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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 98 270 51585 Office: VERMONT SERVICE CENTER

Date: MAR 12 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Public Copy

IN BEHALF OF PETITIONER:



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
Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a dry cleaning business. It seeks to employ the beneficiary permanently in the United States as an alteration tailor. 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 it had the financial ability to pay the beneficiary the proffered wage as of the filing date of the visa petition.

On appeal, counsel submits a statement. Counsel further requests 30 days in which to submit a brief and/or additional evidence. To date, more than 18 months later, no additional documentation has been received. Therefore, a decision will be made based on the record as presently constituted.

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 November 13, 1997. The beneficiary's salary as stated on the labor

certification is \$10 per hour or \$20,800.00 annually.

The petitioner initially submitted copies of bank statements for the petitioning entity for the period from October 1997 through July 1998 which reflected ending balances ranging from approximately \$5190 to \$1190, and a copy of its 1997 U.S. Corporation Income Tax Return. The tax return reflected gross profit of \$243,491; wages paid of \$41,545; depreciation of \$23,692; and a taxable income before net operating loss deduction and special deductions of \$1,627.

On February 12, 1999, the petitioner was requested to submit addition evidence of the ability to pay the proffered wage as of November 13, 1997.

In response, counsel submitted a copy of the petitioner's 1998 U.S. Corporate Income Tax Return which reflected gross profit of \$243,368; wages paid of \$30,131; depreciation of \$23,745; and a taxable income before net operating loss deduction and special deductions of \$13,252. Schedule L reflected current assets of \$5545 and current liabilities of \$17,613. The director denied the petition, noting that the petitioner had not demonstrated the ability to pay the proffered wage.

On appeal, counsel states:

1. The financial evidence submitted supports the conclusion that the Petitioner has the financial ability to pay the proffered wage from the filing date to the present.
2. I have just been informed by the parties that the Beneficiary has been employed by the Petitioner in the position of Alteration Tailor since the date of filing up to the present time. Additional evidence supporting this fact will be submitted with my brief.

A review of the federal tax return for the fiscal year April 1, 1997 through March 31, 1998 shows that when one adds the taxable income and the depreciation, the result is \$25,319, more than enough to pay the proffered wage of \$20,800. A review of the federal tax return for the fiscal year April 1, 1998 through March 31, 1999 shows that when one adds the taxable income and the depreciation, the result is \$36,997, more than enough to pay the proffered wage of \$20,800. The petitioner continues to have the 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.