

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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: EAC 02 074 50618 Office: Vermont Service Center

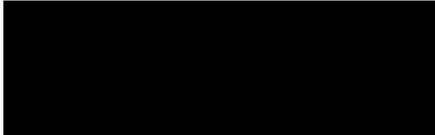
Date: NOV 25 2003

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:



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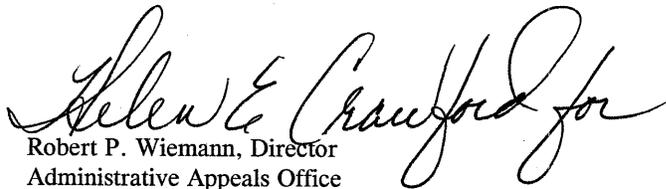
INSTRUCTIONS:

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a company which restores, and maintains metal, marble, and wood. It seeks to employ the beneficiary permanently in the United States as a marble polisher. 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 brief and additional evidence.

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 petitioner's priority date is March 26, 2001. The beneficiary's salary as stated on the labor certification is \$24,960.00 per annum.

Counsel initially submitted no evidence of the petitioner's ability

to pay the wage offered. In response to a CIS request for evidence of the ability to pay the proffered wage, counsel submitted a letter from the petitioner which stated "Stuart Dean will not release financial statement or tax returns at present. There is too much confidential information that at present we do not feel obligated to release."

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 submits a "Compensation Report" for (the beneficiary) for the period from January 4, 2002 to July 19, 2002 and states that:

Stuart Dean Co., Inc. is a large established company which has been in business for over sixty years. With offices in more than twelve cities Stuart Dean Co., Inc. is a recognized leader in different aspects of metal maintenance. They are clearly able to pay the salary of the beneficiary; they have a company policy of not revealing their tax returns. The INS has previously approved petitions of this type from this same company.

CIS understands the petitioner's need for confidentiality. It is however, impossible for CIS to determine a company's ability to pay the proffered wage without some documentation which corroborates the company's solvency at the time of filing the petition. Here, while the "Compensation Report" seems to indicate that named beneficiary has received the proffered wage since January 4, 2002, it is noted that no competent evidence has been submitted to show the petitioner's ability to pay as of the priority date of the petition.

The regulation at 8 C.F.R. § 204.5(g)(2) lists the forms of evidence which are required to demonstrate the ability to pay the wage offered. Additionally, the regulation also provides that the director may accept a statement from a financial officer where the U.S. employer employs 100 or more workers. It is noted, however, that this petitioner states that it has 65 employees. The petitioner has refused to submit tax returns, offering only a compensation report. The petitioner must show that it has the ability to pay the proffered wage at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Based on the evidence submitted, it cannot be found that the petitioner has established that it had sufficient funds available to pay the beneficiary the proffered wage at the time of filing the application for alien employment certification

as required by 8 C.F.R. § 204.5(g)(2). Therefore, the petition may not be approved.

Accordingly, 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.