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U.S. Citizenship
and Immigration
Services

B6

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **SEP 07 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

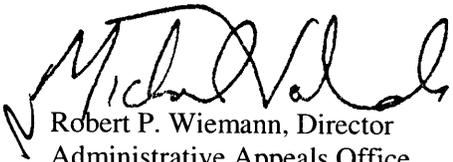
PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)
of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

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

DISCUSSION: The 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 dismissed.

The petitioner is an automotive firm. It seeks to employ the beneficiary permanently in the United States as a foreign automotive specialist supervisor. 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 and denied the petition accordingly.

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

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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 either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the petition's priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is July 15, 2002. The proffered wage as stated on the Form ETA 750 is \$27.46 per hour, which amounts to \$57,116.80 annually. On the Form ETA 750B, signed by the beneficiary on April 11, 2002, the beneficiary did not claim to have worked for the petitioner.

The I-140 petition was submitted on February 24, 2004. On the petition, the petitioner left blank the items for the date on which it was established, its current number of employees, its gross annual income and its net annual income.

In a request for evidence (RFE) dated April 16, 2004, the director requested additional evidence relevant to the petitioner's continuing ability to pay the proffered wage beginning on the priority date. In response to the RFE, the petitioner submitted additional evidence. The petitioner's submissions in response to the RFE were received by the director on July 12, 2004.

In a decision dated July 21, 2004, the director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and denied the petition.

On appeal, counsel submits no brief and no additional evidence.

The I-290B form contains four blocks concerning the possible submission of a brief and/or additional evidence on appeal. The first block is to be checked if no separate brief or evidence is being submitted. The second block is to be checked if a separate brief and/or evidence is being submitted with the I-290B form. The third block is to be checked if the petitioner is sending a brief and/or evidence to the AAO within thirty days. The fourth block is to be checked if the petitioner needs additional time to submit a brief and/or additional evidence, beyond the thirty days allowed by checking block number three. The following words appear on the form as part of the language indicated by block number four: *“(May be granted only for good cause shown. Explain in a separate letter.)”*

On the I-290B form, counsel checked block number four, and entered 90 days as the period of time needed in order to submit a brief and/or additional evidence. Counsel submitted no separate letter explaining the need for 90 days to submit a brief and/or additional evidence.

Instructions to CIS official forms are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). By failing to submit an explanatory letter showing good cause to grant the petitioner 90 days within which to submit a brief and/or additional evidence, the petitioner failed to comply with the instruction to that effect on the I-290B Notice of Appeal form, and thereby failed to conform with the regulations.

Moreover, to date, more than twelve months after counsel signed the I-290B form, no further documentation has been received.

In section number 3 of the I-290B form, counsel stated the following as the reason(s) for the appeal: “The inability to pay the proffered wage to the prospective employee by the Petitioner was the only issue which the denial was based upon. The Petitioner respectfully appeals on this basis.”

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.