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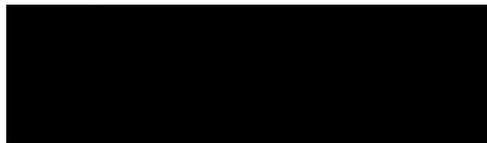
U.S. Citizenship  
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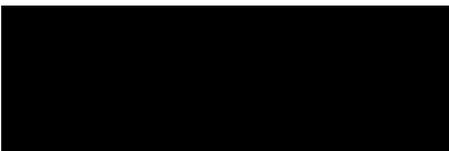
FILE: EAC 03 127 51412 Office: VERMONT SERVICE CENTER Date: **NOV 22 2005**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a machine shop. It seeks to employ the beneficiary permanently in the United States as a tool and mold maker/machinist. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The Acting 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 and denied the petition accordingly.

On appeal, counsel submits a statement and additional evidence.

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 granting 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 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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). Here, the Form ETA 750 was accepted for processing on April 17, 2001. The proffered wage as stated on the Form ETA 750 is \$22.61 per hour, which equals \$47,028.80 per year.

On the petition, the petitioner stated that it was established on November 16, 1982 and that it employs one worker. The petition states that the petitioner's gross annual income is \$232,091 and that its net annual income is \$88,678. On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since July of 2000.<sup>1</sup> Both the petition and the Form ETA 750 indicate that the petitioner will employ the beneficiary in Roselle, New Jersey.

In support of the petition, counsel submitted a copy of the petitioner's owner's 2001 Form 1040 U.S. Individual Income Tax Return. That return shows that the petitioner's owner and his spouse had two dependents. A Schedule C attached to that return appears to indicate that the petitioner's owner holds the

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<sup>1</sup> This office notes that evidence of wages the petitioner actually paid to the beneficiary during the salient years might have assisted the petitioner in demonstrating its ability to pay the proffered wage.

petitioner as a sole proprietorship, and that the petitioner returned a net profit of \$80,291 during that year. The Form 1040 shows that the petitioner's owner declared adjusted gross income of \$75,643 during that year, including the petitioner's net profit, offset by deductions.

On March 17, 2004 the Vermont Service Center issued a Request for Evidence in this matter. The Service Center requested, *inter alia*, that the petitioner's owner provide a budget of all of his recurring monthly expenses, including rent, mortgage payments, food, utilities, clothing, transportation, insurance, medical costs, etc., for 2001.

Counsel submitted a response on May 15, 2004. That response did not include the requested budget. The Acting 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, and, on July 2, 2004, denied the petition. On appeal, counsel submits what purports to be the petitioner's owner's budget.

Where, as here, a petitioner has been previously put on notice of a deficiency in the evidence and afforded an opportunity to respond to that deficiency, this office will not accept evidence relevant to that deficiency that is offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764(BIA 1988). Under the circumstances, this office need not and does not comment on the sufficiency of the evidence offered on appeal. Further, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The priority date is April 17, 2001. The proffered wage is \$47,028.80. The evidence demonstrates that the petitioner's owner had adjusted gross income of \$75,643 during that year. The record contains no evidence of any other assets the petitioner's owner could have utilized to pay the proffered wage.

If the petitioner's owner had been obliged to pay the proffered wage out of his adjusted gross income during 2001 he would have been left with \$28,614.20 with which to support his family of four during that year. Despite a request for the petitioner's owner's budget the petitioner failed to timely provide that information. Absent that information the record did not contain evidence sufficient to show the petitioner's ability to pay the proffered wage. The petitioner failed to show its ability to pay the proffered wage and the petition was correctly denied on that ground.

The burden of proof in these proceedings rests solely upon the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.