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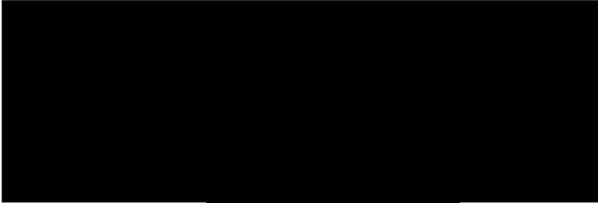
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 04 031 50688

Office: VERMONT SERVICE CENTER

Date:

**MAY 25 2006**

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 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is an Indian restaurant. It seeks to classify the beneficiary pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i), as a skilled worker. The director determined that the petitioner failed to establish its ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 90 days and submitted three letters dated December 9, 2004 supporting the appeal, together with a copy of a memorandum dated May 4, 2004 from William R. Yates, Associate Director for Operations for the United States Citizenship and Immigration Services, entitled "Determination of Ability to Pay under 8 CFR 204.5(g)(2)" (Yates Memo). The first letter submitted by counsel on appeal states that the appeal and corresponding fee are attached. The second letter submitted by counsel on appeal indicates that the petitioner does not have copies of its income tax returns for the period 1993 to 1998 and that the petitioner has requested transcripts of its income tax returns for that period from the Internal Revenue Service (IRS). The letter further states that if the petitioner's tax records cannot be obtained from the IRS within 60 days, the petitioner would need an additional 30 days to prepare financial statements for the same period. Therefore, pursuant to the second letter, counsel requested an additional 90 days to submit additional evidence in this case. The third letter submitted by counsel on appeal restates the petitioner's request for an additional 90 days to submit tax records and/or financial statements in this case. The letter from counsel also references the Yates Memo as support for the petitioner's ability to submit financial statements such as profit/loss statements for the period 1993 to 1998 as evidence of its ability to pay the beneficiary the proffered wage. Counsel does not assert that the petitioner's tax records or its financial statements will show that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. On the contrary, counsel simply indicates that the documentation will be provided within 90 days.

Counsel dated the appeal December 9, 2004. As of this date, more than 17 months later, the AAO has received nothing further.<sup>1</sup> The AAO sent a fax to counsel on May 15, 2006 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he would send anything else in this matter, and as a courtesy, providing him with five days to respond. To date, more than one week later, no reply has been received.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> This office notes that the priority date in this case is December 16, 1993. Pursuant to a request for evidence (RFE) issued on July 8, 2004, the director requested that the petitioner submit its 1993, 1994, 1995, 1996, 1997, 1998, 1999 and 2003 United States federal income tax returns or, in the alternative, its annual reports and audited or reviewed financial statements for the same years. In response to the RFE, the petitioner submitted a financial statement without a tax return or annual report for 1993, and it failed to submit any evidence evidencing its ability to pay the proffered wage in 1994, 1995, 1996, 1997 and 1998.