

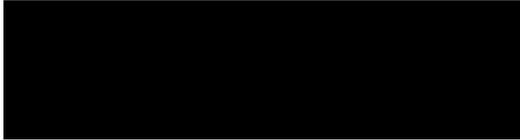
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

*BAP*

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



File: WAC 02 041 57184 Office: California Service Center

Date:

**JAN 27 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.

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 on appeal. The appeal will be dismissed.

The petitioner is a service station. It seeks to employ the beneficiary permanently in the United States as a mechanic. 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 January 12, 1998. The proffered salary as stated on the labor certification is \$12.40 per hour which equals \$25,792 annually.

With the petition, counsel submitted no evidence of the petitioner's ability to pay the proffered wage. Therefore, the director, on February 27, 2002, requested evidence of that ability, specifying that the evidence should consist of corporate tax returns or audited financial statements.

In response, counsel submitted a copy of the petitioner's Form 1120 U.S. Corporation Income Tax Return for the 2001 calendar year. The copy of that return which the petitioner provided is not entirely legible, but indicates that the petitioner's taxable income before net operating loss deductions and special deductions during that year was approximately \$21,090. That return also indicates that the petitioner's net current assets for 2001 were \$11,530. Counsel did not submit the requested evidence pertinent to 1998, 1999, or 2000.

On July 15, 2002, the director denied the petition noting that the petitioner had not provided evidence of its ability to pay the proffered wage during 1998, 1999, or 2000.

On appeal, counsel stated that the petitioner had provided its latest tax return and thought that was sufficient. Counsel opined that a misunderstanding had occurred either on the part of the director or the petitioner. With the appeal, counsel provided copies of the petitioner's Form 1120-A U.S. Corporation Short Form Tax Returns for 1998 and 1999 and its Form 1120 U.S. Corporation Income Tax Return for 2000.

The 1998 Form 1120-A shows that the petitioner had a taxable income before net operating loss deduction and special deductions of -\$800 during that year, and that, at the end of the year, it had neither assets nor liabilities. The 1999 Form 1120 return shows that the petitioner had a taxable income before net operating loss deduction and special deductions of \$13,609 and net current assets of \$51,274. The 2000 Form 1120 return shows taxable income before net operating loss deduction and special deductions of \$22,445 and net current assets of \$8,959.

Counsel also provided copies of the petitioner's Form DE-6 wage reports for the first three quarters of 2001 showing that the beneficiary was paid \$20,400 during that period of time. The reports demonstrate that the beneficiary was on the petitioner's payroll during 2001, but do not show that the petitioner employed the beneficiary prior to 2001.

The evidence does not demonstrate that the petitioner was able to pay the proffered wage out of its income or its net current assets in 1998. In 1999, the wage could have been paid from the petitioner's net current assets while in 2000 it could have paid

from neither. In 2001, the petitioner paid the beneficiary \$20,400 for three quarters of work. The remaining \$5,392 could have been paid from either the petitioner's taxable income or net current assets for that year.

In summary, the petitioner has not established that it 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.