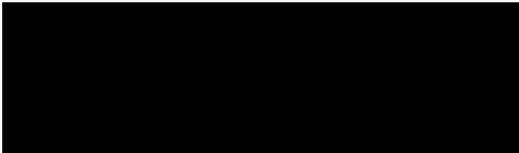




U.S. Citizenship  
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FILE: WAC 04 147 50291 Office: CALIFORNIA SERVICE CENTER Date: JUN 07 2006

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, Chief  
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 Thai restaurant. It seeks to employ the beneficiary permanently in the United States as a Thai chef. 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, and, the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

Counsel submitted a Form I-290B appeal in this matter pursuant to the regulation at 8 C.F.R. § 103(a)(2)(iii). In the section reserved for the basis of the appeal, counsel states:

The regulation relied upon ... [i.e. 8 C.F.R. § 204.5(g)(2),<sup>1</sup> and, 8 CFR § 204.5(l)(3)(ii)] by the agency is *ultra vires*<sup>2</sup> and therefore unlawful. Moreover the agency is now on record stating that it is abandoning that regulation.<sup>3</sup>

The agency's decision is therefore unlawful. This appeal should therefore be sustained.

Counsel's statement on appeal contains no specific assignment of error. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An 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."

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.

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<sup>1</sup> 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." The regulation at 8 CFR § 204.5(l)(3)(ii) states, in pertinent part: "(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien. (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience."

<sup>2</sup> The term "*ultra vires*" in common usage refers to an entities actions that exceeds the authority granted by law.

<sup>3</sup> We note that both portions of the regulation were promulgated pursuant to the requirements set forth in the Administrative Procedures Act and they are binding upon CIS until amended or withdrawn.