



U.S. Citizenship
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Services

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FILE: LIN 02 070 54392 Office: NEBRASKA SERVICE CENTER Date: **MAR 03 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 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.

Handwritten signature of Robert P. Wiemann
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 dismissed.

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as a manager. 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.

On appeal, counsel submits a statement and indicates that a separate brief and/or evidence are being submitted within thirty days. To date, however, no further documentation has been received. Therefore, a decision will be made based on the record as it is presently constituted.

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. Here, the petition's priority date is January 14, 1998. The beneficiary's salary as stated on the labor certification is \$59,924.80 per annum.

Counsel submitted copies of the petitioner's 1998, 1999, and 2000 Form 1120 U.S. Corporation Income Tax Return. The 1998 tax return reflected gross receipts of \$6,079,781; gross profit of \$117,252; compensation of officers of \$29,000; salaries and wages paid of \$28,380; and a taxable income before net operating loss deduction and special deductions of -\$32,041. Net current assets were \$93,301.

The 1999 tax return reflected gross receipts of \$4,543,232; gross profit of \$96,977; compensation of officers of \$0; salaries and wages paid of \$97,500; and a taxable income before net operating loss deduction and special deductions of -\$139,346. Net current assets were -\$46,447. The 2000 tax return reflected gross receipts of \$8,603,608; gross profit of \$358,624; compensation of officers of \$48,000; salaries and wages paid of \$49,500; and a taxable income before net operating loss deduction and special deductions of \$8,088. Net current assets were -\$38,359.

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.

On appeal, counsel argues that:

1. Company has more than doubled in sales in 3 years (4 million to 8 million). Growth has certainly created sufficient revenue flow to pay offered salary.
2. Petitioner with its several offices (5) through US and Canada can indeed pay offered salary.
3. Taxes alone are not indicative of ability to pay offered wages.

Counsel argues that the petitioner's improved economic performance since the filing of the petition allows the petitioner the ability to pay the proffered wage. Counsel has not, however, provided any evidence of this improved economic performance. The regulation states "evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." 8 C.F.R. 204.5(g)(2). While the petitioner has shown that its gross profits have increased in 3 years, its tax returns for those 3 years have also shown that its expenses have increased proportionately.

The petitioner's Form 1120 for calendar year 1998 shows a taxable income of -\$32,041 and net current assets of \$93,301. The petitioner could pay a proffered salary of \$59,924.80 out of its net current asset.

However, the tax returns for 1999 and 2000 show an inability to pay the wage offered either through its taxable income or net current assets.

Accordingly, after a review of the federal tax returns, 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 to 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.