

U.S. Department of Homeland Security

Citizenship and Immigration Services

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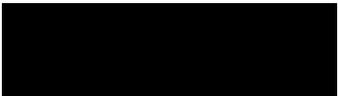
ADMINISTRATIVE APPEALS OFFICE  
Clement D. Mass, 3/F  
251 Street, N.W.  
Washington, D.C. 20536



**NOV 03 2003**

File: / WAC 01 289 51222 Office: California Service Center Date:

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)

ON BEHALF OF PETITIONER:



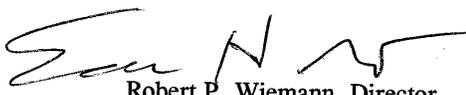
**INSTRUCTIONS:**

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn, and the petition will be remanded to the director for further action and consideration.

The petitioner is a manufacturer of load cells, weighing pads, and sensors. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established its financial ability to pay the beneficiary's proffered wage as of the petition's priority date.

On appeal, counsel asserts that the petitioner has the ability to pay the proffered wage.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is October 26, 2000. The beneficiary's salary as stated on the labor certification is \$28,000.00 per annum.

Counsel submitted copies of the petitioner's 2000 and 2001 Form 1120S U.S. Income Tax Return for an S Corporation.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel asserts that the petitioning company has the financial ability to pay the beneficiary.

Counsel is correct. The petition's tax returns for 2000 and 2001 show net current assets of \$496,691 and \$530,430 respectively. These amounts are more than enough to pay the salary of \$28,000.00 a year.

However, CIS records indicate that on February 11, 2003, the Director, California Service Center, approved a nonimmigrant worker H-1 petition for the beneficiary which is valid until February 1, 2006. The petitioner in this latter case was Cremax USA Corporation. This action on behalf of the beneficiary casts doubt on whether a genuine job now exists for the beneficiary with the petitioner in these proceedings, Amcells Co.

For this reason, the decision of the director will be withdrawn, and the petition will be remanded for further action and consideration. The director should ascertain from the petition whether a legitimate permanent job offer still exists for the beneficiary. The director shall render a new decision based on the petitioner's response.

**ORDER:** The director's decision of March 21, 2002, is withdrawn. The petition is remanded to the director in accordance with the foregoing.