

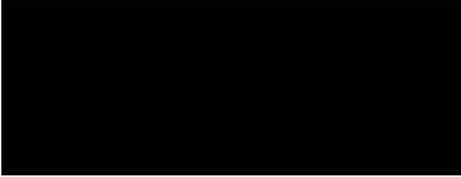
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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: APR 22 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 employment based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be remanded to the director to request additional evidence and entry of a new decision.

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. The petitioner is a wholesaler of fashion accessories. It seeks to employ the beneficiary permanently in the United States as a marketing analyst. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, the petitioner, through new counsel, submits additional evidence and contends that the petitioner has established its ability to pay the proffered wage.

Section 203(b)(3)(A)(i) of 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.

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 case rests, in part, upon the petitioner's continuing financial ability to pay the wage offered as of the petition's priority date. The regulation at 8 C.F.R. § 204.5(d) defines the priority date as the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. Here, the petition's priority date is April 23, 2001. The beneficiary's salary as stated on the labor certification is \$600 per week or \$31,200 per year, based on a 40-hour week. The record indicates that the petitioner was established in 1999 and is organized as a corporation. The visa petition, filed in March 2002, reflects that it has four employees

As evidence of its ability to pay, the petitioner initially submitted a copy of its Form 1120S, U.S. Income Tax Return for an S Corporation for the year 2000 and two internally generated financial statements covering the year ending December 31, 2001. The corporate tax return indicates that the petitioner files its tax return based on a standard calendar year, declaring \$17,844 as ordinary income in the year 2000. Schedule L reflects that it had \$46,079 in current assets and \$59,645 in current liabilities. The difference between current assets and current liabilities is a petitioner's net current assets. In 2000, the petitioner reported -\$13,566 as its net current assets.

CIS will consider net current assets because it represents the amount of liquidity that a petitioner has as of the date of filing. It reflects the level of cash or cash equivalents that would reasonably be available to pay the proffered salary during the year covered by the Schedule L balance sheet.

On July 26, 2002, the director requested additional evidence from the petitioner relevant to its ability to pay the beneficiary's proffered wage. Included in the petitioner's response is its 2001 corporate tax return. As the priority date of April 23, 2001 is covered by the petitioner's 2001 corporate return, this tax return is most relevant to the determination of the petitioner's ability to pay the beneficiary's proposed salary of \$31,200. The 2001 corporate tax return reveals that the petitioner declared \$20,461 in ordinary income. Its Schedule L balance sheet shows that it had \$95,382 in current assets and \$29,960 in current liabilities, producing \$65,422 in net current assets. These figures reflect the same amounts set forth in the financial statements initially submitted with the petition.

The director denied the petition, citing the petitioner's lack of the necessary levels of ordinary income in 2000 and 2001, but failed to discuss the petitioner's net current assets. As noted above, the 2001 corporate tax return, covering the visa priority date of April 23, 2001, shows that the petitioner's net current assets were \$65,422. This demonstrates the petitioner's ability to pay the proffered salary of \$31,200.

As the petitioner's ability to pay the beneficiary's proposed wage has been demonstrated, it is unnecessary to address the additional evidence submitted on appeal relating to this issue. The case is being remanded to the director to request additional pertinent evidence and explanation from the petitioner relevant to the discrepancy presented between the documentation relating to the beneficiary's prior employment experience initially submitted, and the evidence offered with the appellate materials. With the petition, the petitioner originally submitted a statement dated April 16, 2001, signed by [REDACTED] Funky Fish Ltd." Mr. [REDACTED] is identified as a chief executive officer of that company. The statement is not on the company's letterhead, but summarizes the beneficiary's experience as a marketing manager with that firm and states that his length of employment was "02/98-06/2000," or approximately two years and four months. Included in the evidence on appeal is a letter also dated April 16, 2001, signed by [REDACTED] of Funky Fish, Ltd. This statement is on a Funky Fish, Ltd. letterhead and identifies Mr. [REDACTED] as "manager." It states that the beneficiary was a marketing manager for the company from "05/1999 till 07-2000"[sic], or about one year and two months. It is noted that the position of marketing analyst, as set forth on the approved labor certification, requires two years in the job offered.

The director had no reason to address this issue in the original denial. However, the petition is not approvable unless the petitioner establishes the beneficiary's eligibility for the visa classification as of the visa priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). This means that the beneficiary must have accrued two years in the position offered as of April 23, 2001. The case will be remanded to allow the petitioner to address the discrepancy between the two letters and offer additional evidence of the beneficiary's prior work experience.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to request additional credible evidence from the petitioner supporting the beneficiary's qualifications for the position offered. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.