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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 07 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

PUBLIC COPY
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for additional evidence and entry of a new decision.

The petitioner is a transportation and cab leasing company. It seeks to employ the beneficiary permanently in the United States as an office manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied 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 and denied the petition accordingly.

On appeal, counsel submits additional evidence and asserts that the beneficiary's services will be covered by the petitioner's increased growth.

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 nature, for which qualified workers are not available in the United States.

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.

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 27, 2001. The proffered wage as stated on the Form ETA 750 is $56,992 per year. On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner.

On the petition, the petitioner claims to have been established in 1998, to have a gross annual income of $74,000, and to currently employ two workers. In support of its ability to pay the proffered wage, the petitioner submitted copies of its 1999 and 2000, Form 1120S, U.S. Income Tax Return for an S Corporation. They indicate that the petitioner files its returns based on a standard calendar year. As the priority date is April 27, 2001, the 2000 tax return is more relevant to the petitioner's ability to pay the proffered wage. It shows that the petitioner declared an ordinary income of $22,581. Schedule L indicates that the petitioner had $126,384 in current assets and no

current liabilities, resulting in $126,384 in net current assets. Besides reviewing a petitioner's net income, CIS will also examine a petitioner's net current assets as an alternative method of demonstrating a petitioner's 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 and liabilities are shown on Schedule L. 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. Although the petitioner's net income of $22,581 was not sufficient to pay the proffered wage, the petitioner's net current assets during this year were sufficient to pay the proposed annual salary of $56,992.

On June 2, 2003, the director requested additional evidence to demonstrate the petitioner's continuing ability to pay the proffered wage. The director requested additional evidence pertinent to that ability, which shows the petitioner's ability to pay the proffered wage as of the priority date and continuing until the present. The director advised the petitioner that the evidence must include its latest federal tax return, annual report or audited financial statement.

In its response, the petitioner submitted its corporate tax return for the petitioner for the year 2001, along with evidence that the petitioner had delayed filing its 2001 tax return by filing for an extension of time with the Internal Revenue Service (IRS). The 2001 tax return shows that the petitioner declared -$24,600 in net income. Schedule L of the tax return reflects that the petitioner had $194,531 in current assets and $2,483 in current liabilities, yielding $192,048. Although the petitioner's net current assets declined, they remained more than sufficient to pay the proffered wage during this year.

In addition, counsel submitted copies of the principal shareholder's individual tax return and asserted in his transmittal letter that the individual shareholder stands ready to guarantee any shortfall in paying the proffered wage. Counsel also states that the beneficiary's services will allow the company to operate on a larger and more efficient scale.

On September 15, 2003, the director denied the petition, concluding that the petitioner's net income as shown on its 2001 tax return failed to demonstrate its ability to pay the proffered wage.

On appeal, counsel renews his argument that 1) the beneficiary's services in helping the petitioner to expand and more efficiently operate would generate enough revenue to pay his proffered salary, and 2) that the principal shareholder would individually cover any shortfall in paying the proffered wage.

For the reasons discussed below, the AAO is remanding this case to the director for further consideration, however, in response to counsel's argument relating to the principal shareholder, it will also be noted that CIS will not consider the assets of a corporation's individual shareholder. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *Matter*

---

[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 accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980); *Matter of M-*, 8 I&N Dec. 24 (BIA 1958; A.G. 1958). CIS will not consider the financial resources of individuals or entities who have no legal obligation to pay the wage. *See Sitar Restaurant v. Ashcroft,* 2003 WL 22203713, *3 (D. Mass. Sept. 18, 2003).

In response to the claim that retaining the beneficiary will translate into increased profits, it is noted that such a hypothesis is essentially speculative. While it is to be hoped that the beneficiary's employment would produce such a result, the opposite might also occur. It is noted that the record contains no specific evidence of this projected increase in profits or any information from which this asserted increase in business might be estimated. The prospective increase in profits suggested by counsel is not supported by evidence in the record and cannot be considered in this case.

That said, as discussed above, the director failed to consider the petitioner's net current assets in examining the petitioner's ability to pay the proffered wage as presented in its 2001 corporate return. Although the petitioner did not submit its 2002 return, it may have submitted its most recent tax return as requested by the director. Considering the length of time that has elapsed, and for expediency, the AAO will remand the case to allow the petitioner to provide updated financial information consistent with the requirements of 8 C.F.R. §204.5(g)(2). Either by federal tax returns, audited financial statements, or annual reports, the petitioner must show that it can continue to pay the proffered wage.

As the director did not address the evidence submitted in support of the beneficiary's qualifying employment experience, the case will be remanded for consideration of that issue also. It is noted that the beneficiary claims his qualifying two years of employment experience as an office manager or four years in a related (unspecified) occupation, as set forth in Item 14 of the ETA-750A, springs from his own letter to the record describing his self-employment in Pakistan. This is not sufficient to establish his past qualifying work experience for the position offered. The petitioner must submit some kind of independent persuasive corroboration from a competent source establishing the beneficiary's credentials in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(A) and (B). In this instance, for example, such corroboration could take the form of any credible government or official records demonstrating that the petitioner was self-employed in the qualifying occupation in Pakistan, combined with other verifiable attestations from independent third parties.

In view of the foregoing, the director may request any additional evidence deemed relevant to consider the petitioner's continuing ability to pay the proffered salary and to consider the beneficiary's qualifying prior employment experience. Similarly, the petitioner may also provide any further pertinent evidence within a reasonable time to be determined by the director. Upon receipt of all evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.