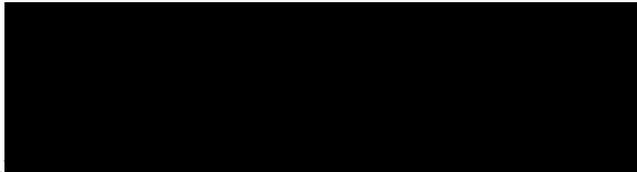


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: WAC-02-124-51494 Office: California Service Center

Date:

APR 23 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:



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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

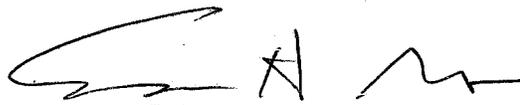
INSTRUCTIONS:

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, 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 (AAO) on appeal. The appeal will be sustained.

The petitioner is a manufacturer of jewelry. It seeks to employ the beneficiary permanently in the United States as an industrial designer. 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.

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 December 5, 1997. The beneficiary's salary as stated on the labor certification is \$20.65 per hour or \$42,952 per year.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated June 11, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. The RFE exacted the petitioner's federal income tax return, annual report or audited financial statement for 1997 through 2001, as well as California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for the last four quarters accepted by the State of California.

Counsel submitted the petitioner's Form 1120 U.S. Corporation Income Tax Return for the years 1997 through 2001. The tax return for 1997 reflected gross receipts of \$271,063; gross profit of \$188,483; compensation of officers of \$41,600; salaries and wages paid of \$0; and a taxable income before net operating loss deduction and special deductions of \$29,432. The tax return for 1998 reflected gross receipts of \$201,476; gross profit of \$192,038; compensation of officers of \$43,200; salaries and wages paid of \$0; and a taxable income before net operating loss deduction and special deductions of \$26,711.

The tax return for 1999 reflected gross receipts of \$209,573; gross profit of \$190,983; compensation of officers of \$45,200; salaries and wages paid of \$0; and a taxable income before net operating loss deduction and special deductions of \$31,739. The tax return for 2000 reflected gross receipts of \$197,353; gross profit of \$190,731; compensation of officers of \$51,000; salaries and wages paid of \$28,170; and a taxable income before net operating loss deduction and special deductions of \$24,442. The tax return for 2001 reflected gross receipts of \$341,821; gross profit of \$290,863; compensation of officers of \$0; salaries and wages paid of \$0; and a taxable income before net operating loss deduction and special deductions of \$30,814.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition.

On appeal, counsel states that the decision to deny the petition is incorrect as the petitioner has the ability to pay the proffered wage. Counsel does not submit any additional evidence.

The petitioner's Forms 1120 for calendar years 1997 through 2001 show a taxable income of \$29,432, \$26,711, \$31,739, \$24,442 and \$30,814, respectively. The petitioner could not pay a proffered wage of \$42,952 a year out of this income. It is noted, however, that the petitioner reported net current assets of \$278,325, \$249,384, \$276,362, \$299,138, and \$323,330, respectively, for those same years. These amounts are more than sufficient to pay the proffered wage.

Accordingly, after a review of the federal tax returns, it is concluded that the petitioner has established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and thereafter.

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.