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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, D.C. 20536

[redacted]

File [redacted] Office: Nebraska Service Center Date: MAR 0 9 2004

IN RE: Petitioner: [redacted]
Beneficiary:
AKA

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hair coloring and styling salon. It seeks to employ the beneficiary permanently in the United States as a hairstyling supervisor. 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 argues that the evidence clearly demonstrates the petitioner has the financial ability to pay the proffered wage.

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 petitioner'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 petitioner's priority date in this instance is February 23, 2001. The beneficiary's salary as stated on the labor certification is $495 per month or $25,740 per year.

With the petition, counsel submitted a copy of the petitioner's 1999, 2000 and 2001 Form 1120-A, U.S. Corporation Short-Form Income Tax Return. The federal tax return for 2001 reflected taxable income before net operating loss deduction and special deductions of negative $4,979.

In a request for evidence (RFE) dated February 18, 2003, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing. In response, counsel submitted copies of petitioner's bank statements for February 2001 and March 2003.

In another RFE dated May 9, 2003, the director again requested evidence to clearly establish the petitioner's financial ability to pay the offered wage as of February 23, 2001 and continuing. In response, counsel submitted copies of the previously submitted bank statements.

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 states that the evidence submitted clearly demonstrated the petitioner's ability to pay as required by CIS. With the appeal, counsel submitted a brief and copies of petitioner's bank statements for March through June 2001 and April through June 2003.

Although the petitioner submitted copies of its commercial bank account statements to demonstrate that it had sufficient cash flow to pay the proffered wage in 2001, there is no proof that they somehow represent additional funds beyond those of the tax return. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner's tax return for calendar year 2001 shows a taxable income before deductions for net operating loss and special deductions of negative $4,979. The petitioner could not have paid the proffered wage from the taxable income. The return also shows current assets of $14,460 and current liabilities of $648. The petitioner could not have paid the proffered wage from net current assets. Counsel submitted no evidence of the petitioner's ability to pay the offered wage in 2002.

The petitioner is obliged by 8 C.F.R. § 204.5(g)(2) to demonstrate the petitioner's continuing ability to pay the proffered wage

beginning on the priority date. The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage beginning on the priority date and continuing to 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.