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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

FEB 24 2004

File: WAC 02 099 53139/A 93 176 223 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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 employment based immigrant 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 seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a private individual doing business as a residential care facility. It seeks to employ the beneficiary permanently in the United States as a board and care facility manager. 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 continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits additional evidence and asserts that the petitioner has demonstrated that she has the ability to pay the proffered wage.

Section 203(b)(3)(A)(i) of 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.

The regulation at 8 C.F.R. § 204.5(g) provides in pertinent part:

> (2) *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. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The sole issue on appeal is whether the petitioner has established her continuing financial ability to pay the beneficiary's offered wage. Eligibility in this case rests upon whether the petitioner's ability to pay the wage offered has been established as of the petition's priority date. The priority date 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 July 31, 1997. The beneficiary's salary as stated on the labor certification is $500 per week or $26,000 annually.

In this case, the petitioner, a private individual doing business as a sole proprietorship, submitted

evidence of her ability to pay the proffered wage in the form of copies of Form 1040 U.S. Individual Income Tax Return for the years 1997 through 2001, including Schedule C, Profit or Loss From Business. The information provided reflects the following:

Year	Business Income	Adjusted Gross Income
1997	$(35,822)	$ 76,410
1998	$(27,612)	$104,275
1999	$(7550)	$117,252
2000	$(9552)	$ 40,319
2001	$(3935)	$ 30,624

In denying the petition, the director concluded that the business' net profits did not support the petitioner's continuing ability to pay. The director noted that the petitioner's 2001 tax return reflected that $-0- wages were paid as salaries indicating that her income may be less than represented.

On appeal, counsel submits copies of various bank statements, accountant's compilation reports, real estate evaluations, and mortgage interest statements. Counsel asserts that the petitioner requested that her tax preparer review her 2001 tax return. An error in representing the salaries paid was discovered. The preparer had listed salaries as payroll (PR) in Part V of Schedule C instead of on the line for salaries. Counsel explains that the petitioner's state wage reports corroborate that the petitioner maintained a 2001 payroll.

We find that the evidence submitted showing that the sole proprietor's adjusted gross income exceeded the beneficiary's proffered wage in each of the tax years is persuasive. Accordingly, we conclude that the petitioner has established that she had the ability to pay the beneficiary's wage as of the priority date and continuing until the present.

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.