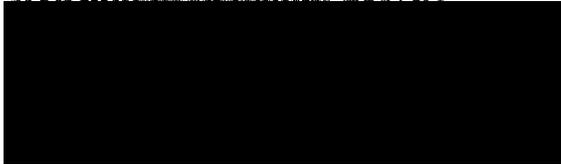


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U.S. Department of Homeland Security
Citizenship and Immigration Services

**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 02 171 53965 Office: CALIFORNIA SERVICE CENTER Date: **OCT 29 2003**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



PUBLIC COPY

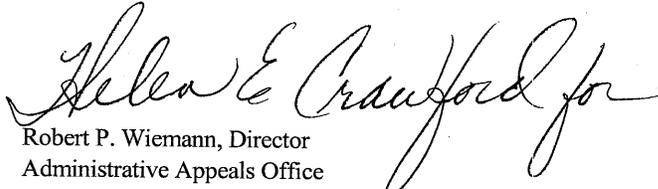
INSTRUCTIONS:

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 mushroom farm. It seeks to employ the beneficiary permanently in the United States as a field crop supervisor. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

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 or seasonal 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 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). The petition's priority date in this instance is January 14, 1998. The beneficiary's salary as stated on the labor certification is \$15.87 per hour or \$33,009.60 per year.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE), dated August 6, 2002, the director required

additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. The record contained the petitioner's 1998 and 1999 Forms 1120S, U.S. Income Tax Return for an S Corporation. The RFE exacted the petitioner's federal income tax return, annual report or audited financial statement for 2000 and 2001.

Counsel submitted the petitioner's 2000 and 2001 Forms 1120S. The federal tax returns for 1998-2001 reflected ordinary income (loss) from trade or business activities, respectively, of \$17,180, \$13,317, \$12,378, and a loss (\$6,249), each less than the proffered wage.

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

On appeal, counsel correctly notes several items besides ordinary income or (loss), pertinent to the ability to pay the proffered wage. Counsel submits copies of Wage and Tax Statements (Forms W-2) for payments to the beneficiary. Counsel, next, discusses only the favorable parts of Schedule L of the tax returns, cash and inventories. Net current assets (NCA), available to pay the proffered wage, result from the difference of current assets minus current liabilities, and NCA will be fully considered.

Ordinary income, Forms W-2, and NCA, calculated from Schedule L for 1998-2000 reflected, in U.S. dollars (\$):

	1998 (\$)	1999 (\$)	2000 (\$)	2001 (\$)
Income (Loss)	17,180.	13,317.	12,378.	(6,249)
Form W-2	16,119.50	30,216.48	18,726.60	20,313.60
NCA (Deficit)	105,033.	57,273.	809.	(2,093)

In 1998, the priority date, and in 1999, NCA satisfied the ability to pay the proffered wage. No combination satisfied it in 2000 and 2001. The computation of the proffered wage as \$33,009.60 appears to be correct, at 2, *supra*.

The petitioner must show that it had the ability to pay the proffered wage with particular reference to the priority date of the petition. In addition, it must demonstrate that financial ability and continuing until the beneficiary obtains lawful permanent residence. See *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977); *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977); *Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532 (N.D. Tex. 1989). The regulations require proof of

eligibility at the priority date. 8 C.F.R. § 204.5(g)(2). 8 C.F.R. § 103.2(b)(1) and (12).

The petitioner presents its commercial bank statements from January 1998 to August 2002 to demonstrate that it had sufficient cash flow to pay the proffered wage. Counsel offers no proof that they somehow represent additional funds beyond those of the tax returns and financial statements. 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).

Similarly, counsel identifies a Kobota tractor and Toyota forklift truck as assets or collateral to apply to raise loans to pay the beneficiary's wages. A loan or line of credit, if paid, will, of course, increase current liabilities and deplete ordinary income and cash. Counsel offers no contract or agreement to pledge the tractor and truck in 2000 and 2001. No explanation reveals how the hypothetical transaction, if consummated, would have created assets in those years, not otherwise found in the tax returns and financial statements.

Contrary to counsel's conclusion, the table at 3, *supra*, for 2000 and 2001, states no ordinary income (loss), wages paid, and NCA (deficit) sufficient to demonstrate the ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence.

After a review of the federal tax returns, 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 until the beneficiary obtains lawful permanent residence.

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.