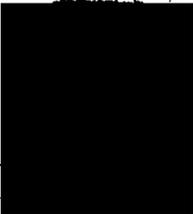
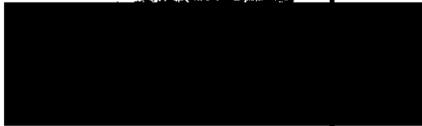




U.S. Department of Justice
Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted]

Office: Vermont Service Center Date:

JAN 24 2000

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

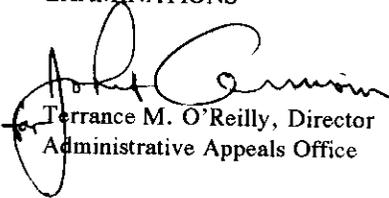
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner seeks classification for the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3). The petitioner seeks to employ the beneficiary as an Italian cook. The director found that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of December 12, 1995, the filing date of the visa petition. The Associate Commissioner affirmed this determination on appeal.

On motion, the petitioner states that supporting documentation is being mailed separately. To date, however, no additional evidence has been received.

8 C.F.R. 103.5(a)(2) states "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy . . . [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed."

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met, as the petitioner has not provided any new facts or additional evidence to overcome the previous decision of the Associate Commissioner. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated October 22, 1999 is affirmed. The motion is dismissed.