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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 I Street N.W.
Washington, D.C. 20536

B6

[redacted]

File: WAC 02 032 52029 Office: CALIFORNIA SERVICE CENTER Date: JAN 28 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 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 dismissed.

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 restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. 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 asserts that the petitioner's evidence established its ability to pay the beneficiary's proposed salary.

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) also 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 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 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 its continuing ability to pay the beneficiary's offered salary. Eligibility in this case rests upon 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. *Matter of Wing's Tea House,* 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is January 12, 1998. The beneficiary's salary as stated on the approved labor certification is $11.62 per hour or $24,169.60 annually.

The petitioner initially submitted no evidence of its ability to pay the beneficiary's proposed salary. On February 19, 2002, the director requested additional evidence of its ability to pay pursuant to the requirements of 8 C.F.R. 204.5(g)(2) in the form of annual reports, federal tax returns, or audited financial statements. The director also requested evidence establishing that the beneficiary has the requisite four years of work experience as described by the approved labor certification.

In response, the petitioner submitted documentation verifying the beneficiary's past employment as a cook. The petitioner also submitted a letter, dated May 13, 2002, signed by Gonzalo Sanchez, General Manager/Chief Financial Officer. Mr. Sanchez asserts that the petitioner is a multimillion dollar corporation employing hundreds of employees and considers its tax returns and financial data as private and confidential information. Mr. Sanchez also states that the petitioner is capable of covering the beneficiary's offered salary.

In denying the petition, the director notes that while the regulations allow a financial officer to certify that a U.S. employer with 100 or more employees can meet the proffered wage, it also states that CIS "*may* accept a statement from a financial officer of the organization." The director noted that the petitioner had represented that it had 40 employees in its Immigrant Petition for Alien Worker (I-140). We concur with the director's decision. It is the petitioner's burden to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel submits a second letter from Mr. Sanchez, dated June 18, 2002. He states that the petitioning business owns fourteen restaurants and that two of the petitioner's subsidiaries own five and four restaurants respectively. Taken as a whole, Mr. Sanchez states that this represents 23 restaurants with 920 employees. It remains that there is no persuasive evidence in the record in the form of corporate documentation establishing that the petitioning business can be considered as the same entity as its fourteen other restaurants, or that they are contractually obligated to the other. We note that because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot generally be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of M,* 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.,* 17 I&N Dec. 530 (Comm. 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof. *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972). We cannot find that the director erred in denying the petition based on the evidence contained in this record.

Accordingly, we cannot conclude that the petitioner has demonstrated its ability to pay the proffered as of the priority date of the petition 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 not met that burden.

ORDER: The appeal is dismissed.