U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

APR 27 2005

FILE: [redacted] Office: [redacted] Date:
WAC 03 094 52619

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

DISCUSSION: The Director, California 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 fashion designer and manufacturer. It seeks to employ the beneficiary permanently in the United States as a sample maker.[1] 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 that it had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

On appeal, counsel submits a brief 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 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.

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.

8 C.F.R. § 204.5(l)(3)(ii) states, in pertinent part:

> (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
>
> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

[1] On the Form ETA 750 the proffered position is termed, "Sample Sewer." On the Form I-140 petition, it is termed "Sample Stitcher." This office concludes that the position is for a sample maker.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the Department of Labor. The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on May 22, 2000. The proffered wage as stated on the Form ETA 750 is $12.18 per hour, which equals $25,334.40 per year. The Form ETA 750 states that the position requires two years of experience in the proffered position.

On the petition, the petitioner stated that it was established on April 1, 2000 and that it employs 55 workers. The Form ETA 750 indicates that the petitioner will employ the beneficiary in Los Angeles, California.

On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since April 2000. The instructions to the Form ETA 750B request that the beneficiary identify every job he has held for the past three years and any job the beneficiary has ever held that is related to the proffered position. The beneficiary listed no employment other than that for the petitioner, thus indicating that he has held no other related jobs.

With the petition, counsel submitted no evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date and no evidence of the beneficiary's employment experience.

In connection with a previous Form I-140 petition filed for the same beneficiary[2], however, the petitioner provided the 1998, 1999, and 2000 Form 10-K annual reports of Tarrant Apparel Group. Because the priority date is May 22, 2000, evidence pertinent to the petitioner's finances during previous years is not directly relevant to the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Although the annual reports, financial statements, and accountant's reports are not correctly matched with each other, the evidence does contain a 2000 accountant's report and a 2000 annual report.

The 2000 annual report states that on April 12, 2000 Tarrant Apparel Group formed Jane Doe International LLC, the petitioner in the instant case, for the purpose of purchasing the assets of [redacted]. The annual report states that the petitioner is 51% owned by Fashion Resource (TCL), Incorporated, a subsidiary of Tarrant Apparel Group, and 49% owned by Needletex, Incorporated, owner of the Jane Doe brand.

As to the beneficiary's experience, counsel provided a letter, dated June 27, 2000, from Confecciones Monroy, in San Mateo Texcalyacac, in the state and country of Mexico, and an English translation.[3] The translation states, "This letter is to verify that [the beneficiary] worked for this company as a sample sewer

[2] The previous petition was filed on May 4, 2001. That petition was denied on January 26, 2002 because it was not eligible for treatment under Schedule A and was not accompanied by an approved Form ETA 750 labor certification.

[3] The employment verification letter and translation were submitted in response to a Request for Evidence issued on September 26, 2001, in connection with the previous Form I-140.

[sic] during the a [sic] period of 17 years." The employment letter and translation do not provide a description of the experience of the beneficiary. Further, that letter does not state the beginning and ending dates of the beneficiary's alleged employment with that company or the number of hours per week the beneficiary worked for that company. That letter purports to be signed by [redacted]

Further still, although the Form ETA 750B requested that the beneficiary list all jobs he has held that were related to the proffered position, the beneficiary did not indicate that he had ever held a sample maker position.

Because the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date and insufficient to show that the beneficiary has the requisite two years work experience, the California Service Center, on April 16, 2003, requested evidence pertinent to both of those issues.

Consistent with 8 C.F.R. § 204.5(g)(2), the Service Center requested that the evidence of the petitioner's ability to pay the proffered wage include copies of annual reports, federal tax returns, or audited financial statements and demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

Consistent with the requirements of 8 C.F.R. § 204.5 (l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from trainers or employers giving the name, address, and title of the trainer or employer, the dates of the employment, and a description of the experience of the alien.

The Service Center also specifically requested copies of the petitioner's California Form DE-6 Quarterly Wage Reports for the previous four quarters.

In response, counsel submitted an additional copy of the June 27, 2000 employment letter and translation. Counsel also submitted portions of a document entitled Financial Highlights pertaining to Tarrant Apparel Group. That document contains various financial tables, but contains no indication that any of the financial tables were produced pursuant to an audit.

Counsel provided additional copies of the petitioner's 1999 and 2000 Form 10-K annual reports. The 2000 report, again, contained financial statements pertinent to 1997 and 1998, rather than the appropriate financial statements.

In a decision issued November 5, 2002, the Director, California Service Center, noted that the financial data submitted is for Tarrant Apparel Group, rather than the petitioner. The director further noted that Tarrant Apparel Group reported a loss of $2,517,742 during in its 2000 annual report, and that the petitioner failed to provide any evidence of its ability to pay the proffered wage during any subsequent year. Finally, the director further noted that the petitioner had failed to provide the requested California Form DE-6 Quarterly Wage Reports.

The director denied the petition on November 5, 2002, finding 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 that

the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, counsel asserts that the loss declared by Tarrant Apparel Group during 2000 was due to "a one time write off (non-recurring) that does not affect current cash flow and/or ability to pay wages," but provided no evidence in support of that assertion.

Counsel provided an additional employment verification letter, dated December 2, 2003, from Confecciones Monroy, and an English translation.

The translation indicates that the letter states that the beneficiary,

> Began his career as an confections[4] [sic] since 1975, he worked doing gentlemen pants [sic], skirts, blouses, coarse cloth jackets, blazers, jacket, etc. by this I permit myself to recommend him, since he has the sufficient capability to work any sewing machinery, he is a responsible person, honest, and he will carry out any job that is assigned to him.

The letterhead upon which that letter was typed is entirely different from the letterhead upon which the first letter from Confecciones Monroy was typed. The first letter purports to be signed by [redacted] Owner, but in this second letter [redacted] represents himself to be the company's "legal representative."[5] Finally, the purported signature of Andres Monroy-Serna on the second letter bears no resemblance to the purported signature of [redacted] on the first letter.

In his brief, counsel argues that the letter should be found to comply with the requirements of 8 C.F.R. § 204.5 (l)(3)(ii) because the petitioner made a good faith effort to comply with the Request for Evidence. Counsel did not, in that brief, address the failure to provide the requested California Form DE-6 Quarterly Reports.

The issue, pertinent to the beneficiary's employment experience documentation, is not whether the petitioner made a good faith effort to provide acceptable documentation, but whether the documentation provided conforms to the requirements of the governing law and regulations.

The inconsistencies between the two employment verification letters provided make clear that only one, at the most, is likely to have been issued by Confecciones [redacted] Further, that [redacted] signed only one of those letters, at the most, is clear. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). That

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[4] In this context, the word "confeccionista" from the employment verification letter likely means a fabricator of clothing, rather than pertaining to confections.

[5] In the original Spanish version of this letter his title is phrased, "Representanate Legal."

the beneficiary provided at least one fraudulent letter in support of his alleged employment experience casts doubt on all of the remaining evidence in this case.

Further, even if the beneficiary's employment verification documents were authentic, they would be insufficient. The approved Form ETA 750 is for a sample maker. Sample makers typically produce a sample garment from the sketch of a designer, without a pattern. The employment verification documentation provided indicates that the beneficiary fabricated clothing, but gives no indication that the beneficiary has two years experience in the proffered position. Further, the employment documentation does not indicate whether the beneficiary's employment experience was full-time. Further still, neither of the two versions of the beneficiary's employment verification documentation gives both the beginning and ending dates of the alleged employment.

Finally, the beneficiary's claim of employment for Confecciones [redacted] is contradicted by the information the beneficiary gave on the Form 750B. The Form 750B, if it was completed in accordance with its instructions, indicates that the petitioner held no such job. The evidence of the beneficiary's alleged employment experience is insufficient in all of these respects. The petitioner has not demonstrated that the beneficiary is qualified for the proffered position pursuant to the terms of the approved Form ETA 750.

The only evidence pertinent to the petitioner's ability to pay the proffered wage actually pertains to the finances, not of the petitioner, but of a corporation whose subsidiary is the beneficiary's majority owner.

The petitioner is a limited liability company (LLC). Although structured and taxed as a partnership, its owners enjoy the same limited liability as the owners of a corporation. It is a legal entity separate and distinct from its owners. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958; AG 1958). The debts and obligations of the company are not the debts and obligations of the owners or anyone else.[6] As the owners and others are not obliged to pay those debts, the income and assets of the owners and others and their ability, if they wished, to pay the company's debts and obligations, are irrelevant to this matter and shall not be further considered. The petitioner must show the ability to pay the proffered wage out of its own funds. The petitioner provided no evidence of its own ability to pay the proffered wage.[7]

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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[6] Although this general rule might be amenable to alteration pursuant to contract or otherwise, no evidence appears in the record to indicate that the general rule is inapplicable in the instant case.

[7] Further still, even if the financial statements submitted pertained to the petitioner's finances; they are insufficient to show the continuing ability to pay the proffered wage beginning on the priority date. The petitioner is obliged to show the ability to pay the proffered wage during every year since the priority date, including 2000. The only evidence pertinent to 2000 is the 2000 financial statement. The 2000 financial statement shows that the petitioner suffered a $2,517,742. Counsel's assertion that the loss was occasioned by "a one time write off (non-recurring) that does not affect current cash flow and/or ability to pay wages," is insufficient to convert the 2000 financial statement into a document that shows that the petitioner was able to pay the proffered wage during 2000.

Another issue exists in this case that was not noted in the decision of denial. Although the director specifically requested, in the April 16, 2003 Request for Evidence, that the petitioner provide its California Form DE-6 Quarterly Wage Reports for the previous four quarters, those reports have never been provided, and no explanation has been given for the failure to provide those requested reports. 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 petition should also have been denied based on the petitioner's failure to provide requested evidence.

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 not met that burden.

ORDER: The appeal is dismissed.