

U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying Information Related to
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ADMINISTRATIVE APPEALS OFFICE
CIS, AA 20 Mass, 3/F
425 E Street N.W.
Washington, D.C. 20536

B60



JAN 07 2004

File: WAC 01 245 56318 Office: California Service Center

Date:

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:



PUBLIC COPY

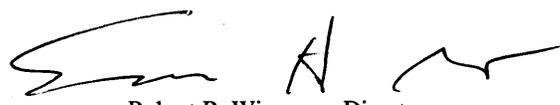
INSTRUCTIONS:

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 the 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 on appeal. The appeal will be dismissed.

The petitioner is a ballroom dancing academy. It seeks to employ the beneficiary permanently in the United States as an instructor of ballroom dancing. 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 financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition and continuing.

On appeal, counsel submits a brief 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 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 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, and continuing. Here, the petition's priority date is June 26, 1995. The beneficiary's salary as stated on the labor certification is \$36,000.00 per annum.

Counsel submitted copies of the petitioner's 1995 through 2001

Internal Revenue Service (IRS) Form 1120. The tax returns showed taxable incomes of:

1995 -	\$5,663
1996 -	\$5,056
1997-	\$26,375
1998 -	-\$37,488
1999 -	-\$5,872
2000 -	-\$14,528
2001 -	-\$17,411

Based on the above taxable income figures and the petitioner's cash assets for the above years, the director determined that the petitioner did not have the continuing ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits a copy of the petitioner's forecast income statement for 2003 and argues that "[a]ll times relevant herein, between 1995 and 2001, Petitioner kept, in average, three thousand dollars (3,000.00) in its business bank account. However, Petitioner's business attorney, Ms. [REDACTED] advised the client not to produce and attach to this Appeal. Therefore, no written attachment was obtained from Petitioner's business and Petitioner's business legal counsel as of the date of filing this Appeal." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel further advances the argument that the "beneficiary's employment at petitioner will create additional income stream, amply covering beneficiary's salaries and benefits." In support of this argument, counsel submits over 1900 signed letters from supporters of the beneficiary. These letters are similarly worded, are general in nature, and therefore are of little evidentiary import.

Other than supplying the letters of support, counsel does not really explain his contention that employment of the beneficiary will benefit the petitioner's business. For example, the counsel and/or the petitioner has not demonstrated that the beneficiary will replace less productive workers, transform the nature of the petitioner's operation, or increase the number of customers on the strength of his reputation. Absent evidence of these savings, this statement can only be taken as counsel's personal opinion. Consequently, CIS is unable to take the potential earnings to be generated by the beneficiary's employment into consideration.

Counsel further states that the facts of this case are similar to

certain unpublished CIS decisions. It should be noted that while 8 C.F.R. § 103.3(c) provides CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, counsel submits a letter of intent from the beneficiary which states his willingness to invest \$50,000.00 in the petitioner's academy upon receipt of his work authorization. Counsel argues that this investment would "drastically change the net assets of Petitioner." The AAO notes, however, that a corporation is a separate and distinct legal entity from its owners or stockholders. Consequently, any assets of its stockholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of M*, 8 I&N Dec.24 (BIA 1958; AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980).

In examining the complete record in this case, it is noted that, although the petitioner could not have paid the beneficiary the proffered salary of \$36,000 from its annual taxable income for the years in question, in some of those years, the beneficiary's salary could be paid from the petitioner's net assets. In 1995, the petitioner's net assets amounted to \$59,180; 1996, \$64,257; 1997, \$88,508; 1998, \$51,625; and 1999, \$46,018; however, in 2000, the petitioner's net assets amounted to only \$21,352, and in 2001, the petitioner's liabilities exceeded assets by \$32,797. Consequently, the petitioner's has not had the continuing ability to pay the beneficiary the proffered wage.

The petitioner must show that it had the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status. See 8 C.F.R. § 204.5(g)(2). After a review of the record, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing.

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.