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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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File: [Redacted] Office: TEXAS SERVICE CENTER Date: NOV 26 2007
WAC-06-065-50725

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)

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 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 restaurant. It seeks to employ the beneficiary permanently in the United States as a restaurant cook (Mexican food cook) pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. 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 denied the petition due to the petitioner's inability to pay the proffered wage at the time the priority date was established and continuing to the present.

On the Form I-290B, counsel indicated that he would be submitting a separate brief and/or evidence to the AAO within 30 days. The appeal was received by the Texas Service Center on August 14, 2006. Since the AAO has received *nothing further*, the AAO sent a fax to counsel on October 9, 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, more than six (6) weeks 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. In the instant case, counsel stated in Part 3 of the Form I-290B, "Briefly, state the reason(s) for this appeal" that "[t]he petitioner will submit additional evidence to demonstrate that it has the ability to pay the proffered wage to the [b]eneficiary." The record does not show that counsel for the petitioner has identified specifically any erroneous conclusion of law or statement of fact for the appeal. In addition, the AAO's October 9, 2007 fax expressly informed counsel that "[f]ailure to respond to this notice within five business days may result in the summary dismissal of your appeal." Despite the AAO's warning counsel has not specifically addressed the reasons stated for denial and has not provided any additional evidence. Therefore, the appeal must therefore be summarily dismissed.

ORDER: The appeal is summarily dismissed.