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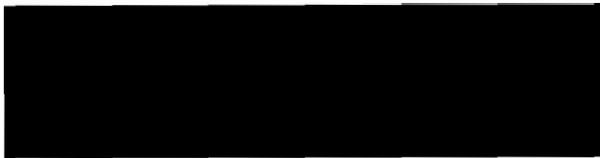
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 29 2007
EAC 04 134 50043

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

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 director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) subsequently denied the petitioner's appeal on October 14, 2005. The petitioner submitted a motion to reopen the matter that was received by the Service Center on November 14, 2005. The motion will not be granted. The petition will be denied.

The petitioner is a company that leases, rents and repairs equipment and tools. The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a supervisor of welding equipment repairers. The director determined that the petitioner had not established its ability to pay the proffered wage as of the April 26, 2002 priority date and onwards. The director accordingly denied the petition. The AAO in its previous decision on the petitioner's appeal, determined that the petitioner had not established its ability to pay the beneficiary the proffered wage based on either the beneficiary's wages, the petitioner's net income, or the petitioner's net current assets for the relevant years.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. On motion, counsel stated that the basis of the motion was to submit financial documents not previously available to establish that the petitioner had sufficient financial resources to pay the proffered wage. Counsel states that the financial documentation would be forwarded within the next twenty-one days.

Counsel dated the motion November 11, 2005. As of this date, more than eighteen months later, the AAO has received nothing further. On March 30, 2007, the AAO attempted to send counsel a FAX and was informed that counsel's FAX telephone number was no longer in service. On April 3, 2007, the AAO attempted to call counsel's office telephone number and was informed that the office telephone number was disconnected. Subsequently the AAO discovered that the petitioner's initial counsel was deceased. On April 13, 2007, the AAO provided the petitioner with an additional 30 days (33 days if sent by mail) to provide further evidence or materials as to why the motion to reopen should be granted. Although the AAO has received a G-28 for new counsel, the petitioner has provided no further evidence.

Thus the petitioner has neither provided new facts nor submitted new evidence to AAO in further consideration of the instant petition. The petitioner has not submitted sufficient new evidence or sufficient new facts to reopen the proceedings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is not granted. The petition is denied.