U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

File: EAC 02 041 54056 Office: VERMONT SERVICE CENTER Date: SEP 2 0 2012

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the director and the AAO will be withdrawn, and the petition will be approved.

On June 8, 2002, the director denied the petition based on a finding that the petitioner did not establish the ability to pay the offered wage at the time of filing. In a decision dated February 11, 2003, the AAO affirmed the director's denial of the petition. On March 10, 2003, Citizenship and Immigration Services (CIS) received a letter and fee from the petitioner's counsel requesting a motion to reopen the petitioner's case. On motion to reopen, counsel asserts that at the time of filing the petition, the petitioner had the ability to pay the offered wage. In support of this statement, the petitioner submits a letter from its president, [redacted] copies of the petitioner's 1997 tax forms, and three W-2 forms for employees other than the beneficiary. The motion to reopen thus qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted.

The letter from [redacted] indicates that the petitioner's 1997 taxes reflect salaries and wages of $119,166 being paid to its employees, a fact acknowledged in both the director's and the AAO's prior decisions. The petitioner's taxable income before net operating loss deduction and special deductions for 1997 was $1,874 with net assets of $10,356. The combined total of $12,230 is not enough to pay the beneficiary an annual salary of $23,400.

Notably, however, [redacted] indicates that the beneficiary will be replacing the three part-time employees for which the W-2 forms were submitted. The three part-time employees' combined earnings in 1997 was $23,737, an amount greater than the proffered wage. This new fact, when viewed in light of the petitioner's indication on the Form I-140 that this position is not a new position, sufficiently establishes the petitioner's ability to pay the proffered wage.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the previous decisions of the director and the AAO will be withdrawn, and the petition will be approved.

ORDER: The motion to reopen is granted. The previous decision of the AAO is withdrawn, and the petition is approved.