

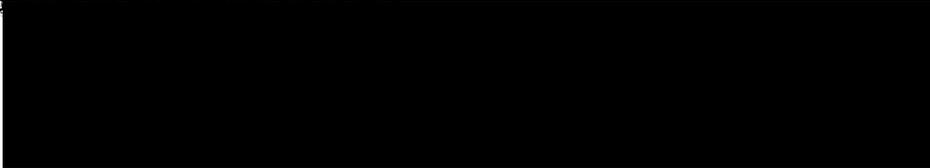
B6

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

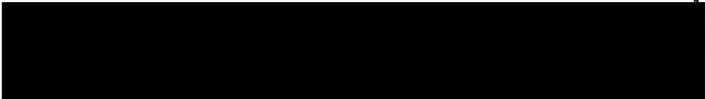


File: WAC 02 146 52974

Office: California Service Center

Date: OCT 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:



**PUBLIC COPY**

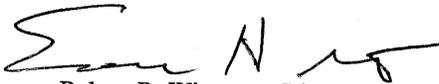
INSTRUCTIONS:

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

The petitioner is a care home. It seeks to employ the beneficiary permanently in the United States as a Residential Care for the Elderly Administrator. 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.

On appeal, counsel submits a brief and 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 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 December 31, 1997. The beneficiary's salary as stated on the labor certification is \$65,748.80 per annum.

Counsel initially submitted a copy of the petitioner's 1997 Internal Revenue Service (IRS) Form 1120S which showed an ordinary income of \$82,241.

On May 13, 2002, the director requested additional evidence of the petitioner's ability to pay the wage offered. The director gave the petitioner until August 5, 2002, to supply this evidence. On July 25, 2002, counsel requested additional time in which to furnish the requested evidence.

In his decision denying the petition, the director noted that 8 C.F.R. 103.2(b)(18) states when there is a request for missing initial evidence, the petitioner shall be given 12 weeks to respond, and additional time may not be granted.

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

On appeal, counsel submits copies of the petitioner's bank account statements for the period from January, 2000 through September 2002, and argues that in 1997 the petitioner had depreciation of \$11,818.00 on hand and that the ordinary income in 1997 of \$82,241.00 is sufficient to pay the salary offered.

Counsel is correct in stating that the petitioner had the ability to pay the wage offered in 1997; however, the petitioner must show that it had 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. See 8 C.F.R. § 204.5(g)(2). No tax returns or audited statements for 1998 to the present have been submitted as requested by the director on May 13, 2002.

The commercial bank statements submitted which cover the period from January 2000 until September 2002 do not cover the entire required period, and are not in conformity with the requirement of the regulation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, it is noted that the labor certification accompanying the petition shows that the beneficiary has worked for the petitioner since August 1997. Nowhere in the record is there any indication of what the petitioner has been paying the beneficiary nor are there any W-2 Wage and Tax Statements for the beneficiary.

The petitioner must show that it had 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. See 8 C.F.R. § 204.5(g)(2). The petitioner has not made

this showing.

Beyond the decision of the director, it is noted that the labor certification in this case requires that the beneficiary have a college degree in any field. The record shows that the beneficiary has a Bachelor of Science degree in Education from Divine Word College of Laoag City, Philippines. The regulations at 8 C.F.R. 204.5(I)(3)(ii)(C) require that the petition be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree. There is nothing in the record to indicate that the degree possessed by the beneficiary is the equivalent of a United States baccalaureate. As the appeal will be dismissed, on the ground discussed, this issue will not be examined further.

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.