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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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APR 08 2004

FILE: WAC 02 130 53708 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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 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 sustained. The petition will be approved.

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 or professional. The petitioner is a leather goods importer. It seeks to employ the beneficiary permanently in the United States as an import manager. 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.

The director determined that the petitioner had failed to establish its continuing ability to pay the proffered salary as of the visa priority date.

On appeal, the petitioner[1] maintains that its financial data demonstrates sufficient ability to pay the proffered salary and that it had employed the beneficiary at the proffered salary.

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.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The regulation at 8 C.F.R. § 204.5(g)(2) also 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 matter is based 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). The petition's priority date in this instance is January 14, 1998. The beneficiary's salary as stated on the labor certification is $4,043.87 per month or $48,526.44 per year. The visa petition reflects that the petitioner has two employees and was established in 1995.

The petitioner initially submitted a copy of its 1999 corporate tax return and a partial copy of its 2000 corporate tax return in support of its ability to pay the beneficiary's wage offer of $48,526.44 per year. On June 3, 2002, the director requested additional evidence to support the petitioner's ability to pay the proffered wage as well as

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[1] The petitioner filed the appeal. As no withdrawal appears in the record, a copy of this decision will be provided to counsel of record.

other documentation relating to the beneficiary's educational and employment experience. The director specifically advised the petitioner to submit copies of its annual reports, signed federal tax returns including Internal Revenue (IRS) supporting documents, or audited financial statements from 1998 through the present.

Counsel's response included copies of the petitioner's Form 1120A, U.S. Corporation Short Form Income Tax Return for 2000 and 2001, as well as IRS computer print-outs verifying the information filed. The petitioner's corporate tax returns reveal that the petitioner files its tax returns based on a standard calendar year. Together with the 1999 corporate tax return previously submitted, they show the petitioner's taxable income before net operating loss deduction (NOL) and special deductions as:

Year	Taxable Income (before NOL and special deductions)
1999	$ 28,370
2000	29,150
2001	32,357

The director issued a notice of intent to deny on July 11, 2002. The director concluded that the petitioner's taxable income as stated on its 1999, 2000, and 2001 tax return failed to demonstrate a continuing ability to pay the proffered salary, beginning as of the visa priority date of January 14, 1998. The director afforded thirty additional days to the petitioner to provide further evidence or arguments in support of its ability to pay the proposed salary.

Counsel's response to the director's notice of intent to deny included a copy of the petitioner's 1998 corporate tax return. It shows that the petitioner declared $36,224 in taxable income before the NOL and special deductions in that year. The beneficiary's Wage and Tax Statement (W-2) for 2001 also accompanies this evidence. It reflects that the petitioner paid the beneficiary $42,164.50 in wages in 2001. A letter, dated July 11, 2002, from the president and sole shareholder of the petitioning business is included in counsel's response. The president states that he reduced his salary when the beneficiary received employment authorization in 2001 in order to accommodate the beneficiary's salary and is happy to continue to do so.

The director denied the petition, citing the inadequacy of the petitioner's taxable income to meet the beneficiary's proposed salary in 1999, 2000, and 2001. As noted by the petitioner on appeal, the director erroneously stated that the record failed to indicate whether the beneficiary ever received wages from the petitioner and the director failed to mention the petitioner's 1998 tax return that had been submitted with its response to the notice of intent to deny. On appeal, the petitioner resubmitted the documentation previously in the record, maintaining that it has always had the ability to pay the proffered salary since the priority date of January 14, 1998. The petitioner claims that the response to the notice of intent to deny shows that the beneficiary has been receiving the proffered wage for at least one year.

Although the AAO does not necessarily agree that the record clearly shows that the beneficiary has received the proffered wage, since the beneficiary's 2001 W-2 shows approximately $6,000 less than the proposed salary, but the AAO concurs that the evidence shows that the petitioner has had the ability to pay the proffered wage. The petitioner's net current assets as shown on Part III, Balance Sheet per Books of the corporate tax returns reflects the following:

Year	Current Assets	Current Liabilities	Net Current Assets
1998	$ 97,192	$ 9,257	$ 87,935
1999	119,805	3,500	116,305
2000	149,955	4,500	145,455
2001	261,509	111,200	150,309

Net current assets are the difference between current assets and current liabilities. CIS will review a petitioner's net current assets because it reflects the level of liquidity a petitioner has during the year covered by the tax return's balance sheet. It represents the amount of cash or cash equivalents that would reasonably be available to pay the beneficiary's proffered salary during that year. In this case, although the petitioner's level of net income was not sufficient to meet the beneficiary's proffered wage, the petitioner's net current assets were more than enough to cover the proffered wage in each of the relevant years.

Following a review of the federal tax returns and other financial information the petitioner provided, as well as the evidence and arguments offered on appeal, the AAO concludes that the petitioner demonstrated a continuing financial ability to pay the proffered wage 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 met that burden.

ORDER: The appeal is sustained. The petition is approved.