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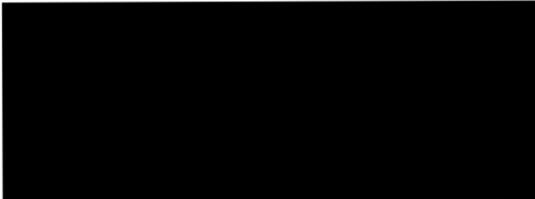
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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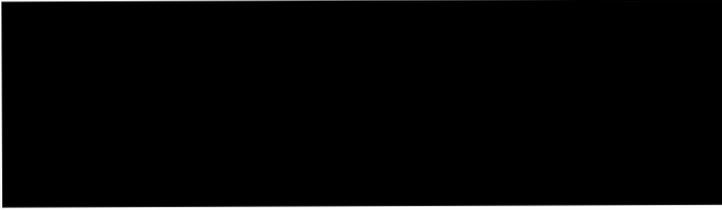


File: [Redacted] Office: VERMONT SERVICE CENTER Date: OCT 01 2007
EAC-06-019-50470

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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a commercial and residential painting contractor. It seeks to employ the beneficiary permanently in the United States as a painter 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) with the priority date of April 27, 2001. After complete review of the response to the director's November 29, 2005 request for evidence and all materials in the record, the director determined that while the petitioner established its ability to pay the proffered wage in 2001, the petitioner failed to establish that it could pay the proffered wage in 2002, 2003 and 2004. The director denied the petition accordingly.

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 Vermont Service Center on April 25, 2006. Since the AAO has received nothing further, the AAO sent a fax to counsel on August 1, 2007 informing counsel that no separate brief and/or evidence was received to confirm whether or not counsel would send anything else in this matter, and as a courtesy, providing counsel with five (5) days to respond. However, to date, more than five (5) 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. Counsel states on appeal that "[t]he petitioner has submitted evidence sufficient to establish ability to pay the proffered wage" and that he "will be submitting a brief and/or evidence to the AAO within 30 days." However, 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. In addition, the AAO's August 1, 2007 fax notice 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 notice, counsel has not specifically addressed the reasons stated for denial and has not provided any additional evidence. Counsel has not even expressed disagreement with the director's decision. The appeal must therefore be summarily dismissed.

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).