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U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. 3/F
Washington, D.C. 20536

[redacted]

File: WAC 01 293 57878 Office: California Service Center Date: MAY 28 2003

IN RE: Petitioner:
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)

ON 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 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a metal plating company. It seeks to employ the beneficiary permanently in the United States as a copper plater. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on 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 continuing ability to pay the wage offered beginning on the priority date, 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 request for labor certification was accepted for processing on September 26, 1997. The proffered salary as stated on the labor certification is $7.90 per hour which equals $16,432 annually.

With the petition, counsel submitted an unsigned, uncertified copy of page one of the petitioner's 1998 Form 1120S U.S. corporation income tax return. That document shows that the petitioner declared an ordinary income of $231,657 during its October 1, 1998 to September 30, 1999 fiscal year.

Because the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the California Service Center, on February 10, 2002, requested additional evidence pertinent to that ability. Specifically, the Service Center requested IRS certified copies of the petitioner's Form 1120S tax returns signed by an authorized official of the petitioner and audited financial statements for the past year.

In response, counsel submitted 1998, 1999, 2000, and 2001 W-2 wage and tax statements showing that the petitioner paid the beneficiary $7,940.05, $15,968.00, $14,596.01 and $11,222.75 during those years, respectively.

Counsel also submitted signed, though uncertified, copies of the petitioner's complete 1998 and 1999 Form 1120 U.S. corporation tax returns. The income declared on the 1998 return was stated above. The 1999 return shows that the petitioner declared an ordinary income of $282,727 during its October 1, 1999 to September 30, 2000 fiscal year.

Those submissions were accompanied by a letter from counsel, dated April 18, 2002, in which he stated that the petitioner had been granted an extension to file its 2000 and 2001 returns, and that they were not yet available.

On June 14, 2002, the Director, California Service Center, denied the petition, finding that, absent the 2000 and 2001 returns, the evidence submitted did not demonstrate the petitioner's continuing ability to pay the proffered wage.

On appeal, counsel submitted copies of the petitioner's 1997, 1998, 1999, and 2000 Form 1120S tax returns. The 1997 return states that the petitioner declared ordinary income of $151,420 during its October 1, 1997 to September 30, 1998 fiscal year. The income declared on the 1998 and 1999 returns is stated above. The 2000 return states that the petitioner declared $302,781 in ordinary income during its October 1, 2000 to September 30, 2001 fiscal year. This office notes that, at the time the appeal was filed, the petitioner's return for the fiscal year from October 1, 2001 to September 30, 2002 would not have been available.

The evidence submitted demonstrates that the petitioner was able to pay the proffered wage during each of the years for which tax returns were available when the appeal was filed. Therefore, the petitioner has established that it has had the continuing ability to pay the proffered salary beginning on the priority date.

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.