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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-02-139-50583 Office: California Service Center Date: JAN 16 2004

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

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a training and development specialist. 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 April 26, 2001. The proffered salary as stated on the labor certification is $26.00 per hour which equals $54,080 annually.

Pursuant to 8 C.F.R. § 204.5(g)(2) the petitioner is obliged to demonstrate its ability to pay the proffered wage. The regulation further states that the proof of the ability shall be copies of annual reports, federal tax returns, or audited financial statements. The petitioner has submitted none of the above.

With the petition, the petitioner submitted a photocopied, unaudited, income and expense statement for the year 2001. The report indicated that during that calendar year, the petitioner had net revenue of $3,983,560 and total expenses of $3,962,175 yielding a net pre-tax profit of $21,385.

On May 22, 2002, the California Service Center requested additional evidence pertinent to the petitioner's ability to pay the proffered wage. Specifically, the petitioner was requested to provide evidence of the petitioner's ability to pay the beneficiary. The director indicated that such evidence could consist of annual reports, federal tax returns or audited financial reports.

In response, counsel submitted a letter from Steve Ziegler, who indicated that he was Chief Financial Officer for Life Care Centers of America, Inc., a management company operating La Habra Convalescent Center and administering its payroll. Mr. Ziegler stated that Life Care Centers of America, Inc. writes checks on the account of the petitioner, regularly covering the payroll of over 100 employees.

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 on September 18, 2002.

On appeal, counsel states, in pertinent part, that:

> At the present time, Life Care Centers of America has submitted an additional letter, dated October 15, 2002, illustrating the ability to pay the proffered wage. This letter states that Life Care Centers of America, which owns and operates [the] petitioning company has the ability to pay the wage of the beneficiary. This letter further states that Life Care Centers of America operates more than 200 centers throughout 28 different states and has over 27,000 employees... Life Care Centers of America clearly has over 100 employees, the letter states [the petitioner's] ability to pay and is signed by the financial officer of the company.

Counsel submitted several earnings statements and a Form W-2 Wage and Tax Statement indicating that the beneficiary earned $10,127.63

during 2001. The W-2 was issued by Life Care Center of America, Inc. Counsel states that the petitioner has sufficient funds available to pay the proffered wage as demonstrated by the income expense statements submitted on appeal.

The proffered wage is $54,080 per year. The 2001 W-2 form establishes that the petitioner paid the beneficiary $10.127.63 during that year. The petitioner is obliged to demonstrate that it was able to pay the beneficiary the additional $43,952.37 which is the balance of the proffered wage. During that year, in an unaudited financial statement, the petitioner declared a pre-tax profit of $21,385, which was insufficient to pay the balance of the proffered wage.

Further, although claimed, the petitioner has not demonstrated that it is owned and operated by Life Care Centers of America, Inc. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, after a review of the evidence submitted, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered at the time of filing of the petition.

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.