B6

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

MAR 29 2004

FILE: WAC 02 168 54276 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

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director to request additional evidence and entry of a new decision.

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 or professional. The petitioner is a leather goods manufacturer. It seeks to employ the beneficiary permanently in the United States as a leather goods fashion designer. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor. The director determined that the petitioner had failed to establish that it had the continued financial ability to pay the beneficiary's proffered wage as of the visa priority date.

On appeal, the petitioner, through counsel, asserts that the director failed to properly evaluate the petitioner's federal income tax returns and failed to consider the Wage and Tax Statements (W-2s) documenting the wages that the petitioner had already paid to the beneficiary.

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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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 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.

In this case, eligibility for the visa classification is based, in part, upon whether the petitioner has demonstrated its continuing ability to pay the beneficiary's proffered salary as of the priority date of the visa petition. 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 $22.60 per hour for a 40-hour week or $47,008 per year. The record indicates that the petitioner is organized as a corporation and was established in 1997. It has employed the beneficiary since 1998.

As evidence of the petitioner's ability to pay the beneficiary's proposed salary of $47,008, counsel initially submitted a copy of the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation for the year 2001.

This tax return reflects that the petitioner files its returns based on a standard calendar year. In 2001, the petitioner declared an ordinary income of $122,697.

On June 25, 2002, the director requested additional evidence to establish the petitioner's continuing ability to pay the beneficiary's proffered wage as of the priority date. The director specified either annual reports, federal tax returns, or audited financial statements from the petitioner covering 1998, 1999, and 2000. The director also instructed the petitioner to submit copies of its payroll summaries and copies of any W-2s documenting payment of wages to the beneficiary.

Counsel's response included copies of the beneficiary's W-2s for 1998, 1999, and 2000. They indicate that the petitioner paid the beneficiary $21,192.21, $23,622.43, and $24,160, respectively. The petitioner's W-3s submitted with this response reflect that the petitioner's payroll ranged from $185,000 to $252,000 during these years.

On October 16, 2002, the director issued a notice of intent to deny the petition. He reviewed the evidence that had been offered thus far and noted that the petitioner had not submitted sufficient evidence to support its ability to pay the proffered wage for 1998, 1999, and 2000. The petitioner was given an additional thirty days to respond to the notice of intent to deny and submit additional evidence.

Counsel responded by submitting copies of the petitioner's Form 1120S for 1998, 1999, and 2000, as well as other financial documentation. The 1998 tax return reflects that the petitioner declared ordinary income of $48,674. Its 1999 tax return showed ordinary income as $180,849. It declared ordinary income of -$124,793 on the federal tax return for 2000.

The director's denial was based on his review of the level of the petitioner's ordinary income. As noted by counsel on appeal, the director did not specify which year of the petitioner's tax return figures was insufficient to cover the beneficiary's proffered salary of $47,008, but it is apparent that the only year showing an insufficient amount was the year 2000. The AAO does not concur with the director's conclusion relating to the petitioner's ability to pay the beneficiary's proffered wage because the director failed to consider the petitioner's net current assets.

Net current assets are the difference between current assets and current liabilities. It identifies the level of a petitioner's liquidity at the beginning and end of the tax year as reflected on Schedule L of a corporate tax return. CIS will consider net current assets in reviewing a petitioner's ability to pay a beneficiary's proposed salary because it represents the amount of cash or cash equivalents as set forth on the Schedule L balance sheet that would reasonably be available to pay the proffered wage. Here, Schedule L indicates that the petitioner had $820,345 in current assets and $96,417 in current liabilities at the end of the 2000 tax year. The difference of $723,928 represents the petitioner's net current assets. This amount far exceeded the beneficiary's proffered wage of $47,008. As noted above, even without considering the wages paid to the beneficiary since 1998, the petitioner's ability to pay the beneficiary's wage offer of $47,008 was established during each of the relevant years as shown by either its ordinary income or its net current assets.

It is noted, however, that the director's decision failed to address the evidence supporting the beneficiary's educational background. To be eligible for approval, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House,* 16 I&N Dec. 158 (Act. Reg. Comm. 1971).

In this case, the approved labor certification (Form ETA750-A) requires that the beneficiary have at least one year of experience in the job offered and a Bachelor of Arts degree with a major in fashion design. Although the record contains documents relating to the beneficiary's experience, other than a couple of brief credential evaluations referring to the beneficiary's professional qualification as either an "Artist-Technologist" or as having

majored in "industrial design," there is no evidence of an official college or university record showing the date of the degree and area of concentration of study as required by 8 C.F.R. § 204.5(l)(3)(ii)(C). Such documentation must also be accompanied by an English translation pursuant to 8 C.F.R. § 103.2(b).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the beneficiary's educational credentials. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.