

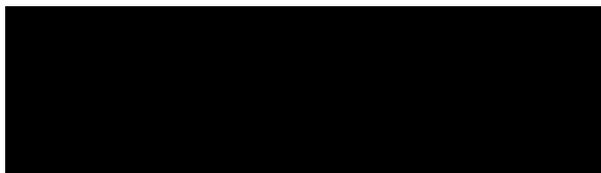
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 09 2005

IN RE:

Petitioner:

Beneficiary:



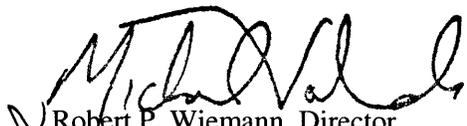
PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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 a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook, foreign specialty food (Greek). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. In a decision dated February 7, 2005, 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.

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

The I-290B notice of appeal 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 seven 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 ability to pay 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.