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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: WAC 02 145 50200 Office: California Service Center Date: MAR 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: SELF-REPRESENTED

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 roof installation and repair firm. It seeks to employ the beneficiary permanently in the United States as a roofer. 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, the petitioner submits copies of its 2000 and 2001 W-3, Transmittal of Wage and Tax Statements, and a copy of the beneficiary's 2001 W-2, Wage and Tax Statement. The petitioner states the attorney did not submit these documents, previously requested by the director.

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.

The regulation at 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 and continuing until the alien is granted

permanent residence. The petitioner's priority date in this instance is November 17, 1997. The beneficiary's salary as stated on the labor certification is $21.77 per hour or $45,281.60 per year.

With the petition, counsel submitted a copy of a Dun & Bradstreet listing of the petitioner, showing it had sales in excess of $3 million.

In a request for evidence (RFE) dated May 13, 2002, the director requested evidence of the petitioner's ability to pay the proffered wage, including copies of the beneficiary's income tax returns with the Form W-2 for the years 1997 through 2001, and copies of the company's payroll summary, W-2 or W-3 showing the wages it had paid to the beneficiary.

In response, counsel submitted certified copies of the beneficiary's computer tax returns for 1998 through 2001, and stated the employer (the petitioner) would not release its payroll summary, as its policy does not allow release of personal information.

The director determined that the petitioner had not established it had the ability to pay the proffered wage as of the priority date and continuing until the present.

The petitioner's Dun & Bradstreet report and its 2000 and 2001 W-3s show a substantial business practice. However, these documents do not provide the information necessary for CIS to make a determination as to its ability to pay the proffered wage as of the priority date and continuing to the present. The beneficiary's W-2 provides information for only one year. The W-3s only provide information for a two-year period and also fail to provide information as it applies specifically to the beneficiary.

The petitioner is required by 8 C.F.R. § 204.5(g)(2) to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. The petitioner has provided no evidence to demonstrate its ability to pay the proffered wage in 1997, 1998 or 1999. Therefore, the petitioner has not established that it has had the continuing ability to pay the proffered salary beginning on the priority date.

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.