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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2004

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 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.

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a trading company. It seeks to employ the beneficiary permanently in the United States as a sales and marketing manager. 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.

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 turns, in part, on the petitioner's ability to pay the wage offered as of 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. The petition's priority date in this instance is August 3, 2000. The beneficiary's salary as stated on the labor certification is $1,450.00 per week or $75,400.00 per year.

Counsel initially submitted insufficient evidence of the beneficiary's experience and of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated January 3, 2003, the director required additional evidence to establish that the beneficiary holds a United States baccalaureate degree or the foreign equivalent of a baccalaureate degree. The RFE also required evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. The RFE required computer printouts from the Internal Revenue Service of tax returns prepared by the petitioner for 2000 and 2001, as well as W-2 forms for the beneficiary for 2000 and 2001. The RFE also requested copies of the petitioner's California Employment Development Department (EDD) Form

DE-6 quarterly wage reports for the most recent four quarters, with job title and duties for each employee.

In response to the RFE counsel submitted an official transcript of the beneficiary's college studies and a photocopy of the degree received. Counsel also submitted IRS printouts of the petitioner company's tax returns for 2000 and 2001. Counsel also submitted DE-6 reports for the most recent four quarters. Counsel stated that no W-2 forms existed for the beneficiary and that the beneficiary would be placed on the payroll upon receipt of his employment authorization.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition.

On appeal, counsel submits no new evidence, but provides additional copies of selected pages of the petitioner's Form 1120S tax return for 2000 and for 2001, full copies of which had been submitted previously. Counsel also submits a brief in the form of a letter.

Counsel argues on appeal that the director made several calculation errors and that the director also failed to include among current assets certain deposits listed as "other assets" on the tax returns of the petitioner for 2000 and for 2001. Counsel argues that the director should have calculated the sum of net income and net current assets for each year. Counsel argues that the total of those figures for each year was sufficient to pay the proffered wage in 2000 and in 2001.

In his decision the director states that the annual proffered wage is $69,600.00. The manner in which this figure was calculated is not stated in the decision and this figure is incorrect. The petitioner's Form ETA-750 originally showed a rate of pay of $680.00 per week. That figure, however, is crossed out and the rate of pay of $1,450.00 per week is entered in its place. A weekly wage of $1,450.00 is equivalent to an annual wage of $75,400.00. ($1,450.00 x 52 = $75,400.00). This is the amount which should have been used for the proffered annual wage in the director's calculations. Counsel's brief also uses the erroneous figure of $69,600.00 as the proffered annual wage. Counsel does not state the source of this figure, though it is presumably taken from the director's decision.

The director calculated that for 2000 the petitioner had net income of $26,452 and net current assets of $37,628. The director calculated that for 2001 the petitioner had net income of $38,323.00 and net current assets of $23,066.00. The director stated that these amounts indicated that the petitioner did not have the funds available to pay the proffered wages.

Counsel argues that an additional amount of $11,610 should be added to current assets for 2000 and for 2001, reflecting the figure shown on schedule L, line 14 each year for "other assets." Counsel notes that on each return the "other assets" line is itemized with a separate statement identifying the "other assets" as "deposits." Counsel argues that those deposits should be counted as current assets

for 2000 and for 2001. Counsel's argument, however, fails to offer any evidence to support the conclusion that the $11,610 shown as deposits on each return are current assets. The returns do not specify that these deposits are current assets. In fact, Schedule L line 6 for "other current assets" is blank on the returns for 2000 and 2001. Schedule L line 14 for "other assets" is the last item in the assets section, following several categories of non-current assets, such as mortgage loans, buildings and land. The petitioner's placement of the $11,610 in deposits on line 14 each year therefore indicates that the petitioner considered those deposits to be non-current assets. For these reasons counsel's argument that an additional $11,610 should be considered as current assets on the returns for 2000 and for 2001 is not found to be persuasive.

Counsel argues that the director's figures for net current assets in 2000 and 2001 were incorrect. However, in fact the director's figure for net current assets for 2000 was correct. Counsel's calculations omit $1,985 in "other current liabilities" which must be taken into account for that year. The director's figure for net current assets for 2001, however, was incorrect. The director gave that figure as $23,066, but the correct figure is $23,966. This error, however, did not affect the result in this case.

Beyond the decision of the director, there is no evidence of an academic evaluation in the record.

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.