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U.S. Department of Homeland Security

Citizenship and Immigration Services

**B6**

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
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Washington, D.C. 20536



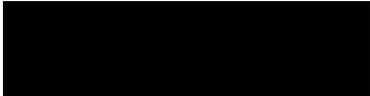
File: EAC 01 076 50157

Office: Vermont Service Center

Date:

**NOV 19 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)

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner repairs houses. It seeks to employ the beneficiary permanently in the United States as a house repairer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a statement and indicates that a separate brief and/or evidence is being submitted within thirty days. To date, however, no further documentation has been received. Therefore, a decision will be made based on the record as it is presently constituted.

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.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

*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.

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 January 14, 1998. The beneficiary's salary as stated on the labor

certification is \$14.54 per hour or \$30,243.20 per annum.

Counsel submitted copies of the beneficiary's W-2 Wage and Tax Statement which showed that he was paid \$21,591.99 in 1999 and \$5,646.00 in 1998, and a copy of the first page of the petitioner's 1998 Form 1120 U.S. Corporation Income Tax Return. The tax return reflected gross receipts of \$98,100; gross profit of \$64,688; compensation of officers of \$9,800; salaries and wages paid of \$31,452; and a taxable income before net operating loss deduction and special deductions of \$5,229.

Counsel also submitted a copy of the petitioner's 2000 Form 1120S U.S. Income Tax Return for an S Corporation which reflected gross receipts of \$70,218; gross profit of \$46,108; compensation of officers of \$6,000; salaries and wages paid of \$29,960; and an ordinary income (loss) from trade or business activities of -\$142.

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

On appeal, counsel argues that:

The underlying petition was denied because the Director of the Vermont Service Center was not persuaded that Petitioner had sufficient income to pay the Beneficiary the proffered wage. Perhaps it did a poor job of meeting its burden to show sufficient income but Monroe Service, Inc. has sufficient income to pay the proffered wage. Petitioner asserts that on administrative appeal it will effectively demonstrate its financial ability so that the INS will be convinced that it has met its burden.

The petitioner's Form 1120 for calendar year 1998 shows a taxable income of \$5,229. Even though the petitioner paid the beneficiary \$5,646 in 1998, the petitioner could not pay the remaining proffered wage of \$24,597.20 a year out of its income.

Similarly, the record indicates that the petitioner failed to pay the proffered salary in 1999 and failed to document its ability to pay the entire proposed salary through other evidence. As noted above, its ordinary 2000 income of -\$142 fails to cover the proposed salary.

Accordingly, after a review of the evidence submitted, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date of the petition.

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.