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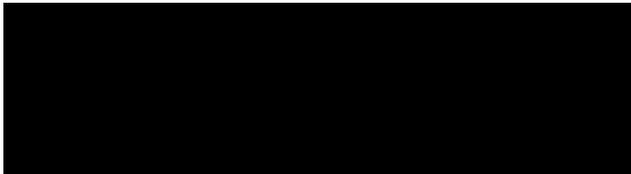


**U.S. Citizenship  
and Immigration  
Services**

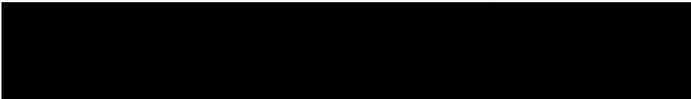
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**B6**

**JAN 27 2004**



FILE:  Office: NEBRASKA 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:



**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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a healthcare facility. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petition was filed pursuant for classification under section 203(b)(3)(A)(i) of the Act as a skilled worker (registered nurse). 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 nature, for which qualified workers are unavailable in the United States. As required, the petition is accompanied by an individual labor certification approved by the Department of Labor.

Aliens who will be employed as nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10. The Director of the United States Employment Service has determined that an insufficient number of United States workers are qualified and available to work in those occupations, and that employment of aliens in those occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

The regulation at 20 C.F.R. § 656.22 states, in pertinent part:

- (a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750 at Part A) in duplicate with the appropriate [Immigration and Naturalization Service or INS, now CIS] office.
- (b) The Application for Alien Employment Certification shall include:
  - (1) Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.
  - (2) Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. 656.20(g)(1).

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. On appeal, counsel submits a brief and additional evidence. Counsel also requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown a case involves unique facts or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Counsel's request for oral argument is, consequently, denied.

The issue to be discussed in this decision is whether or not the petitioner has established its ability to pay the proffered wages. 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 hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the immigrant visa petition was received by CIS for processing. Here, the petition's priority date is December 21, 2001. The beneficiary's salary as stated on the labor certification is \$16.00 per hour which equates to \$33,280.00 per annum.

Initially, counsel submitted insufficient evidence of the petitioner's ability to pay the wage offered. On March 19, 2002, the director requested additional evidence of the petitioner's ability to pay the proffered wage.

In response, counsel submitted a letter from the Vice President of Financial Operations, Beverly Healthcare which stated that Beverly Healthcare has the ability to pay the wage offered.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly. The director noted that no evidence of any affiliation between Beverly Healthcare and [the petitioner] had been submitted.

On appeal, counsel submits evidence that [the petitioner] is a subsidiary of Beverly Healthcare. Counsel further submits a letter from the Chief Financial Officer which states that the petitioner employs approximately 64,000 employees and that he can confirm that "Beverly Healthcare has the ability to pay the prevailing wage offered in its immigrant visa."

The regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that in a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In this case, the petitioner has submitted a letter asserting that it has more than 100 employees and that it is financially viable.

The record does not contain any derogatory evidence which would persuade the CIS to doubt the credibility of the information contained in the letter from the financial officer or the supporting documentation. Therefore, the petitioner has demonstrated its financial ability to pay the beneficiary's salary as of the petition's filing date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.