



U.S. Citizenship  
and Immigration  
Services

BY



FILE: WAC 02 195 50161 Office: CALIFORNIA SERVICE CENTER

Date: SEP 09 2004

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

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:  
[Redacted]

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

PUBLIC COPY

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an antenna-manufacturing firm. It seeks to employ the beneficiary permanently in the United States as an antenna manufacturer and repairer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits additional evidence.

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)(2) also provides in pertinent part:

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 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 appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

Eligibility in this case rests upon the petitioner's continuing financial ability to pay the wage offered as of the petition's priority date. The regulation at 8 C.F.R. § 204.5(d) defines the priority date as the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. Here, the petition's priority date is January 16, 1998. The beneficiary's salary as stated on the labor certification is \$7.00 per hour or \$14,560 per year, based on a 40-hour week. The visa petition indicates that the petitioner was established in 1961 and employs more than 200 workers.

As evidence of its ability to pay the proffered wage, the petitioner initially submitted copies of business tax registration certificates reflecting that it was established in 1961, along with a letter, dated May 1, 2002, from [REDACTED] the petitioner's president. [REDACTED] states that the petitioner has been in business for 41 years, has shown a significant profit in each of those years, and has more than 250 employees and enough cash reserves to pay the proffered wage to the applicant. The petitioner also submitted a letter indicating that it had employed the beneficiary since 1993.

On September 17, 2002, the director requested additional evidence from the petitioner in support of its ability to pay the proffered wage. The director requested the petitioner to provide copies of annual reports, federal tax

returns, or audited financial statements from 1998 to the present. The director also requested that the petitioner submit copies of its federal tax returns for 1998 through 2002 .

In response to the director's request for additional evidence related to the petitioner's ability to pay the proffered wage, the petitioner, through counsel, submitted another letter from Ms. [REDACTED], dated October 22, 2002, which was a duplicate of the May 1<sup>st</sup> letter previously submitted, except that instead of stating that the petitioner had over 250 employees, this letter asserts that the petitioner has "over 200 employees."

The director denied the petition, determining that the petitioner had failed to submit copies of annual reports, federal tax returns, or audited financial statements in support of its ability to pay the proffered wage. The director further noted that the petitioner had also failed to submit any corroboration that it actually has over 200 or more employees.

On appeal, counsel submits another letter from the petitioner, signed by [REDACTED] as President, Owner, Chief Financial Officer, and Chairman of the Board. The letter's content duplicates [REDACTED] other letters. In a transmittal letter, signed by [REDACTED] it is asserted that the evidence has been submitted in a timely manner and the denial of the petition should be reconsidered in view of the regulatory requirements.

As noted above, and as referenced by the petitioner, the regulation at 8 C.F.R. § 204.5(g)(2) allows organizations which employ at least 100 workers to submit a statement from a financial officer relevant to the U.S. employer's ability to pay the proffered wage. This provision was adopted in the final regulation in response to public comment favoring a less cumbersome way to allow large, established employers to utilize a more simplified route through adjudication. *See* Employment-Based Immigrants, 56 Fed. Reg. 60897, 60898 (Nov. 29, 1991). This alternative recognizes that large employers may have large net losses but remain fiscally sound and retain the ability to pay the proposed wage offer, although the director retains the discretion to reject an employer's assurances and seek corroborative evidence. 8 C.F.R. § 103.2(b)(8).

In this case, the director requested further financial documentation from the petitioner. The petitioner responded by resubmitting its claim to be an employer of more than 200 workers. As noted by the director, no corroboration of this claim was submitted to the record. The AAO cannot disagree with the director's concern that the petitioner should further document its continuing ability to pay the beneficiary's proposed wage offer of \$14,560 for a full-time permanent position, rather than simply accepting a bald assertion of a stated number of employees. 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).

The evidence submitted on appeal does not establish the petitioner's continuing ability to pay the proffered wage, nor does it establish the number of workers the petitioner has consistently employed since the priority date of January 16, 1998.

Accordingly, based on the evidence contained in the record and after consideration of the information submitted on appeal, the AAO cannot conclude that the petitioner has demonstrated its continuing ability to pay the proffered wage as of the 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 not met that burden.

WAC 02 195 50161

Page 4

**ORDER:** The appeal is dismissed.