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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B6

DATE: 'AUG 16 2012      OFFICE: NEBRASKA SERVICE CENTER      FILE: 

IN RE:      Petitioner:   
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)

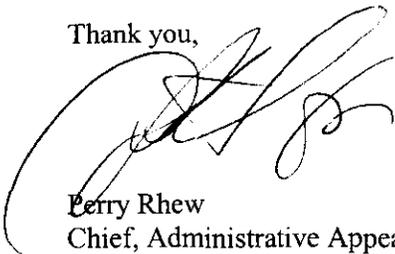
ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**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 appeal will be sustained. The petition will be approved.

The petitioner is a moving and storage business. It seeks to employ the beneficiary permanently in the United States as a dispatch manager pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). 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. The director denied the petition accordingly.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(3)(A)(i) of 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.

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 either 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, 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 DOL. *See* 8 C.F.R. § 204.5(d). 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 DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on January 6, 2003. The proffered wage as stated on the Form ETA 750 is \$20.00 per hour (\$41,600.00 per year). The Form ETA 750 states that the position requires two years of experience in the proffered position.

Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that the petitioner has established that it is more likely than not that the petitioner had the continuing ability to pay the beneficiary the proffered wage from the priority date (January 6, 2003) onward. The record reflects, and the petitioner's tax returns show, the ability to pay the proffered wage for 2004, 2005, and 2008 based upon the petitioner's net income. The petitioner's 2007 tax return states a net income which is sufficient to pay the \$11,000 difference between the proffered wage and the wages paid to the beneficiary for 2007. Therefore, the petitioner's tax returns demonstrate its ability to pay the difference between the proffered wage and the wages paid to the beneficiary for 2004, 2005, 2007, and 2008.

While the petitioner's tax returns do not establish its ability to pay the proffered wage in 2003 and 2006 based upon the petitioner's net income or net current assets, a totality of the circumstances establish that it is more likely than not that the petitioner had the continuing ability to pay the proffered wage for 2003 and 2006. The petitioner's tax returns reflect positive net income from 2004 through 2008. The petitioner's net income for 2006 is only minimally less than the difference between the proffered wage and wages paid to the beneficiary in that year. The record also contains a letter from the petitioner's accountant which states that the petitioner incurred extraordinary expenses in 2003, which have not been repeated and are consistent with data in the tax returns.

According to the Form I-140, the petitioner has been in business since 1999. The petitioner submitted additional tax returns for the time period before the priority date to establish its historical growth. The petitioner's tax returns demonstrate a consistent pattern of growth in its gross receipts from 1999 through 2008. The record also contains evidence of the petitioner's reputation in the industry.

Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has established that it had the continuing ability to pay the proffered wage.

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. The petition is approved.