

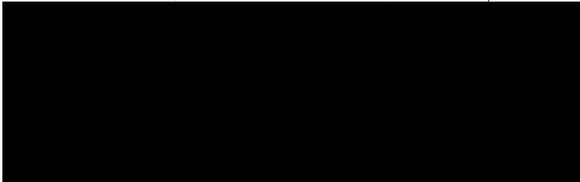
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [Redacted]

Office: TEXAS SERVICE CENTER

Date: APR 15 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

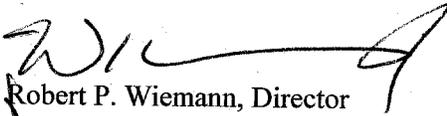
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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

DISCUSSION: The employment-based preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a mortgage company. It seeks to employ the beneficiary permanently in the United States as a secretary. 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 continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

The petitioner’s counsel filed an appeal on June 6, 2003, requesting an additional ninety (90) days to submit a brief and/or evidence to the AAO. The attached letter from counsel merely states that he “need [sic] 90 days to obtain financial documentation from the Petitioner in order to submit a brief and evidence to the [AAO].” On the appellate form, Form I-290B, the reason for the petitioner’s appeal is stated as follows: “The inability to pay the proffered wage is the only issue in question. The petitioner challenges and disputes this issue.”

As of the date of this decision, which is ten months later, no additional evidence or brief has been received by the AAO.

On the Form I-290B, counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).¹

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.

¹ Even if the substantive merits of the petitioner’s ability to pay were addressed, the case would also be dismissed since the petitioner’s only regulatory-sanctioned evidentiary submission consists of a 2001 Form 1120 U.S. Corporation Income Tax Return reflecting negative taxable income before net operating loss deduction and special deductions. See 8 C.F.R. § 204.5(g)(2) and *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff’d*, 703 F.2d 571 (7th Cir. 1983). Additionally, on Schedule L to its 2001 tax return, the petitioner’s net current liabilities far exceed its net current assets. The petitioning corporate entity failed to provide any other competent and probative evidence of its ability to pay the proffered wage. Thus, the petitioner failed to establish its ability to pay the proffered wage.