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**U.S. Department of Homeland Security**

**Citizenship and Immigration Services**

*ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536*



File: WAC 02 194 51651 Office: CALIFORNIA SERVICE CENTER

Date: **APR 09 2004**

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)

ON BEHALF OF PETITIONER:



**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.

  
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 sustained. The petition will be approved.

The petitioner is a church. 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 found that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also found that the petitioner had not established that the beneficiary met the minimum requirements of the proffered position as stated on the approved Form ETA 750.

On appeal, counsel submits a statement and additional evidence.

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 nature, for which qualified workers are not available in the United States.

The regulation at 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 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 proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. The petitioner must also demonstrate that the beneficiary was qualified for the proffered position on the priority date. Here, the Form ETA 750 was accepted on January 14, 1998. The proffered wage as stated on the Form ETA 750 is \$12.64 per hour, which equals \$26,291.20 per year. The ETA 750 further states that the

proffered position requires two years experience in bookkeeping.

With the petition counsel submitted a copy of a bank statement showing that on January 9, 2002, the petitioner had \$38,436.01 in its checking account. Counsel submitted no evidence of the beneficiary's qualifications with the petition.

The evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date and insufficient to show that the beneficiary was qualified for the proffered position on the priority date. Therefore, the California Service Center, on August 13, 2002, requested additional evidence.

Consistent with 8 C.F.R. § 204.5(g)(2), the Service Center requested copies of annual reports, federal tax returns, or audited financial statements showing the petitioner's continuing ability to pay the proffered wage beginning on the priority date. The Service Center also requested evidence that the beneficiary had the requisite experience as stated on the approved ETA 750.

In response, counsel submitted (1) the petitioner's unaudited financial statements for the 2001 calendar year, (2) the petitioner's bank statement for the period from September 17, 2002 through October 15, 2002 showing a beginning balance of \$35,365.69 and an ending balance of \$36,427.65, (3) a letter, dated October 2002, with English translation, from the president of Clemente Borbon Borbon of Obregon, Sonora, Mexico, stating that the beneficiary worked for that company, performing duties consistent with the position of bookkeeper, from November 11, 1994 through June 15, 1996, (4) a letter, dated October 5, 2002, with English translation, from the Rural Credit Bank of the Northwest in Obregon, Sonora, Mexico, stating that the beneficiary worked for that bank, performing duties consistent with the position of bookkeeper, from June 16, 1996 through December 30, 1996, and (5) a letter from the petitioner's pastor stating that the beneficiary worked for the petitioner, performing duties consistent with the position of bookkeeper, from January 1998 through October 19, 2002, the date of the letter.

The director found that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date and did not establish that the beneficiary met the minimum requirements of the proffered position as stated on the Form ETA 750. The director denied the petition on November 27, 2002.

On appeal, counsel stated that, although the petitioner is exempt from filing income tax returns, it had chosen to file California and Federal returns for the years 1998 through 2001. Counsel also stated that the employment verification letters submitted

demonstrate that the beneficiary is qualified for the proffered position.

With the appeal, counsel submitted copies of the petitioner's 1998, 1999, 2000, and 2001 Form 990, Returns of Organization Exempt from Income Tax.

The 1998 return shows line 21 fund balances of \$115. Part IV of that return shows current assets of \$51,391 and no current liabilities, which equals net current assets of \$51,391.

The 1999 return shows line 21 fund balances of \$42. Part IV of that return shows current assets of \$51,848 and no current liabilities, which equals net current assets of \$51,848.

The 2000 return shows line 21 fund balances of \$264. Part IV of that return shows current assets of \$52,569 and no current liabilities, which equals net current assets of \$52,569.

The 2001 return shows line 21 fund balances of \$77. Part IV of that return shows current assets of \$53,367 and no current liabilities, which equals net current assets of \$53,367.

During each of the salient years, the petitioner had net current assets in excess of the amount of the proffered wage. Therefore, the petitioner has demonstrated the ability to pay the proffered wage during each of the salient years.

As to the beneficiary's employment experience, this office notes that the letter from Clemente Borbon Borbon indicates that the beneficiary obtained slightly more than one year and seven months of bookkeeping experience with that company. The letter from Rural Credit Bank indicates that the beneficiary obtained slightly more than six months of bookkeeping experience with that company. Those two periods of employment, combined, equal more than two years of experience.

The beneficiary's employment with the petitioner began during January of 1998. The priority date is January 14, 1998. Therefore, that experience there was all, or almost all, after the priority date. That experience, however, is unnecessary to establish the beneficiary's eligibility.

Contrary to a statement in the decision, the periods of the beneficiary's claimed employment do not conflict with the period during which the beneficiary claimed, on the Form ETA 750 Part B, to be enrolled in school. That latter period was from December 1996 through May 1997.

This office sees no reason to question the beneficiary's asserted employment history. Therefore, the petitioner has established that the beneficiary has the requisite two years of bookkeeping

experience.

Having established its ability to pay the proffered wage and the beneficiary's qualifying employment experience, the petitioner has overcome both of the bases of the decision of denial.

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.