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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 075 50728 Office: NEBRASKA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an auto body shop. It seeks to employ the beneficiary permanently in the United States as a body frame repairer. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

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.

Provisions of 8 C.F.R. § 204.5(g)(2) state:

> *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 from 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. *See* 8 C.F.R. § 204.5(d). The petition's priority date in this instance is January 12, 1998. The beneficiary's salary as stated on the labor certification is $21.41 per hour or $44,532.80 per year.

The petitioner, being self-represented, initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated March 22, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing to the present. The RFE exacted, for 1998-2000, the petitioner's original, signed federal income tax return, annual report, or audited financial statement.

The petitioner submitted its 1998-2000 Form 1120, U.S. Corporation Income Tax Return. These returns reported taxable income before net operating loss deductions and special deductions, as reflected on line 26 of Form 1120. For the respective years, they were losses, namely, ($28,973), ($48,345), and ($812), less than the proffered wage.

The director considered taxable income, as reflected on line 30 of Form 1120, and depreciation, as stated on line 21b. The director noted that the tax returns showed negative income from the priority date, determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage at the priority date and continuing to the present, and denied the petition.

On appeal, the petitioner indicates to Citizenship and Immigration Services (CIS), formerly the Service or INS, that it will send a brief and evidence to the AAO within 30 days and states:

> We respectfully disagree with the [CIS] evaluation regarding our company's financial standing for the past four (4) years.

The petitioner filed the appeal on September 6, 2002. Neither the petitioner nor a representative of the petitioner has filed any additional brief or evidence with the director or the AAO, and more than the time allowed and requested has elapsed. 8 C.F.R. § 103.3(a)(2)(i) and (viii). The petitioner does not identify, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

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 summarily dismissed.