

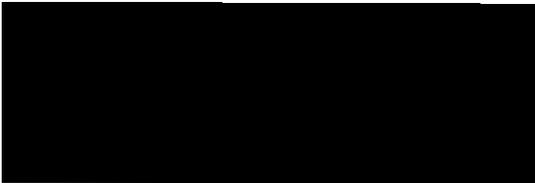


U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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File:

EAC-05-161-50506

Office: VERMONT SERVICE CENTER

Date: **AUG 21 2007**

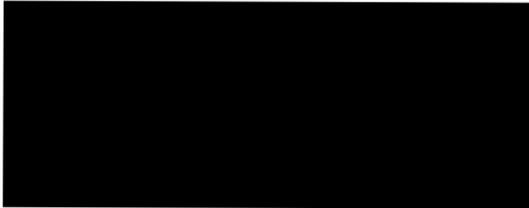
In re:

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)

IN 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), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction/masonry company. It seeks to employ the beneficiary permanently in the United States as a stonemason (mason). 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 director determined that the petitioner failed to establish 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 the Form I-290B, the petitioner that he would be submitting a separate brief and/or evidence to the AAO within 30 days. The Form I-290B was dated February 22, 2006. However, the AAO had received nothing further as of 16 months later. The AAO sent a fax to counsel on June 28, 2007 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 (5) days to respond. To date, almost two (2) months later, no reply has been received.

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. The AAO's June 28, 2007 fax notice expressly indicates that: "Failure to respond to this notice within five business days may result in the summary dismissal of your appeal." Counsel merely stated on the appellate form that the director erred but did not identify a specific erroneous conclusion of law or statement of fact. Therefore, the appeal must be summarily dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.