U.S. Department of Justice

Immigration and Naturalization Service

P56

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 29 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

identification data deleted to prevent clearly unwarranted invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer consulting service which seeks to employ the beneficiary as a programmer analyst. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the filing date of the visa petition.

On appeal, counsel states that the director erred in denying the Form I-140 Immigrant Petition for Alien Worker.

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 or seasonal 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 either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's filing date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is June 12, 1998. The beneficiary's salary as stated on the labor certification is $48,000.00 annually.

In response to a request for evidence, the petitioner submitted copies of its 1998 Form 1120S U.S. Income Tax Return for an S Corporation. The returns indicated that the petitioner's ordinary

income was $118,541. The director informed the petitioner that although this amount would sufficiently pay two additional employees the proffered wage, the petitioner has previously filed ten petitions with a priority date of June or July 1998. In addition, two of the petitions had been previously approved by the Service.

The petitioner was then asked to provide evidence that it could pay the proffered wage. In response, the petitioner provided profit and loss statements for January through October 1999, and copies of two September 1999 statements of money fund accounts from Paine Webber. The director found that the provided information did not establish the ability to pay the wages offered and denied the petition.

On appeal, the petitioner submitted a letter stating that the director erroneously denied the petition based on an incorrect analysis of the submitted documents. The petitioner states that it has provided adequate documentation to show that it has the ability to pay the proffered wage at the time the priority date was established. The petitioner concedes that it has the requirement to establish that it can pay the proffered wage. The petitioner states that it has met this requirement.

The statements and documentation provided by the petitioner on appeal do not overcome the issues raised by the director in denying the petition. The petitioner has failed to specifically address the issues presented by the director in his denial. The director stated that the petitioner had not established its ability to pay the wages of all of the beneficiaries for which the petitioner filed petitions. The petitioner did not establish that it could meet this requirement.

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.