

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
Citizenship and Immigration Service

**B6**

OFFICE OF ADMINISTRATIVE APPEALS  
CIS, AAO, 20 Mass, Rm 3045  
425 Eye Street N.W.  
Washington, D.C. 20536



File: LIN 01 268 51945

Office: Nebraska Service Center

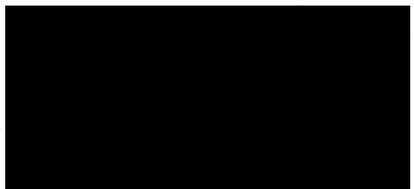
Date: **DEC 13 2003**

IN RE: Petitioner:  
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)

IN BEHALF OF PETITIONER:



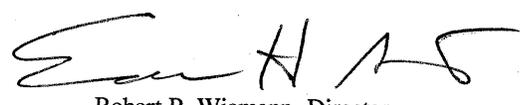
**INSTRUCTIONS:**

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 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 which 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration.

The petitioner is a roofing construction company. It seeks to employ the beneficiary permanently in the United States as a roofing supervisor. 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 denied the petition, but without explicitly stating the basis for that denial.

On appeal, counsel submits a brief.

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.

When a Service officer denies a petition, the officer shall explain the specific reason for denial. 8 C.F.R. § 103.2(a)(1).

On December 13, 2001, the Director, Nebraska Service Center requested evidence of ownership of the petitioning company. The director specified that the evidence submitted should include (1) the petitioner's articles of incorporation, (2) evidence of all current and past ownership of the petitioner's stock, and (3) any minutes of the petitioner's board of directors pertaining to proxy control of the petitioner's stock.

In response, counsel provided some documents pertinent to the petitioner's ownership. Although that evidence is not identical to the evidence requested by the director, it was accompanied by counsel's statement that the beneficiary and his wife own a controlling interest in the petitioner.

The director denied the petition on May 10, 2002. The director cited *Matter of Silver Dragon Chinese Restaurant*, 14 I&N Dec. 190 for the proposition that the Service may consider the beneficiary's interest in the petitioner in determining whether a job offer was really open to all qualified candidates.

On appeal, counsel inferred that the director found, on the basis

of the beneficiary's interest in the petitioner, that the job offer was not bona fide, or that the vacancy had not been open to candidates other than the beneficiary. Counsel's surmise may be correct, but this office is unwilling to speculate on the reasons for the denial.

This decision does not reach the issue, raised by counsel, of the legitimacy of such a finding, based solely on the beneficiary's interest in the petitioner. This decision merely finds that the director failed to state the reason for the denial as required by 8 C.F.R. § 103.2(a)(1).

**ORDER:** The matter is remanded for further action consistent with the foregoing.