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U.S. Citizenship  
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*BE*

APR 07 2004

FILE: EAC 01 229 59395 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for a 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 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, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted, the previous decisions of the director and AAO will be affirmed, and the petition will be denied.

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 manufacturer of custom furniture and fences. It seeks to employ the beneficiary permanently in the United States as furniture designer/wood carver. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor.

On January 24, 2002, 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 August 11, 2002, the AAO dismissed the petitioner's appeal. The AAO reviewed the 1999 and 2000 federal tax returns previously submitted, the letters from the petitioner's president and accountant offered in support of its ability to pay the proffered wage, as well as counsel's arguments offered on appeal. The AAO affirmed the director's decision, concluding that the petitioner's financial data failed to establish that it had the continuing ability to pay the beneficiary beginning as of the October 13, 1999 priority date of the visa petition.

Counsel submits a motion to reconsider, contending that the AAO should consider the petitioner's financial status within the context of *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). Thus, the motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy. Counsel asserts that the financial health of the petitioner is reflected by the fact that the business has existed for over 15 years, employs nine full-time workers, and has declared gross income of over \$900,000 as shown on the 1999 and 2000 tax returns. Counsel also asserts that the expectation for future growth is reasonable as shown by the petitioner's filing for three additional alien workers and the leasing of additional space in August 2001. He argues that the petitioner's small net income shown on its 2000 corporate tax return should not preclude the approval of the petition based on its anticipation of future revenue.

Counsel is correct that *Matter of Sonogawa* is sometimes applicable where reasonable expectations of increasing profits overcome current evidence of unusual hardship. That case, however, relates to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years.

During the year in which the petition was filed, the *Sonogawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of time when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look*. Her clients included movie actresses, society matrons and Miss Universe. The petitioner had lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturier.

In this case, the two corporate tax returns submitted as evidence of the petitioner's ability to pay the beneficiary's proffered annual salary of \$49,920, each covered a fiscal year beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>. Thus, the 1999 tax return presents financial information from July 1, 1999 to June 30, 2000 and the 2000 return runs from July 1, 2000 through June 30, 2001. Both the petitioner's net income of \$38,274 for fiscal year 1999 and the -\$907 net income reported for fiscal year 2000 were insufficient to cover the proffered salary of \$49,920. The petitioner's net current assets set forth on Schedule L of both tax returns were -\$91,921 and -\$83,274, respectively, well short of the necessary level to cover the beneficiary's wage offer. The evidence does not show that unusual circumstances exist in this case, which parallel those in *Sonegawa*, or that this level of income is somehow uncharacteristic within a framework of profitable years. It is noted that the petitioner's space expansion pursuant to a new lease arrangement did not occur until August 2001. We cannot conclude that the petitioner's projection of future earnings and profitability overcomes the previous AAO decision of August 11, 2002 to affirm the director's denial. See *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977).

Accordingly, based on the evidence contained in the record and the foregoing discussion, we cannot conclude that the petitioner has presented sufficient persuasive evidence to demonstrate its continuing ability to pay the proffered wage as of the priority date of the petition. As such, the petitioner's motion does not overcome the grounds of dismissal as set forth in the AAO decision of August 11, 2002.

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 motion to reconsider is granted. The AAO's decision of August 11, 2002 dismissing the petitioner's appeal is affirmed. The petition remains denied.