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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

FEB 24 2004

File: [redacted] Office: Nebraska Service Center Date:

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 Citizenship and Immigration Services (CIS) 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, 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 long-term care facility. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petition is accompanied by an application for Schedule A labor certification. 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 petition and application for Schedule A labor certification were filed with CIS. Here, the petition's priority date is October 17, 2001. The beneficiary's salary as stated on the labor certification is $29,120.00 per annum.

The director initially determined that the petitioner, through counsel, had submitted insufficient evidence of its ability to pay

the wage offered. On December 5, 2001, the director requested additional evidence of the ability to pay the proffered wage.

In response, counsel submitted a copy of a prospectus for Five Star Quality Care, Inc., dated December 6, 2001, which states 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 submitted 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 properties that Five Star Quality Care rents, and that Westridge Quality Care and Rehabilitation Center is one of those properties. Counsel further submits a letter from Five Star's Chief Financial Officer which states that it employs and pays all facility-based employees at 92 facilities, and that "[o]n a pro forma basis, for the year 2001 Five Star generated $520 million revenue of which $70 million was paid towards rent to Senior Housing Properties Trust and the remaining $450 million was used towards operation of the facilities to include payment of employees." The record also indicates that Five Star has over 6,500 employees.

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 such a letter.

The record does not contain any derogatory evidence which would persuade CIS 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 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.