

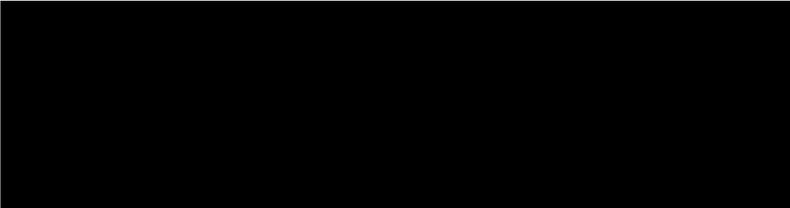
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC-05-148-51097

Office: TEXAS SERVICE CENTER

Date: APR 26 2007

IN RE:

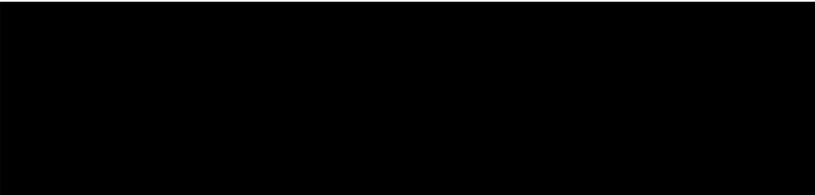
Petitioner:

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

The petitioner is a computer consulting and software development firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The instant petition is for a substituted beneficiary.¹ The original Form ETA 750 was accepted on July 19, 2001. The proffered wage as stated on the Form ETA 750 is \$72,000 per year. The petition was submitted on April 29, 2005 without sufficient evidence to establish the petitioner's continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On June 6, 2005, the director issued a notice of intent to deny (NOID) requesting that the petitioner submit additional evidence to establish that the petitioner has the ability to pay the proffered wage as of priority date and continuing to the present. The director specifically requested the petitioner's federal tax returns with all schedules, annual reports or audited or reviewed financial statements and the beneficiary's W-2 forms for 2002, 2003 and 2004. In a response received on July 6, 2005, the petitioner submitted a 2001 W-2 form for the original beneficiary of the labor certification application showing that the petitioner paid \$32,305.77 to the replaced employee, the petitioner's 2001 tax return with net income of \$20,120 and net current assets of \$16,141, the petitioner's 2002 tax return with net income of \$913 and net current assets of \$21,342, the petitioner's 2003 tax return with net income of \$787 and without net current assets, and bank statements of the petitioner's business checking accounts for May 2005.

The director determined that the petitioner's tax returns for 2002 and 2003 did not establish the petitioner's ability to pay the proffered wage of \$72,000 in 2002 or 2003, and the petitioner did not establish its ability to pay the proffered wage in 2004 since the record does not contain any evidence of ability to pay for 2004. The director denied the petition on July 14, 2005 accordingly.

On August 12, 2005, counsel filed a timely appeal on the Form I-290B without any separate brief or evidence. Counsel states that additional documentation and clarification regarding petitioner's financial ability would be forwarded to the AAO within the next 30 days, both on the Form I-290B and in the submission letter. On February 21, 2007, the AAO sent a fax to counsel 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. On February 21, 2007, counsel sent a reply to the AAO by fax indicated that he did not file a brief or evidence in support of this appeal. Counsel has not provided any brief and/or additional evidence to the AAO as of the date. Moreover, counsel here has not specifically addressed the reasons stated in the denial decision and has not provided any additional evidence to rebut the ground of denial that the petitioner failed to establish that it had the ability to pay the proffered wage.

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.

ORDER: The appeal is dismissed.

¹ An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).