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U.S. Department of Justice

Immigration and Naturalization Service

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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 2 4 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based 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 sustained.

The petitioner is a nursing home. It seeks to employ the beneficiary permanently in the United States as a registered nurse. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established its financial ability to pay the beneficiary's proffered wage as of the petition's priority date.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority 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 priority date is October 17, 2001. The beneficiary's salary as stated on the labor certification is $18.00 per hour or $37,440.00 per annum.

Initially, counsel submitted insufficient evidence of the petitioner's ability to pay the wage offered. On December 4, 2001, the director requested additional evidence of the petitioner's ability to pay the proffered wage.

In response, counsel submitted a copy of the petitioner's prospectus dated December 6, 2001 which stated that:

> We are furnishing this prospectus to the shareholders of Senior Housing Properties Trust and HRPT Properties Trust, each a Maryland real estate investment trust. We are currently a 100% owned subsidiary of Senior Housing. Senior Housing will distribute substantially all of our outstanding common shares as a special distribution to its shareholders.

The director determined that the evidence did not establish that

the petitioner had the ability to pay the proffered wage and denied the petition accordingly. The director noted that no evidence of any affiliation between Senior Housing Properties Trust and Five Star Quality Care Inc. had been submitted.

On appeal, counsel submits evidence that Senior Housing Property Trust is the landlord of the property that Cedar Healthcare Center rents. Counsel further submits a letter from the Chief Financial Officer which states that the petitioner employs over 100 employees and "has a gross annual income of $520,000,000.00.

The regulations at 8 C.F.R. 204.5(g)(2) state, in pertinent part, that in a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In this case, the petitioner has submitted a letter asserting that it has more than 100 employees and that it is financially viable.

The record does not contain any derogatory evidence which would persuade the Service to doubt the credibility of the information contained in the letter from the financial officer or the supporting documentation. Therefore, the petitioner has demonstrated its financial ability to pay the beneficiary's salary as of the petition's filing date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.