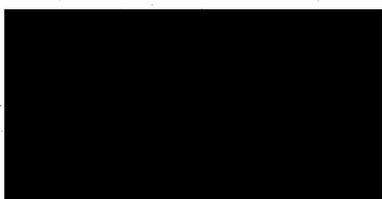


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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



File: WAC 03 029 53016 Office: CALIFORNIA SERVICE CENTER Date:

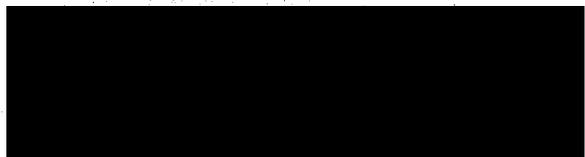
APR 12 2004

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 of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION: DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. At the request of the director, the decision will be withdrawn, and the petition will be remanded for further consideration and a new decision.

The petitioner is a guest home for the elderly. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

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 nature, for which qualified workers are not available in the United States.

The regulation at 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted on March 13, 2001. The proffered wage as stated on the Form ETA 750 is \$11.00 per hour, which equals \$22,880.00 per year.

In a message dated April 8, 2004, the Director, California Service Center, requested that the AAO remand the matter to the service center for further consideration and a new decision. The director stated that the service center has obtained additional information that was not previously considered in the original decision.

The AAO will grant the director's request and withdraw the director's previous decision. The matter will be remanded to the California Service Center for a new decision. If the new decision will be adverse to the petitioner and is based on information considered by the director and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before the decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). If the new decision is adverse to the petitioner, the decision shall be certified to the AAO for review in the most expeditious manner possible.

**ORDER:** The director's decision dated April 30, 2003, is withdrawn. The petition is remanded to the director for entry of a new decision in accordance with the foregoing which, if adverse to the petitioner, is to be certified to the AAO for review.