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

*BP*



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

File: WAC-02-170-50887 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: SELF-REPRESENTED

**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*  
Robert P. Wiemann, Director  
Administrative Appeals Office  
*f*

**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 petitioner is a telecommunications company. It seeks to employ the beneficiary permanently in the United States as a software engineer. 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.

On appeal, the petitioner submits a financial report.

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.

Regulations at 8 C.F.R. § 204.5(g)(2) state 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 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. The petition's priority date in this instance is July 26, 2001. The beneficiary's salary as stated on the labor certification is \$69,659 per year.

With the petition, the petitioner submitted copies of the petitioner's 2001 corporate income statement.

The petitioner initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated July 22, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing. The RFE exacted the petitioner's federal income tax return, annual report, audited financial statement, or if the petitioner has more than 100 employees, a current statement from a financial officer.

The petitioner submitted additional financial documentation.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition. The director specifically noted the absence of any annual report in the record, tax records, or audited financial statements.

On appeal, the petitioner states that it is submitting an audited financial statement for 2001, which should be considered as an annual report since, during 2001, the company changed ownership. The petitioner further states that documentary evidence reflecting that it has over 200 employees is being submitted.

The petitioner submitted a letter from the chief financial officer of the company attesting to the number of employees (over 200) and the petitioner's ability to pay the proffered wage, audited 2001 financial statements for the period ending December 31, 2001, an income statement and balance sheet, a list of employees, and an organizational chart.

The regulation at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that in a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In this case, the petitioner has submitted a letter asserting that it has more than 100 employees and that it is financially viable.

The record does not contain any derogatory evidence which would persuade CIS to doubt the credibility of the information contained in the letter from the financial officer or the supporting documentation. Therefore, the petitioner has demonstrated its financial ability to pay the beneficiary's salary as of the petition's filing date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained.