

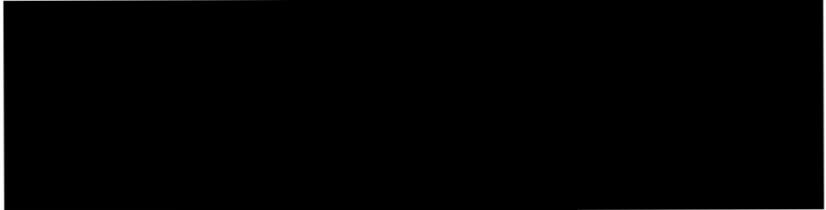
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U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER
EAC 03 227 50631

Date: JAN 16 2007

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The petitioner appealed the director's decision, and as it was untimely filed, accepted as a Motion to Reopen. Upon review of the record of proceeding, the director found that the grounds of denial had not been overcome, and affirmed the decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO reviews appeals on a de novo basis. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) It is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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 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.

Here, the Form ETA 750 was accepted on April 20, 2001. The proffered wage as stated on the Form ETA 750 is \$18.89 per hour.

The petitioner had submitted a U.S. federal tax return¹ based upon its tax year that begins on May 1, 2001 and ends April 30, 2002. The return stated taxable income of \$3,759.00, and current net assets of <\$1,899.00>².

According to the record of proceeding, the petitioner's submitted a statement as basis for appeal of the director's decision of October 19, 2004. In that statement the petitioner stated that the beneficiary had filed for adjustment of status, for employment authorization (i.e. the beneficiary received an Employment Authorization Document, Form I-765), had received a social security number, and, she was placed by the petitioner on its payroll.

According to a letter in the record of proceeding dated November 22, 2004, that accompanied the first appeal, the beneficiary commenced employment on July 19, 2004 at a weekly wage of \$736.71.

¹ There is no tax return in the record of proceeding from the priority date, April 20, 2001.

² The symbols <a number> indicate a negative number, or in the context of a tax return or other financial statement, a loss, that is below zero.

To further substantiate this statement the petitioner had submitted two letters dated November 5, 2004, one signed and one unsigned stating the beneficiary's wage rate. There were also submitted two computer generated documents on plain paper, one undated stating the beneficiary's total earnings of \$5,893.68 without indication of a time period or year, and the other, a pay statement for the beneficiary from the petitioner for the period July 19, 2004 through July 23, 2004, stating year to date earnings of \$736.71.

The petitioner has not attached any documents to accompany the second appeal filed on May 5, 2005, other than a letter dated May 4, 2005 restating, in pertinent part, that the beneficiary had filed for adjustment of status, employment authorization, she had received a social security number, and, she was placed by the petitioner on its payroll.

The petitioner must demonstrate the ability to pay the proffered wage 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 has not submitted this evidence. Further, if the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. The petitioner has not shown that it has paid the beneficiary the proffered wage.³

The record of proceeding contains no documentary evidence of wages actually paid to the beneficiary such as Wage and Tax statements (W-2), processed checks, or 1099-MISC statements. In any event, even if the petitioner were paying the beneficiary the proffered wage in 2004, that would not demonstrate its ability to pay the proffered wage from the priority date, April 20, 2001. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the unsupported assertions of petitioner will not satisfy the petitioner's burden of proof. The unsupported assertions of the petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of the petitioner on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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 will be dismissed.

³ Since the second appeal filed by the petitioner was on May 5, 2005, and according to the record of proceeding the beneficiary was placed on the payroll on or about July 19, 2004, there was sufficient time to submitted additional wage information for tax year 2004.