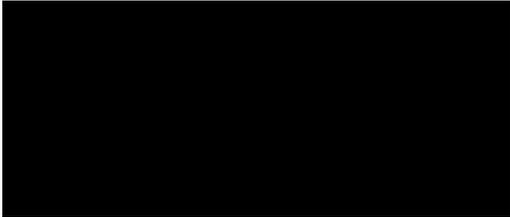


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FILE: EAC 02 207 53280 Office: VERMONT SERVICE CENTER Date: **JUL 21 2007**

IN RE: Petitioner: 
Beneficiary: 

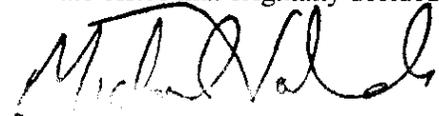
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as an Italian specialty cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. 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.

On appeal, the 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.

The regulation 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, 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 U.S. 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 April 23, 2001. The proffered wage as stated on the Form ETA 750 is \$510.00 per week (\$26,510.00 per year). The Form ETA 750 states that the position requires two years experience.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, a copy of the first page of petitioner's U. S. Income Tax Return for an S Corporation Form 1120S tax return, and, copies of documentation concerning the beneficiary's qualifications.

Because the Director determined the evidence submitted was insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the Vermont Service Center on June 16, 2003, requested evidence pertinent to that issue.

Consistent with 8 C.F.R. § 204.5(g)(2), the Service Center requested pertinent evidence of the petitioner's ability to pay the proffered wage beginning on the priority date. The Service Center specifically requested:

The financial information offered into evidence does not appear to establish your ability to pay the proffered wage as of the date of filing to present.

In general, there are three basic approaches that can be used to establish a petitioner's ability to pay in the year of filing. (1) the petitioner's net income in the year of filing was equal to or greater than the proffered wage; (2) the petitioner's net current assets in the year of filing were equal to or greater than the proffered wage; and (3) the petitioner paid the beneficiary a salary equal to or greater than the proffered wage in that year.

Upon review, the 2001 tax returns submitted show net income at \$2,435, which is insufficient to cover the proffered salary.

Submit additional evidence to establish that the employer had the ability to pay the proffered wage or salary of \$26,510 as of April 23, 2002, the date of filing and continuing to the present.

In response to the Request for Evidence of the petitioner's ability to pay the proffered wage beginning on the priority date, counsel submitted or resubmitted the petitioner's Internal Revenue Service (IRS) Form 1120S tax returns for years 2001 and 2002.

The tax returns demonstrated the following financial information concerning the petitioner's ability to pay the proffered wage of \$26,510.00 per year from the priority date.

- In 2002, the Form 1120S stated taxable income¹ of \$5,353.00.
- In 2001, the Form 1120S stated taxable income of \$2,436.00.

The director denied the petition on December 6, 2003, 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

Counsel filed an appeal on January 2, 2004. As a reason for the appeal, counsel stated:

"USCIS erred as a matter of fact and law."

The above declaration accompanied by the resubmission of wage information paid by petitioner to its employees upon appeal does not articulate with any specificity what error of fact or law the director could have made in its decision, nor does petitioner provide additional evidence upon appeal not considered by the Service Center. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify any erroneous conclusion of law or statement of fact for the appeal, The petitioner has not specifically

¹ IRS Form 1120s, Line 21.

addressed the reasons stated for denial, and, it has not provided any additional evidence. The appeal must be summarily dismissed.

ORDER: The appeal is dismissed.