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Citizenship and Immigration Services

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



File: WAC 01 290 52690 Office: California Service Center

Date: APR 15 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 dismissed.

The petitioner is a convalescent hospital. It seeks to employ the beneficiary permanently in the United States as a medical records chief. 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 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 or seasonal nature, for which qualified workers are not available in the United States.

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 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 continuing ability to pay the wage offered beginning on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on March 27, 1997. The proffered salary as stated on the labor certification is \$514.40 per week which equals \$26,748.80 annually.

With the petition, counsel submitted the petitioner's 1999 Form 1120 U.S. corporation income tax return. That return states that the petitioner declared a taxable income before net operating loss deductions and special deductions of -\$16,264 during that year. The accompanying Schedule L states that at the end of that year the petitioner had current assets of \$210,203 and current liabilities of \$147,129, which yields net current assets of \$63,074.

Because the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on February 6, 2002, requested additional evidence pertinent to that ability. The Service Center requested that the petitioner provide that evidence in the form of annual reports, federal tax returns, or audited financial statements. In addition, the Service Center requested the petitioner's Form DE-6 quarterly wage reports for the previous four quarters and the beneficiary's 2001 Form W-2 wage and tax statement.

In response, counsel submitted a request for a forty day extension of time during which to respond to the request for evidence. No further response was received. On August 2, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate the petitioner's ability to pay the proffered wage.

On appeal, counsel submits additional evidence but made no assignments of error.

Counsel submits the petitioner's 1997, 1998, 2000, and 2001 Form 1120 U.S. corporation income tax returns. The 1997 return shows that the petitioner declared a taxable income before net operating loss deductions and special deductions of -\$4,469,386 during that year. The corresponding Schedule L states that at the end of that year the petitioner had current assets of \$9,392,238 and current liabilities of \$9,055,342, which yields net current assets of \$336,896.

The 1998 return declared a taxable income before net operating loss deductions and special deductions of -\$2,021,462 during that year. The corresponding Schedule L shows that at the end of that year, the petitioner's current liabilities were greater than its current assets.

The 2000 return shows that the petitioner declared a taxable income before net operating loss deductions and special deductions of \$2,345,619 during that year.

The 2001 return shows that the petitioner declared a taxable income before net operating loss deductions and special deductions of \$1,846,481 during that year.

Counsel submitted the petitioner's Form DE-6 quarterly wage reports for all four quarters of 2001 and the first quarter of 2002. Counsel also submitted the petitioner's Form 941 Employer's Quarterly Federal Tax Returns for all four quarters of 2001 and the first and second quarters of 2002. Finally, counsel submitted two 2001 Form W-2 wage and tax statements showing amounts paid to the beneficiary by two employers during that year. Neither the W-2 forms nor the DE-6 forms indicate that the petitioner employed the beneficiary during 2001 or 2002.

The petitioner's 2000 and 2001 tax returns show that the petitioner had the ability to pay the proffered wage from its income during those years. The petitioner's 1997 and 1999 returns show that the petitioner was unable to pay the proffered wage from its income, but was able to pay the proffered wage from its net current assets during those years.

The only evidence in the record pertinent to the petitioner's ability to pay the proffered wage during 1998 is the petitioner's 1998 tax return. That return does not show that the petitioner was able to pay the proffered wage out of its income or out of its net current assets during that year.

The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage during 1998. Therefore, the petitioner has not established that it has had the continuing ability to pay the proffered salary beginning on the 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 not met that burden.

ORDER: The appeal is dismissed.