



U.S. Department of Justice
Immigration and Naturalization Service

Bl

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

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER Date: MAR - 6 2001

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)

IN BEHALF OF PETITIONER:

[Redacted]

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.

identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a jewelry manufacturer. It seeks to employ the beneficiary permanently as a master jeweler engraver. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the petition's filing date. The director further determined that the petitioner had not established that it had the financial ability to pay the proffered wage as of the filing date of the petition.

On appeal, counsel submits a brief and additional documentation.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 153(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.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date which is the date on which any office within the employment system of the Department of Labor accepted the request for labor certification. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, the filing date of the petition is March 13, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of master jewelry engraver required three years of experience in the job offered or three years in the related occupation of master hand engraver (jewelry manufacture).

The director determined that the petitioner had not established that the beneficiary had the required three years of experience and denied the petition.

On appeal, counsel submits affidavits from [REDACTED], a master jeweler who worked with the beneficiary in Armenia, and [REDACTED] who also worked with the beneficiary in Armenia, who testify that the beneficiary is a master jeweler and hand engraver and has been since 1973.

The record establishes that the beneficiary had the requisite experience as required on the labor certificate. Consequently, the petitioner has overcome this portion of the director's decision.

The other issue in this proceeding is whether the petitioner has the ability to pay the proffered wage of \$29,120 annually as of March 13, 1997, the petition's filing date.

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 submitted copies of its 1996 and 1997 U.S. Income Tax Return for an S Corporation. The 1996 tax return indicated gross receipts of \$7,498,169, gross profit of \$737,978, salaries and wages paid of \$7,938, depreciation of \$1,555, and an ordinary income from trade or business activities of \$164,702. The 1997 tax return indicated gross receipts of \$7,806,103, gross profit of \$725,663, salaries and wages paid of \$3,820, depreciation of \$1,056, and an ordinary income from trade or business activities of \$153,714. The director denied the petition, noting that the petitioner had not demonstrated its ability to pay the proffered wage.

On appeal, counsel states:

1. The Labor Certification was filed in March 1997. Our 1997 U.S. Income Tax Return Form 1120S evidence gross sales of \$7+ million U.S. Dollars with ordinary income from business activities of \$153,714. Therefore, our company did have the ability to pay the offered \$14.00 per hour as stated on the Labor Certification when it was filed in 1997. Also, our 1996 U.S. Income Tax Return Form 1120S also evidences gross sales of \$7+ million U.S. Dollars with ordinary income from business activities of \$164,702.

A review of the federal tax returns shows that the petitioner has established that it had sufficient available funds to pay the salary offered at the time of filing of the petition and continuing to present.

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.