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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: LIN 02 223 51238 Office: NEBRASKA SERVICE CENTER Date: MAR 29 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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 employment based immigrant 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 sustained. The petition will be approved.

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 professional or skilled worker. The petitioner is a publishing company. It seeks to employ the beneficiary as an art director. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner had failed to establish that it had the continuing financial ability to pay the beneficiary's proffered wage. The director also concluded that the petitioner had failed to establish that the beneficiary's employment experience met the requirements of the labor certification.

On appeal, the petitioner submits additional evidence and argues that the evidence establishes that it has the continuing ability to pay the beneficiary's proposed salary and that the beneficiary's credentials satisfy the terms of the labor certification.

In pertinent part, 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) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *See Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977); 8 C.F.R. § 204.5(d). In this case, that date is February 28, 2001. The petitioner must also establish that it has had the continuing financial ability to pay the proposed salary as of the priority date. In this case, the labor certification states that the beneficiary's proposed annual salary is $45,198.

As evidence of its ability to pay, the petitioner submitted a copy of its Form 1120, U.S. Corporation Income Tax Return for the years 2000 and 2001. A note in the file, and resubmitted by letter on appeal, indicates that the petitioner changed its accounting year in 2001. The petitioner originally used a tax year beginning on March 1st and ending on February 28th of the following year. In 2001, it changed its tax year to run from June 1st to the following May 31st.

The petitioner's 2000 corporate tax return shows that it declared $18,225 as taxable income before net operating loss (NOL) deduction and special deductions. Schedule L of this tax return reflects that it had current assets of $133,503 and $15,476 in current liabilities, resulting in $118,027 in net current assets.

The petitioner's 2001 corporate tax return, as originally submitted, reflected its financial information from March 1, 2001 until May 31, 2001 when it changed fiscal years. On this return, the petitioner declared a taxable income before the NOL and other special deductions of -$23,154. Schedule L indicates that it had $118,010 in current assets and $20,018 in current liabilities, resulting in $97,992 in net current assets. On appeal, the petitioner submits the remaining 2001 figures in its 2001 corporate tax return running from June 1, 2001 to May 31, 2002. At the end of the 2001 fiscal year, the petitioner declared -$1,653 in taxable income before the NOL and other special deductions. Schedule L shows that it had $87,992 in net current assets.

The director denied the petition, in part, because he determined that the petitioner had failed to establish its continuing ability to pay the beneficiary's proposed salary of $45,198.40 based on its taxable income figure of -$23,154 for 2001. It can be concluded, however, that the petitioner's net current assets of $118,027 in 2000, and $87,992 by the end of fiscal year 2001, more than covered the proffered wage. Net current assets represent the amount of liquidity that the petitioner maintains and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the balance sheet. In this case, the balance sheet figures are reflected in Schedule L of the corporate tax returns.

The director also based his denial on the petitioner's failure to demonstrate that the beneficiary had accrued two years of experience in the position of art director. To determine whether a beneficiary's credentials establish eligibility for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of art director. Items 14 and 15 should be examined as whole to determine the most reasonable interpretation.

In the instant case, Form ETA-750A contains several erasures and subsequent corrections approved by the DOL regional office. In particular, one of these corrections involves the description of the employment experience that an applicant must have to be considered for the position of art director. It appears that item 14 originally required two years of experience in the job offered of art director, or three years of experience in a related occupation of production manager or prepress operator. It also appears that the "3" was erased and was subsequently approved as a correction by the DOL on April 26, 2002, according to the DOL stamp and notation on the ETA-750A. The related occupations of "production manager" or "prepress operator" were not erased, thus creating some confusion as to whether any related experience in these occupations would be acceptable. Although it would have helped if the petitioner had submitted some evidence of how these changes were actually communicated to, or interpreted by the DOL, it appears that the most reasonable interpretation of the terms of this labor certification, in this particular case, is that an applicant could alternatively have two years of experience as a production manager or a prepress operator. Otherwise, the specification of the related occupations of production manager or prepress operator would be completely superfluous.

The file contains several references to the beneficiary's prior work experience. Two letters appear

to indicate that the beneficiary acquired two years as a production manager between October 1994 and July 31, 1997. One is an undated letter from a Sung In Printing Co., Ltd. It is in the form of a "certificate of employment" that indicates that the beneficiary worked as a "project manager" at that company from October 1994 to July 31, 1997. There is no further explanation regarding the beneficiary's training or specific experience pursuant to the requirements of 8 C.F.R. § 204.5(l)(3)(ii), although a subsequent letter from the petitioner elaborates on this experience and indicates that the beneficiary was a production manager for their own projects at this print plant. We find that these letters, although minimal, are sufficient to satisfy the requirements of the labor certification. The beneficiary's own description of this job as reflected in Form ETA-750B also supports this experience.

Based on the evidence submitted, it can be concluded that the petitioner has established its continuing ability to pay the beneficiary's proposed salary and has established that the beneficiary's credentials are sufficient to satisfy the terms of the labor certification and thus establish her eligibility for the visa classification sought.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.