

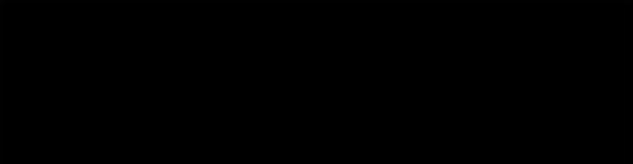
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



File: WAC 02 041 57012 Office: CALIFORNIA SERVICE CENTER

Date: APR 13 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*  
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 an auto body repair shop. It seeks to employ the beneficiary permanently in the United States as an auto body repairman. 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 determined 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.

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. Here, the Form ETA 750 was accepted on April 20, 2001. The proffered wage as stated on the Form ETA 750 is \$23.51 per hour, which equals \$48,900.80 per year.

With the petition, counsel submitted a copy of the petitioner's 1999 Form 1120 U.S. Corporation Income Tax Return. The return covers the petitioner's 1999 fiscal year (FY), which ran from October 1, 1999 through September 30, 2000. This office notes

that, because the priority date is April 20, 2001, information on the petitioner's FY 1999 tax return is not directly relevant to the petitioner's ability to pay the proffered wage beginning on the priority date.

Because the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on February 24, 2002, requested additional evidence pertinent to that ability.

The Service Center requested evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Consistent with 8 C.F.R. § 204.5(g)(2), the Service Center requested that the evidence be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The Service Center also requested that the petitioner provide copies of its California Form DE-6 Quarterly Wage Reports for the previous four quarters and copies of its 2001 Form W-2 Wage and Tax Statements and Form W-3 Transmittal Statements.

In response, counsel submitted the petitioner's 2000 Form 1120 U.S. Corporation Income Tax Return, covering the petitioner's fiscal year, which ran from October 1, 2000 through September 30, 2001. That return shows that the petitioner declared a taxable income before net operating loss deduction and special deductions of \$15,315 during that period. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of \$107,725 and current liabilities of \$6,127, which yields net current assets of \$101,598.

Counsel provided the petitioner's California Form DE-6 wage reports for all four quarters of 2001. Those reports show that the petitioner did not employ the beneficiary during 2001. Counsel also provided copies of its 2001 W-3 and W-2 forms. Those forms confirm that the petitioner did not employ the beneficiary during 2001.

The director determined 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, on May 15, 2002, denied the petition.

On appeal, counsel submits a copy of the petitioner's financial statements. The accountant's report that accompanies those financial statements makes clear that the financial statements were produced pursuant to an audit. The Statement of Operations included in those financial statements covers the period from April 21, 2001, the day after the priority date, until May 31, 2002. Counsel notes, correctly, that the net income shown on

that statement is \$79,089.

The Request for Evidence was issued on February 24, 2002. The Statement of Operations covers a period beginning on the day after the priority date and ending after that request for evidence. It therefore covers the entire period for which evidence was requested. The statement demonstrates that the petitioner was able to pay the proffered wage during that entire period out of its net income.

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.