

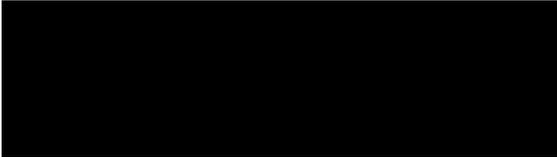
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

BL



MAR 17 2004

FILE: SRC 02 051 52262 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



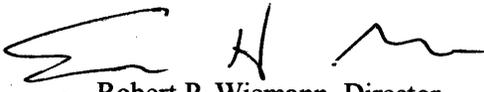
PETITION: Immigrant Petition for a Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 employment based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a furniture upholstery repair firm. It seeks to employ the beneficiary permanently in the United States as an upholsterer. 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 additional evidence and asserts that the petitioner has established its ability to pay the beneficiary's proffered wage.

Section 203(b)(3)(A)(i) of 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) provides in pertinent part:

(2) 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. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

Eligibility in this case rests upon 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. 8 C.F.R. § 204.5(d). Here, the petition's priority date is February 22, 2001. The beneficiary's salary as stated on the labor certification is \$500 per week or \$26,000 annually.

The petitioner initially submitted a copy of its U.S. Income Tax Return for an S Corporation for the year 2000 as evidence of its ability to pay the proffered wage. This return indicated that the petitioner had \$389,403 in gross receipts/sales, no officers' compensation, no salaries and wages, no labor costs, and -\$37,874 as ordinary income. Schedule L of this return reflected that the petitioner had \$16,654 in net current assets.

On April 21, 2002, the director instructed the petitioner to submit additional financial information reflecting that it had the ability to pay the proffered wage from the priority date of February 22, 2001 and continuing until the present. The petitioner responded by submitting a copy of Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return for the year 2001. The petitioner indicated in an accompanying letter that its 2001 corporate tax return was not yet ready to be filed and that it had not issued a W-2 to the

beneficiary.

In denying the petition, the director concluded that the evidence failed to establish that the petitioner has the ability to pay the proffered wage as of the visa priority date of February 22, 2001. The director noted that the petitioner's 2000 corporate tax return showed a negative ordinary income of -\$37, 874.

On appeal, counsel submits a partial copy of the petitioner's 2001 Form 1120S corporate tax return indicating that it had just become available. Only page 1 and 2 were submitted. Page 1, however, shows that the petitioner claimed an ordinary income of \$25,078. As the visa priority date of this petition is February 22, 2001, the petitioner's ordinary income, as shown on its 2001 tax return, need only demonstrate that the petitioner had the ability to pay that part of the beneficiary's wage offer that was due for the remaining portion of the year. The petitioner's ordinary income of \$25,078 was sufficient to cover the beneficiary's prorated salary of approximately \$22,295.

Based on the evidence contained in the record, the petitioner has persuasively demonstrated its continuing ability to pay the proffered wage as of the visa priority date of the petition.

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 met that burden.

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