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U.S. Citizenship  
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**B6**



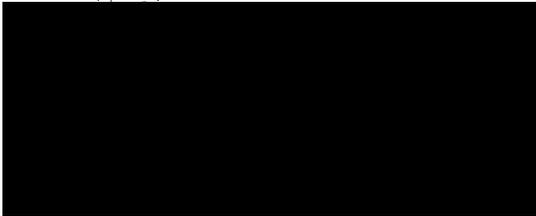
FILE: SRC-01-116-51758 Office: TEXAS SERVICE CENTER Date: **MAY 26 2004**



IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a certified public accounting firm. It seeks to employ the beneficiary permanently in the United States as a junior accounting consultant. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Regulations at 8 C.F.R. § 204.5(g)(2) state 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. 8 C.F.R. § 204.5(d). The petition's priority date in this instance is March 15, 1999. The beneficiary's salary as stated on the labor certification is \$36,000 per year.

With the initial petition, counsel submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE), dated November 14, 2001, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing. The RFE specified the petitioner's Form 941 for the year 2000.

In response to the RFE, counsel submitted a letter from the petitioner, who indicated that during 2000 he had no employees and was therefore, not required to file Form 941 with the Internal Revenue Service. The petitioner provided no alternate means of establishing its ability to pay the proffered wage.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition.

On appeal, counsel states that Form 941 cannot be relied on to establish the petitioner's ability to pay the proffered wage and submits copies of evidence, previously submitted.

The priority date in this case is March 15, 1999. The petitioner must establish its ability to pay the proffered wage from that date until the beneficiary obtains lawful permanent residence. In support of its ability to pay, the petitioner submitted its 1998 Form 1120S Federal Income Tax Return for an S Corporation. As the tax return is for the calendar year 1998, it is of no probative value in determining eligibility in this case.

The record as presently constituted contains no evidence that the petitioner conducted any business during 1999 and 2000. As such, it cannot be concluded that the petitioner had the ability to pay the proffered wage during those years. As an alternative to Form 941, the petitioner should have submitted other tax documents, audited

financial statements, or annual reports, whether or not requested. The regulation quoted above requires such documentation, placing the petitioner on notice of the documentary requirements for demonstrating an ability to pay the proffered wage. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). 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).

After a review of the evidence 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 until the beneficiary obtains lawful permanent residence.

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.