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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



File: WAC 02 162 51019 Office: CALIFORNIA SERVICE CENTER Date: **OCT 21 2003**

IN RE: Petitioner:   
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Other Worker 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a fish company. It seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), which provides visas to qualified immigrants performing unskilled labor for which qualified workers are not available in the United States. The petitioner seeks to employ the beneficiary as a fish butcher. 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 and continuing until the beneficiary obtained lawful permanent residence.

On appeal, the petitioner contends that it is a debt free and profitable company that has reinvested its income back into the business.

The regulation at 8 C.F.R. § 204.5(g) provides 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.

Eligibility in this case rests upon whether the petitioner’s ability to pay the wage offered has been established as of the petition’s priority date. The priority date 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 November 7, 1997. The beneficiary’s salary as stated on the labor certification is \$11.55 per hour or \$24,024 annually.

In this case, the petitioner initially submitted copies of its Form 1040 U.S. Individual Income Tax Return for the tax years 1997 through 2000 as evidence of its ability to pay the beneficiary's proffered wage. As noted by the director, the information contained in these returns reflects the following:

Year	Gross Receipts	Business Income	Adjusted Gross Income
1997	\$255,705	\$19,827	\$18,672
1998	\$280,812	\$12,673	\$11,042

Year	Gross Receipts	Business Income	Adjusted Gross Income
1999	\$265,607	\$20,012	\$17,110
2000	\$213,975	\$14,510	\$12,567

On July 15, 2002, along with evidence pertaining to the beneficiary's work experience, the director instructed the petitioner to submit evidence of its ability to pay the beneficiary's wage at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. The director specifically instructed the petitioner to submit evidence relevant to the year 2001. In response, the petitioner submitted a copy of its 2001 Form 1040 U.S. Individual Income Tax Return. This return and attached Schedule C indicated that the petitioner had gross receipts of \$191,118, business income of \$13,975, and an adjusted gross income of \$13,245. As noted by the director, the petitioner claimed no wages or labor paid on the tax returns submitted for 1997 through 2001.

In denying the petition, the director stated that each of the returns submitted showed that the adjusted gross income of the owner of the petitioning business was insufficient to meet the beneficiary's proffered wage of \$24,024. We concur.

On appeal, the petitioner's owner submits a letter stating that the numbers on the tax returns do not give a complete picture of the potential of the business. She asserts that the "past 6 years warranted our company to reinvest our income back into the business to meet the requirements of the Federal Food & Drug Administration. This will justify our low gross income shown on our tax returns." The petitioner's owner submits no evidence to support this assertion. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Her assessment of the potential of the business is essentially speculative. As noted previously, the regulation at 8 C.F.R. § 204.5(g)(2) requires specific forms of primary evidence to establish a petitioner's ability to pay the proffered wage. This evidence is either annual reports, federal tax returns, or audited financial statements. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well recognized. See *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986)(citing *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9<sup>th</sup> Cir. 1984)).

Based on the evidence contained in the record, the petitioner has not demonstrated the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status.

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.