U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: MAR 24 2014 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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 The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a Delaware corporation that seeks to employ the beneficiary in the United States as its "Country Manager." Accordingly, the petitioner endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

On July 24, 2013, the director denied the petition after determining that the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage. The director made this determination after issuing a request for evidence (RFE) and reviewing the response, which included the petitioner's 2011 corporate tax return and the beneficiary's IRS Form W-2 for 2012, which showed that the beneficiary was compensated $146,417.

On appeal, counsel submits an appellate brief asking U.S. Citizenship and Immigration Services (USCIS) to consider that the petitioner had "a substantial amount of sales as 'deferred revenue,'" which did not reflect the full amount of sales the petitioner had during the 2011 tax year. Counsel also points out that the petitioner has a considerable amount of financial resources available through its parent holding company, which is part of the same organization.

I. The Law

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> > (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Additionally, 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.

II. Discussion

The record shows that the petitioner is part of a group of companies that are owned and controlled by [redacted] Although the petitioner's corporate tax returns for 2011 and 2012 show net operating losses, the same tax returns show that the petitioner paid considerable funds in employee salaries and wages during each of the two tax years.

In the denial, the director focused on the petitioner's 2011 tax return, pointing to the petitioner's negative net income and liabilities which exceeded the petitioner's assets, as well as the beneficiary's 2012 Form W-2, which showed a salary that was $33,583 below the proffered wage of $180,000.

Although the director's interpretation of the specific provisions of the applicable regulation was correct, it must be noted that in analyzing a petitioner's ability to pay the proffered wage, the fundamental focus is whether the employer is making a "realistic" or credible job offer and has the financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm'r 1977). In applying this approach to the facts in the matter at hand, the AAO cannot overlook the petitioner's 2011 and 2012 tax returns, which show that the petitioner paid in excess of $1.7 million and $2.2 million, respectively, in salaries and wages. Given the petitioner's ability to consistently pay employee salaries, despite its negative profit in 2011 and 2012, the petitioner more likely than not has a sustainable ability to pay the beneficiary's proffered wage commencing on the date the petition was filed and going forward.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance,

probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Here, the submitted evidence is relevant, probative, and credible. Upon review, the petitioner provided sufficient documentation to meet the preponderance of the evidence standard, thereby establishing that the petitioner more likely than not had the ability to pay the beneficiary's proffered wage at the time the petition was filed.

III. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.