U.S. Department of Homeland Security
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Washington, DC 20536

B-6

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 086 50818 Office: VERMONT SERVICE CENTER Date: JUL 8 2004

IN RE: Petitioner: [redacted]
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:

[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

identifying [illegible] deleted to prevent clearly unwarranted [illegible]

DISCUSSION: The preference 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 petitioner is a computer programming and consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst. 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 ability to pay the beneficiary the proffered wage during 2001.

On appeal, counsel submits a brief.

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 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.

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 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 continuing ability to pay the proffered wage beginning on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on August 23, 2001. The proffered salary as stated on the labor certification is $70,000 per year.

With the petition, counsel submitted a copy of the petitioner's 2000 Form 1120 U.S. corporation income tax return. The priority date of this petition, however, is August 23, 2001. The petitioner's finances during 2000, therefore, are not directly relevant to these proceedings.

Because the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the Vermont Service Center, on February 25, 2002, requested additional evidence pertinent to that ability. In addition, the Service Center specifically requested that, if the petitioner employed the beneficiary in 2000 or 2001, it provide copies of the Form W-2 wage and tax a statement showing the amount the beneficiary was paid.

In response, counsel submitted copies of the petitioner's 2001 Form 1120 U.S. corporation income tax return. The tax return shows that the petitioner declared a taxable income before net operating deduction and special deductions of $28,038 for that year. The corresponding Schedule L shows that at the end of that year, the petitioner's had current assets of $734,371 and current liabilities of $652,100, yielding net current assets of $82,271. An accompanying letter from counsel, dated May 8, 2002, indicates that the petitioner did not employ the beneficiary during 2000 or 2001.

On June 13, 2002, the Director, Vermont Service Center, denied the petition, finding that the petitioner's 2001 tax return did not demonstrate that the petitioner was able to pay the proffered wage during that year.

Counsel submitted a motion to reopen stating that the petitioner's net current assets at the end of 2001 had been incorrectly computed, leading the director to state that the petitioner's current liabilities exceeded its current assets. Counsel also submitted copies of the petitioner's bank statements and an unaudited accrual basis balance sheet for July 11, 2002.

The Director, Vermont Service Center, granted the motion to reopen. The director again found that at the end of 2001 the petitioner's current liabilities were greater than its current assets and denied the petition again, affirming the previous decision.

On appeal, counsel again urges that the petitioner's 2001 net current assets were incorrectly computed. Because this point has been so long contended, this office shall show its calculation of that amount.

The assets portion of petitioner's 2001 Schedule L shows that the petitioner had cash of -$16,849, accounts receivable of $383,215, and other current assets of $368,005. The petitioner's current assets total $734,371.

The liabilities portion of that Schedule L shows that at year end the petitioner had accounts payable of $242,396 and other current liabilities of $409,704. The petitioner's current liabilities total $652,100.

The petitioner's net current assets, that is, its current assets minus its current liabilities, equal $82,271. The petitioner's 2001 tax return, therefore, indicates that the petitioner could have paid the proffered wage of $70,000 out of its net current assets.

The petitioner has overcome the sole reason for denial. 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.