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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

File: EAC 02 061 55137 Office: Vermont Service Center Date: MAR 26 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii).

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a beauty salon. It seeks to employ the beneficiary permanently in the United States as a cosmetologist. 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 priority date of the visa petition.

On appeal, counsel submits a brief and additional evidence.

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 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 April 25, 2000. The beneficiary's salary as stated on the labor certification is $9.36 per hour or $19,468.80 per annum.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the wage offered. On February 5, 2002,

the director requested additional evidence to establish that the petitioner had the ability to pay the proffered wage.

In response, counsel submitted a copy of the petitioner's unaudited financial statement for the period ended December 31, 2000.

The director determined that the evidence submitted did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits a copy of the petitioner's Statement of Assets for the period ended June 30, 2002 and a copy of the petitioner's Form 1040 U.S. Individual Income Tax Return including Schedule C, Profit or Loss From Business. The Form 1040 reflects an adjusted gross income of $4,256. Schedule C reflects gross receipts of $45,215; gross profit of $31,935; wage of $0; and a net profit of $3,550.

Counsel argues that the employment of the beneficiary will increase the gross income of the petitioner. Counsel does not explain, however, the basis for such a conclusion. For example, the petitioner has not demonstrated that the beneficiary will replace less productive workers, transform the nature of the petitioner's operation, or increase the number of customers on the strength of her reputation. Absent evidence of these savings, this statement can only be taken as counsel's personal opinion. Consequently, the Service is unable to take the potential earnings to be generated by the beneficiary's employment into consideration.

Counsel further argues that the petitioner has other income as shown in the audited report submitted on appeal. While the report does show the petitioner's personal value, none of the assets mentioned are easily liquidated and it would seem impossible that these assets did not carry certain liabilities with them (not mentioned).

The petitioner must show that it had the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status. See 8 C.F.R. § 204.5(g)(2).

The petitioner's Form 1040 for calendar year 2000 shows an adjusted gross income of $4,256. The petitioner could not pay a proffered wage of $19,468.80 a year out of this income.

Accordingly, after a review of the evidence submitted, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the

priority date of filing of the petition.

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.