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U.S. Citizenship
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FILE: LIN 02 102 54815 Office: NEBRASKA SERVICE CENTER Date:

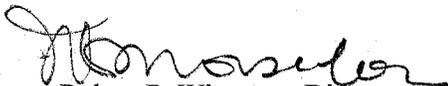
IN RE: Petitioner:
Beneficiary:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a hotel. It seeks to employ the beneficiary permanently in the United States as a front office manager. 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 continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits additional evidence and requests reversal of the director's decision.

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.

The regulation at 8 C.F.R. § 204.5(g)(2) provides 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. . . . 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 [CIS].

Eligibility in this case rests upon 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. 8 C.F.R. § 204.5(d). Here, the petition's priority date is January 7, 2000. The beneficiary's salary as stated on the labor certification is \$31,948.80 per year. The information provided on the Immigrant Petition for Alien Worker (I-140) indicates that the petitioner was established in 1998 and has 16 employees.

The petitioner, through counsel, initially submitted copies of bank statements in the name of "Seville Hotels Inc.," in support of its ability to pay the beneficiary's proposed salary. The bank statements cover a period from December 1999 through November 2001. On April 9, 2002, the director informed the petitioner that the documentation provided was not sufficient to establish its ability to pay the proffered wage. The director specifically instructed the petitioner to submit signed corporate income tax returns for 1999, 2000, and 2001. The director also advised the petitioner that personnel records, profit/loss statements, or bank records may be included in its response.

The petitioner responded to the director's request by resubmitting copies of the previously provided bank statements, through December 2001. The petitioner also provided a copy of an accountant's report, signed by Joseph Yeboah, C.P.A. Mr. Yeboah refers to "Seville Hotels, Inc dba Comfort Inn" as the subject of his review.

He states that the "company is one of four hotel facilities owned by Dr. Abbas Shikary." He also asserts that the "group of companies" has average gross revenue in excess of \$3.5 million and that Seville Hotels, Inc. has sufficient cash flow, represented by its bank statements, to cover the beneficiary's proposed salary. It is not clear from Mr. Yeboah's letter, whether Seville Hotels, Inc. represents the group of hotels or only the petitioner. No further evidence was submitted describing the relationship between the petitioner and Seville Hotel, Inc. It is noted that simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Also included in the petitioner's response, is a copy of an internally generated statement of revenue and expenses for the period ending April 30, 2002, which is in the name of the petitioner as "Comfort Inn-Seville." It indicates that the reported net income for this period is \$20,816.63, or approximately \$11,000 less than the beneficiary's wage offer of \$31,948.80.

The director concluded that evidence failed to establish that the petitioner has had the continuing ability to pay the proffered wage. The director noted that the petitioner failed to submit its tax returns as requested and failed to submit persuasive evidence specifically related to the petitioner rather than Seville Hotels, Inc.

On appeal, counsel submits a copy of a previously provided bank statement of Seville Hotels, Inc. and another copy of the petitioner's internally generated statement of revenue and expenses for the period ending April 30, 2002. The bank statement shows a balance of \$11,199.69. Counsel explains that the legal corporate name of the petitioner is "Seville Hotel, Inc." with a federal tax identification number of 31-1547730. He states that the director did not raise the issue in the request for additional evidence or else it would have been addressed. Counsel also asserts that the bank statements establish that the petitioner has the ability to pay the proffered wage.

Although the AAO agrees with counsel's observation that the director initially failed to mention the discrepancy between the petitioner's name and the name given on the bank statements, neither was this issue sufficiently clarified on appeal. In visa petition proceedings, the burden of proof to establish eligibility rests with the petitioner. *In re Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Without first-hand competent evidence such as state registration documents, articles of incorporation, purchase contracts, or tax returns that clearly establishes the relationship between the petitioner and Seville Hotels, Inc., it cannot be concluded that they are the same entity, or that the financial information related to Seville Hotels, Inc. should be accepted as the petitioner's. The assertions of counsel on appeal do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is also noted that a corporation is a separate and distinct legal entity from its owners or stockholders. *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980); *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, the assets of its shareholders, or other corporations or enterprises cannot generally be considered in determining the petitioning corporation's ability to pay the proffered wage.

The petitioner must establish its ability to pay the proffered wage as of the priority date. The petitioner failed to submit copies of its federal tax returns as requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The regulation at 8 C.F.R. § 204.5(g)(2) further requires copies of annual reports, federal tax returns, or audited financial statements. While additional material, such as the petitioner's April 2002 revenue and expense statement may be submitted, such documentation generally cannot be substituted for the fundamental evidentiary requirements. It would need to provide sufficient independent probative value in order to be accepted as competent evidence. Here, neither the bank statements, nor the other financial information

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provided to the record were sufficiently persuasive to establish the petitioner's continuing ability to pay the beneficiary's proposed wage offer of \$31,948.80 as of the visa 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.