decision is erroneous because the director did not consider "the totality of the financial resources of the employer which will be submitted to the AAU with the brief within 30 days."

The petitioner's Form 1040 for calendar year 2000 shows net current assets of $17,833. The petitioner could not pay a proffered salary of $30,000.00 from this amount.

Additionally, as the director noted in his decision, the beneficiary on the Statement of Qualifications portion of Form ETA 750 shows himself, as of March 2, 2001, as an employee of the petitioner who began work in December of 2000. CIS records show that an H-1 temporary worker petition filed by the same petitioner for the beneficiary was approved on February 1, 2001. Nevertheless, none of the 2001 quarterly wage reports submitted with this petition show the beneficiary as an employee.

Beyond the decision of the director, it is noted that Form ETA 750, as certified by the Department of Labor, requires the beneficiary to have a bachelor's degree in Accounting. In his decision, the director incorrectly indicated that this petition was for a skilled worker rather than for a member of the professions holding a baccalaureate degree. The regulation at 8 C.F.R. §204.5(ii)(C) requires that any foreign degree be the equivalent of a United States degree. The record shows that the beneficiary holds a Bachelor of Business Technology - Major in Accounting degree from Kalookan City Polytechnic College in the Philippines. There is nothing in the record to indicate that this degree is the equivalent of a United States baccalaureate degree. Since the appeal will be dismissed on another ground, this issue will not be

discussed further.

No additional evidence of the petitioner's ability to pay the wage offered has been submitted. Accordingly, after a review of the evidence submitted, 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.