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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER

Date: JUL 22 2002

IN RE: Petitioner: [Redacted]  
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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

INSTRUCTIONS:

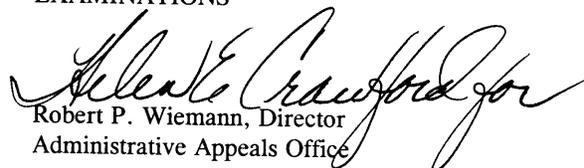
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an engineering and technology firm. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on September 9, 1999. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on March 14, 2001. The revocation was based on the finding that the petitioner had not established its ability to pay the proffered wage.

The director, in his revocation notice, stated in pertinent part that:

It has now come to the attention of this Service that the petition may have been approved in error. The petitioner has failed to establish the ability to pay the proffered wage and the existence of the company questioned by this Service.

On appeal, counsel submits copies of the beneficiary's W-2 Wage and Tax Statement which show he was paid \$29,176.00 in 1998, and \$41,000 in 1999. Counsel also submitted a copy of the petitioner's 1999 Form 1120-A U.S. Short-Form Income Tax Return which reflects gross receipts of \$298,349; gross profit of \$298,349; compensation of officers of \$0; salaries and wages paid of \$260,493; and a taxable income before net operating loss deduction and special deductions of \$825.

The petitioner paid the beneficiary \$29,176.00 in 1998, however, the proffered wage is \$46,000.00 per annum. The Form 1120-A for calendar year 1999 shows a taxable income of \$825. This taxable income along with the wages paid to the beneficiary in 1999 is still less than the proffered wage of \$46,000.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the district director in his decision to revoke the approval of the petition. The petitioner

has not established eligibility pursuant to section 203(b) (3) (A) (i) of the Act and the petition may not be approved.

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.