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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

B6

[redacted]

MAR 02 2004

FILE: WAC 00 237 56434 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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based preference visa petition. The director's decision to deny the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The petition will be denied.

The petitioner is a Filipino weekly newspaper/24 hour radio station. It seeks to employ the beneficiary permanently in the United States as a radio-programming editor. As required by statute, the petition was 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 financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition. The AAO affirmed this determination on appeal.

On motion, counsel submits a brief and additional documentation.

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 request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the petition's priority date is December 2, 1996. The beneficiary's salary as stated on the labor certification is $3,165 per month or $37,980.00 per annum.

The AAO affirmed the director's decision to deny the petition, noting that the petitioner had not submitted evidence of its ability to pay the proffered wage as of the priority date of the petition.

On motion, counsel argues that the petitioner "would have foregone his salary in order to pay any necessary wages to [the beneficiary]."

The petitioning entity in this case is a corporation. Consequently, any assets of the individual stockholders including ownership of shares in other enterprises or corporations cannot 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;AG

1958); *Matter of Aphrodite Investments Limited,* 17 I&N Dec.530 (Comm. 1980); and *Matter of Tessel,* 17 I&N Dec.631 (Act. Assoc. Comm. 1980).

A review of the petitioner's Form 1120 for fiscal year 1996 shows a taxable income of $11,192. The petitioner cannot pay a proffered wage of $37,980.00 per year from this figure. Schedule L was not provided and, therefore, it could not be determined if there were sufficient net current assets to pay the wage.

It is noted that the petitioner was able to pay the proffered wage for fiscal year 1998 through its net current assets and for fiscal year 1999 through its taxable income. The petitioner, however, neglected to provide Schedule L for Form 1120 for fiscal year 1997 and, again, CIS is unable to determine if there were sufficient net current assets to pay the wage for that year. Therefore, the ability to pay the proffered wage has not been established for fiscal years 1996 and 1997.

Based on the evidence submitted, it cannot be found that the petitioner had sufficient funds available to pay the beneficiary the proffered wage as of the priority date of the application for alien employment certification as required by 8 C.F.R. § 204.5(g)(2). Therefore, the petition may not be approved.

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 AAO's decision of May 30, 2002 is affirmed. The petition is denied.