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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC 01 226 56539 Office: VERMONT SERVICE CENTER

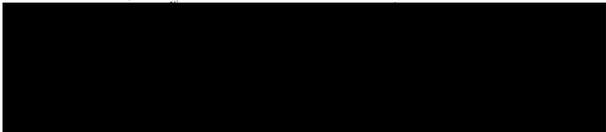
Date: JUN 05 2003

IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann
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 cabinet maker. It seeks to employ the beneficiary permanently as a cabinet maker. 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 priority 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 priority 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 priority date of the petition is February 3, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of cabinet maker required two years of training in the job offered. The director determined that the petitioner had not established that the beneficiary had the required two years of training and denied the petition.

On appeal, counsel submits letters of employment from Cal Lotry of Robinson Group Enterprises Ltd., [REDACTED] of Mallet Millwork Inc., and Vishnu Sookar of Ontario Store Fixtures Inc. which testify to the beneficiary's two years of experience as a cabinet maker.

Therefore, the record establishes that the beneficiary had the requisite training 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 \$36,800.40 annually as of February 3, 1997, the petition's priority 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.

Counsel submitted a copy of the petitioner's 1997 Form 1120S U.S. Income Tax Return for an S Corporation which reflected gross receipts of \$162,340; gross profit of \$111,548; compensation of officers of \$10,000; salaries and wages paid of \$33,650; and an ordinary income (loss) from trade or business activities of \$21,013.

The director determined that the documentation was insufficient to establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel argues that:

1. The petitioner established ability to pay the beneficiary the proffered wage in the original submission of the I-140 package to the satisfaction of the Immigration and Naturalization Service. As part of the petition package, the Petitioner submitted the corporate tax returns as evidence of the ability to pay the proffered wage. The tax returns show that the petitioner will be able to pay the beneficiary based on earnings from the previous years.

The petitioner's tax return for calendar year 1997 shows an ordinary income of \$21,013. The petitioner could not pay a salary of \$36,800.40 a year from this figure.

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).

No additional evidence of the ability to pay the proffered wage has been received. Therefore, the petitioner has not overcome this portion of the director's decision.

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.