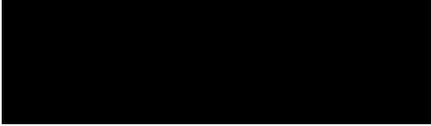


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



OCT 28 2003

File: WAC 02 220 53926 Office: CALIFORNIA SERVICE CENTER Date:

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 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 pharmacy. It seeks to employ the beneficiary permanently in the United States as a pharmacist computer technician. 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 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 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 day 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 on January 14, 1998. The proffered salary as stated on the labor certification is \$15.61 per hour, which equals \$32,468.80 per year.

With the petition, counsel submitted the petitioner's Form 1120, U.S. Corporation Income Tax Return for the year 2000. That return shows that the petitioner declared a loss of \$775.48 as

its taxable income before net operating loss deductions and special deductions during that year. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of \$115,985.32 and current liabilities of \$64,128.86, which yields net current assets of \$51,856.46.

Because the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on October 22, 2002, requested additional evidence pertinent to that ability. In addition, the Service Center specifically requested copies of the petitioner's federal income tax returns for each year since 1998.

In response, counsel submitted copies of 2000 and 2001 Form W-2 Wage and Tax Statements showing wages the petitioner paid to the beneficiary. An unsigned handwritten note that accompanied those W-2 forms states that during 1998 and 1999 the petitioner paid the beneficiary in cash.

The 2000 W-2 form shows that the petitioner paid the beneficiary \$14,400 during that year. The 2001 W-2 form shows that the petitioner paid the beneficiary \$21,600 during that year.

Counsel also submitted the petitioner's California Form DE-6 Quarterly Wage Reports for the first quarters of 1998 and 1999 showing the amounts the petitioner paid to its employees during those quarters, and 1998 Form W-2 wage and tax statements and W-3 transmittals showing the amounts the petitioner paid its employees during that year.

Finally, counsel submitted copies of the petitioner's 1998, 1999, and 2001 Form 1120 U.S. Corporation Income Tax returns.

The 1998 return shows that the petitioner declared a loss of \$2,165.10 as its taxable income before net operating loss deduction and special deductions during that year. The corresponding Schedule L shows that at the end of that year, the petitioner had current assets of \$97,460.68 and current liabilities of \$74,381.42, which yields net current assets of \$23,079.26.

The 1999 return shows that the petitioner declared a loss of \$934.49 as its taxable income before net operating loss deduction and special deductions during that year. The corresponding Schedule L shows that at the end of that year, the petitioner had current assets of \$109,200.10 and current liabilities of \$61,732.24, which yields net current assets of \$47,467.86.

The 2001 return shows that the petitioner declared a loss of \$610.93 as its taxable income before net operating loss deduction and special deductions during that year. The corresponding

Schedule L shows that at the end of that year, the petitioner had current assets of \$143,145.04 and current liabilities of \$56,013.23, which yields net current assets of \$87,131.81.

The director determined that the evidence submitted did not establish that the petitioner had the ability to pay the proffered wage during 1998 and, on March 12, 2003, denied the petition.

On appeal, counsel declared that the decision had misstated the value of the petitioner's net assets at the end of 1998. Counsel stated that the petitioner's net assets of \$124,381.42 exceed the proffered wage and argued that the petitioner has therefore shown the ability to pay the proffered wage.

This office notes, however, that the figure cited by counsel is the petitioner's Schedule L, line 15(d) total assets. That figure is not net of the petitioner's liabilities and includes real property and various other assets that are not available to pay the proffered wage. Net current assets are calculated by subtracting the petitioner's current liabilities from its current assets. The director's arithmetic was flawed, but not by the order of magnitude counsel suggests. As was noted above, the figures on the petitioner's 1998 tax return reveal its net current assets to have been \$23,079.26.

The petitioner has not demonstrated that it paid any amount of wages to the beneficiary during 1998. On its 1998 tax return, the petitioner declared a loss, rather than income. The petitioner's net current assets at the end of that year, \$23,079.26, were insufficient to pay the proffered wage of \$32,468.80. The petitioner has not demonstrated that any other funds were available to pay that wage. The petitioner has not demonstrated the ability to pay the proffered wage during 1998.

During 1999, the petitioner declared a loss rather than income. The petitioner's net current assets of \$47,467.86, however, were sufficient to pay the proffered wage of \$32,468.80.

The petitioner demonstrated that it paid the beneficiary \$14,400 and \$21,600 during 2000 and 2001, respectively. The petitioner is only obliged, therefore, to show that it had the ability to pay the balance of the proffered wage, which was \$18,068.80 during 2000 and \$10,868.80 during 2001. During 2000 and 2001, the petitioner declared losses rather than income, but its net current assets at the end of those years, \$51,856.46 in 2000 and \$87,131.81 in 2001, were sufficient to cover those balances.

The petitioner failed to submit sufficient evidence that the petitioner had the ability to pay the proffered wage during 1998. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage 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.