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

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, D.C. 20536

File: WAC 02 032 56805 Office: California Service Center Date: **SEP 16 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)

IN BEHALF OF PETITIONER:

**PUBLIC COPY**

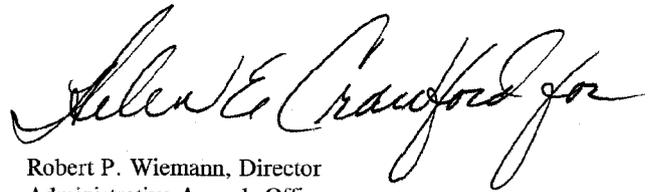
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Bureau of Citizenship and Immigration Services (Bureau) 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 which 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 video rental and grocery store. It seeks to employ the beneficiary permanently in the United States as a bookkeeper. 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 financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a brief.

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 continuing ability to pay the wage offered beginning on the priority date, 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 request for labor certification was accepted for processing on January 13, 1998. The beneficiary's salary as stated on the labor certification is \$12.64 per hour which equals \$26,291.20 annually.

With the petition, counsel submitted the petitioner's 1998, 1999, and 2000 Form 1065 U.S. Partnership Return and 1998 and 1999 California Form 565 Partnership Return.

The 1998 federal return showed a loss of \$15,426, which was confirmed by the corresponding California return. The 1999 federal return showed an income of \$12,900, which was confirmed by the corresponding California return. The 2000 federal return showed an income of \$14,231.

The director found that the petitioner had submitted insufficient evidence of the petitioner's ability to pay the proffered wage. On February 16, 2002, the California Service Center requested additional evidence pertinent to the petitioner's continuing ability to pay the proffered wage. The director requested evidence of that ability beginning on the priority date, January 13, 1998, and continuing to the date of that request. The director specified that the evidence should be in the form of copies of annual reports, complete federal tax returns, or complete audited financial statements.

The director also requested copies of the petitioner's California Form DE-6 Quarterly Wage Reports and a statement of the monthly income and expenses of the petitioner's owners, and a statement of the assets of each partner which might be used to pay the proffered wage.

In response, counsel submitted a copy of the petitioner's 2001 Form 1065 U.S. Return of Partnership Income, copies of the petitioner's Form DE-6 Quarterly Wage Reports for all four quarters of 2001 and the first quarter of 2002, and a monthly budget of Efren Crisologo, one of the petitioner's owners, and his wife.

The 2001 Form 1065 shows an income of \$32,190. The monthly budget states that Mr. and Mrs. [REDACTED] have a monthly income of \$3,400 and monthly expenses of \$1,500.

On June 6, 2002, the Director, California Service Center, found that the petitioner had failed to demonstrate that it had sufficient funds to pay the proffered wage and denied the petition.

On appeal, counsel argued that the evidence demonstrates the petitioner's ability to pay the proffered wage.

Both the director and counsel have complicated the matter by discussing whether the petitioner's profits are sufficient to support the partners and, at the same time, pay the proffered wage. The calculation pertinent to this matter is somewhat more simple.

The petitioner suffered a loss during 1998 of \$15,426. The petitioner earned ordinary income during 1999 of \$12,900. The petitioner earned ordinary income during 2000 of \$14,231. During each of those three years, the petitioner's income was insufficient to pay the proffered wage of \$26,291.20. Other than that income, the petitioner did not demonstrate that it had any resources at its disposal to pay the proffered wage during those years.

The petitioner failed to submit sufficient evidence that the petitioner had the ability to pay the proffered wage during 1998, 1999, and 2000. Therefore, the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date and continuing to 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.