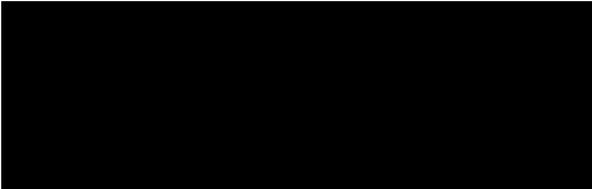


*BP*

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: WAC-02-167-51361 Office: CALIFORNIA SERVICE CENTER Date: **APR 26 2004**

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

PETITION: 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:



**PUBLIC COPY**

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

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*  
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 dismissed.

The petitioner is a furniture maker. The petitioner is an individual, doing business under the company name of his furniture company. The petitioner seeks to employ the beneficiary permanently in the United States as a wood carver, hand. 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.

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 either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter turns, in part, 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 June 24, 1998. The beneficiary's salary as stated on the labor certification is \$463.00 per week or \$24,076.00 per year.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated October 2, 2002, the director requested copies of the beneficiary's W-2 forms for his employment by the petitioner for the years 1998, 1999, 2000 and 2001.

The petitioner responded to the RFE by providing copies of the beneficiary's W-2 forms for 1998, 1999, 2000 and 2001.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage at the priority date and continuing until the present, and denied the petition.

On the Form I-290B notice of appeal counsel checked the box which indicates that a brief and/or additional evidence would be sent to the AAO within thirty days. Nonetheless, to date no additional documentation is in the file.

Counsel states on appeal that the petitioner's evidence demonstrated financial solvency and his ability to pay the proffered wage.

The tax returns in evidence are Form 1040 U.S. individual income tax returns, and are joint returns for the petitioner and his wife. The director found that the petitioner's tax returns showed the following amounts for adjusted gross income: \$51,984.00 for 1998; \$87,497.00 for 1999; \$16,995.00 for 2000; and -\$11,463 for 2001. The director found that the petitioner's returns showed two exemptions for each of those years. The director's analysis of the petitioner's tax returns was correct. The negative figure in petitioner's adjusted gross income for

the year 2001 was apparently because of alimony paid by either the petitioner or his wife that year, though the petitioner's tax return fails to provide details to clarify the apparent alimony payments.

The director also found that the beneficiary's W-2 forms showed the following amounts paid to the beneficiary by the petitioner: \$19,600.00 for 1998; \$23,040.00 for 1999; \$23,920.00 for 2000; and \$18,860.00 for 2001. The director's citations of these figures were also correct. Calculations of the difference between the amounts paid to the beneficiary and the proffered wage yield the following amounts: \$4,476 for 1998, \$1,036 for 1999, \$156 for 2000 and \$5,216 for 2001. The petitioner's income was insufficient to pay the increases necessary to bring the amount paid up to the proffered wage in the years 2000 and 2001 and still have sufficient income to support the petitioner and his wife.

For the foregoing reasons, the decision of the director was correct in finding that the petitioner's evidence failed to establish the ability of the petitioner to pay the proffered wage from the priority date up to the present.

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.