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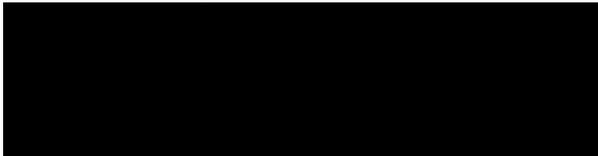


FILE: LIN-04-107-54686 Office: NEBRASKA SERVICE CENTER Date: FEB 03 2006

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:



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, Nebraska Service Center. The petitioner then filed a motion to reopen or reconsider. The record of proceedings, including the motion, was then transferred to the Administrative Appeals Office (AAO) by the director. Later, the petitioner filed with the director a motion to supplement its previous motion to reopen or reconsider. The director also transmitted the second motion to the AAO. The petition will be remanded to the director for adjudication of the petitioner's motions.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a restaurant manager. 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 August 17, 2004, 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.

Following the director's decision the petitioner submitted a motion to reopen or reconsider, which was received by the director on September 16, 2004.

Although no notice of appeal had been filed, the director then transmitted the record of proceedings to the AAO, with no ruling by the director on the petitioner's motion to reopen or reconsider.

The petitioner later submitted to the director a motion captioned "Motion to Supplement Previously Filed Motion to Reopen." That motion was received by the director on April 11, 2004. With the motion, the petitioner submitted a letter dated April 7, 2005 from a new counsel for the petitioner and a Form G-28 Notice of Appearance as Attorney or Representative on behalf of the petitioner signed by new counsel and co-signed by the petitioner's owner. The motion and attached documents were then transmitted to the AAO, with no adjudication by the director on the motion.

The regulation a 8 C.F.R. § 103.5(a)(1) states in part as follows:

(i) *General* Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. . . .

(ii) *Jurisdiction* The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. . . .

In the instant petition, the decision addressed by the petitioner's motion to reopen or reconsider is the director's decision dated August 17, 2004. Therefore the official having jurisdiction over that motion is the director. The petitioner's motion to supplement the previously filed motion to reopen is similarly within the authority of the director to adjudicate. No appeal or certification is pending before the AAO.

For the foregoing reasons, the petition must be remanded to the director for adjudication of the petitioner's motion to reopen or reconsider and for adjudication of the petitioner's motion to supplement the previously filed motion to reopen.

**ORDER:** The petition is remanded to the director for adjudication of the pending motions.