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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

B6

FILE: [REDACTED]
SRC 02 216 53263

Office: TEXAS SERVICE CENTER

Date: JUN 28 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

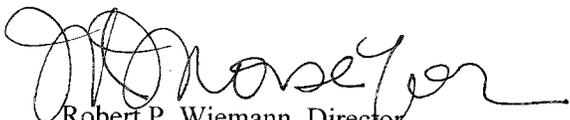
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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

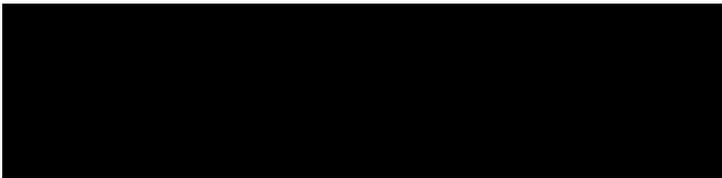
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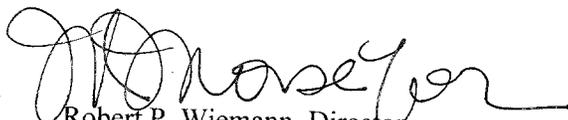
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DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a convenience and gas store. It seeks to employ the beneficiary permanently in the United States as a retail store manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On appeal, the petitioner submits a brief and 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) 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's continuing ability to pay the wage offered beginning on the priority date, the day the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). Here, the request for labor certification was accepted on December 27, 2000. The proffered salary as stated on the labor certification is \$3,852 per month or \$46,224 per year.

With the petition, counsel submitted a copy of the petitioner's personal bank statement, a copy of the petitioner's personal financial statement, copies of the petitioner's business bank statements, and copies of the petitioner's 2000 and 2001 Forms 1120, U.S. Corporation Income Tax Returns. The 2000 tax return reflected a taxable income before net operating loss deduction and special deductions of \$15,726 and net current assets of \$30,740. The 2001 tax return reflected a taxable income before net operating loss deduction and special deductions of \$15,160 and net current assets of \$67,052. The director determined that the evidence submitted was insufficient to establish the continuing ability to pay the proffered wage, and, on January 15, 2003, the director requested additional evidence of the petitioner's ability to pay the proffered wage from 2000 and continuing to the present. The director specifically requested copies of Forms W-2, Wage and Tax Statements, for each employee from 2000 to 2002, copies of Forms 941, Employer's Quarterly Federal Tax Returns, for each quarter in 2002, copies of the

petitioner's bank statements from December 2000 to the present, and any other documents that would establish the petitioner's ability to pay the proffered wage.

In response, counsel provided copies of Forms W-2 for each employee in 2000, 2001, and 2002, copies of Forms 941 for each quarter in 2002, copies of the petitioner's bank statements from December 2000 to the present, a letter from [REDACTED] copy of the petitioner's personal financial statement, and a copy of the petitioner's 2001 Form 1040, U.S. Individual Income Tax Return. The Forms W-2 showed that the beneficiary earned \$6,000 in 2000, 2001, and 2002. The petitioner's bank statements reflected balances from a low of -\$1,235.84 to a high of \$20,286.05. The letter from [REDACTED] stated that the petitioner had a balance of \$164,972 total in commercial accounts as of February 27, 2003. The petitioner's owner's personal financial statement asserts the owner's net worth at \$2,670,088, and the petitioner's owner's 2001 personal tax return reflected an adjusted gross income of \$118,503.

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. On April 4, 2003, the director denied the petition.

On appeal, counsel submits a letter from the petitioner's Certified Public Accountant (CPA), a consolidated financial statement, and a copy of the petitioner's 2002 Form 1120S, U.S. Income Tax Return for an S Corporation. The 2002 income tax return reflects an ordinary income of \$79,997 and net current assets of \$103,915. The petitioner's CPA states:

Financials

According to 2002 financials of Salim Enterprises, Inc. the financial results were as follows:

Sales	1,666,148
Income from operations	134,961
Depreciation & Amortization	54,965
Net Income	79,996

During 2002 total wage expense of Salim Enterprises, Inc. was in excess of \$59,000, and cash balance at the end of 2002 was in excess of \$95,236.

Salim Enterprises, Inc. is a growth company not only it has improved the sales and profit but it has added new businesses. If we perform the same store analysis the sales have increase[d] from \$369,097 in 2000 to \$412,083 in 2002, and taxable profits have increase[d] from \$15,160 in 2000 to \$50,370 in 2002. Considering the current economic situation it is a remarkable performance.

Counsel states:

petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.¹ A corporation's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 16(d) through 18(d). If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner's net current assets in 2000 through 2002 were \$30,740, \$67,052, and \$103,915, respectively. The petitioner could have paid the proffered wage in 2001 and 2002 from its net current assets. The petitioner needed to show that it could pay the proffered wage for the last three working days in 2000. The beneficiary earned \$6,000 in 2000, more than enough to pay the proffered wage for three days ($\$46,224 \text{ proffered wage} / 2,080 \text{ hours per year} = \$22.22 \text{ per hour} \times 24 \text{ hours} = \533.28).

Counsel points to the petitioner's bank statements as evidence of its ability to pay the proffered wage. However, counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L.

Counsel states that, "Even though the Director correctly concludes that corporations are separate legal entities from their shareholders, it does not automatically follow that shareholder's assets cannot be considered in determining a company's financial viability." Contrary to counsel's assertion, because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

¹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.