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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, DC 20536

File: [REDACTED] RC 01 238 53217 Office: NEBRASKA SERVICE CENTER

Date: OCT 21 2003

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: SELF-REPRESENTED

PUBLIC COPY

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 employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a manufacturer. It seeks to employ the beneficiary permanently in the United States as a supervisor loom fixer. 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 continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, the petitioner argues that the evidence establishes the petitioner's financial ability to pay the proffered wage.

Section 203(b)(3)(A)(i) of 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.

The regulation at 8 C.F.R. § 204.5(g) states in pertinent part:

(2) *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. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The regulation at 8 C.F.R. § 103.3(b) relating to oral argument before the AAO additionally provides in pertinent part:

(1) *Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary.

Eligibility in this case rests upon 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 June 7, 2000. The beneficiary's salary as stated on the approved labor certification is \$22.00 per hour or \$45,760

annually.

At the outset, we note that the petitioner requests oral argument before the AAO. The petitioner does not specifically clarify why oral argument is necessary pursuant to 8 C.F.R. § 103.3(b)(1), as previously noted. As such the petitioner's request is denied. The decision in this case will be based on the evidence contained in the record.

The petitioner initially submitted insufficient evidence supporting its ability to pay the proffered wage. On April 2, 2002, the director requested additional evidence related to the petitioner's ability to pay the beneficiary's proffered wage. The director instructed the petitioner to submit evidence that "must include your latest annual report, your latest U.S. tax return, or audited financial statements."

Included in its response, the petitioner submits a background letter explaining the problems in securing qualified individuals and stating that it changed its name to [REDACTED] in 2001. The petitioner also submits a [REDACTED] company brochure, a Georgia Dept. of Transportation initial product evaluation letter, two product specification sheets, and a copy of an "equipment lease/purchase to [REDACTED] by [REDACTED]. The only documents submitted that relate to the ability to pay are bank statements in the name of [REDACTED] that cover a period from February 1, 2001 to September 3, 2001 and bank statements in the petitioner's name that cover various periods from December 31, 1999 to July 2, 2000. The petitioner also submitted unaudited financial statements of [REDACTED] LLC for the period ending December 31, 2000 and December 31, 2001.

The director denied the petition. The director noted that although the petitioner claimed that a name change had taken place, no documentation was submitted to substantiate this event. He also determined that the petitioner had not established its continuing ability to pay the beneficiary's proffered wage as of the priority date of the visa petition. We concur with the director's conclusion, although the director misstated the proffered wage as \$67,600. Nonetheless, we find that the petitioner failed to submit competent evidence of its ability to pay. The regulation at 8 C.F.R. § 204.5(g)(2) requires primary evidence in the form of audited financial statements, federal tax returns or annual reports. While additional material may be submitted, such documentation cannot substitute for the primary evidentiary requirements. The petitioner submitted compilation reports of its financial status, which by their own terms, were not audited or reviewed and represented only management opinion. As such, they hold little evidentiary value. As noted by the director, the bank statements submitted by the petitioner had fluctuating balances that cannot be considered to substitute for the evidence required by 8 C.F.R. 204.5(g)(2).

On appeal, the petitioner, represented by the general manager, resubmits a copy of the "equipment lease/purchase to [REDACTED] by [REDACTED] and asserts that this represents equipment that is only 50% utilized because of the lack of technical support. The petitioner contends that with the beneficiary's assistance, monthly profit will increase approximately \$68,000 based on additional monthly sales of approximately \$125,000. Although we do not decline to consider such an argument, in light of the absence of any documentation submitted in conformance with the three types of evidence enumerated in 8 C.F.R. 204.5(g)(2), we cannot conclude that this essentially speculative assertion, standing alone, establishes the petitioner's continuing financial ability as of the visa priority date of June



7, 2000.

The petitioner also submits copies of Georgia limited liability company registration documents that establish that [REDACTED] L.C. is registered as a limited liability company. We note that the name of the petitioner [REDACTED] is not mentioned in either of these documents. As such, we would note that the record contains no first-hand evidence of corporate and contractual documentation establishing the manner by which the petitioner became [REDACTED]

While the petitioner may currently be a financially viable business, it has not submitted sufficiently convincing financial information to establish its ability to pay the beneficiary's offered wage as of the visa priority date of June 7, 2000 and continuing until the 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.