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U.S. Department of Homeland Security

Citizenship and Immigration Services

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PUBLIC COPY

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

[redacted]

MAR 17 2004

File: LIN 02 091 55506 Office: NEBRASKA 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 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 Mexican food restaurant. It seeks to employ the beneficiary permanently in the United States as a Mexican specialty 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 submits additional evidence and argues that the petitioner has the financial ability to pay the proffered wage.

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) states 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 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.

Eligibility in this case rests upon the petitioner's continuing ability to pay the wage offered as of the petition's priority date. The regulation at 8 C.F.R. § 204.5 (d) defines the priority date as the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. Here, the petition's priority date is January 14, 1998. The beneficiary's salary as stated on the labor certification is $9.98 per hour or $20,758.40 annually.

As evidence of its ability to pay, the petitioner initially submitted a copy of its Form 1120, U.S. Corporation Income Tax Return for the calendar year of 2000. The tax return indicated that the petitioner declared –$2,813 in ordinary income in 2000. Schedule L of this tax return reflects that the petitioner had $35,129 in current assets and $4,173 in current liabilities, resulting in $30,956 in net current assets.

On March 29, 2002, the director requested further evidence relevant to the petitioner's ability to pay pursuant to the regulatory requirements set forth at 8 C.F.R. § 204.5(g)(2). The director also requested copies of any W-2s or pay stubs that the petitioner may have if it employed the beneficiary.

The petitioner responded by submitting a letter from the petitioner's owner stating that the beneficiary had been employed since 1996 and had been paid in cash. The petitioner also submitted copies of its Form 1120, U.S. Corporation Income Tax Return for 1998, 1999, and 2001. These tax returns, including Schedule L, reflected the following information:

	Taxable income before net operation loss (NOL) deduction and special deductions	Current Assets	Current Liabilities	Net Current Assets
1998	$5,349	$27,174	$-0-	$27,174
1999	$256	$31,573	$-0-	$31,573
2001	$2,449	$40,045	$2,520	$37,525

The director denied the petition. He determined that the petitioner had not established its continuing ability to pay the beneficiary's proffered wage as of the priority date of the visa petition. The director concluded that the petitioner's taxable income as shown on its federal tax returns was insufficient to cover the beneficiary's proffered salary.

Insofar as taxable income is concerned, the director is correct in observing that the petitioner's figures fall well short of the beneficiary's salary of $20,758.40. In this case, however, the petitioner's net current assets can be considered as a measure of the petitioner's liquidity. These assets, as shown on Schedule L of the petitioner's tax returns, represent cash or cash equivalents that would be available to pay the proffered wage during the period covered by the tax returns. As referenced above, the petitioner's net current assets are sufficient to meet the beneficiary's salary of $20,758.40 in each of the relevant years.

Based on a review of the evidence contained in the record, it can be concluded that the petitioner has submitted sufficient convincing evidence to establish its continuing ability to pay the beneficiary's offered wage as of the visa priority date of January 14, 1998.

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 met that burden.

ORDER: The appeal is sustained.