

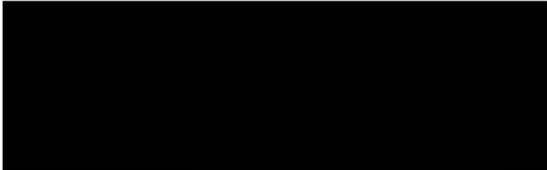
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FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER Date: **JUN 27 2008**  
SRC 06 262 51461

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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the employment-based visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be rejected for jurisdictional reasons. The AAO will return the matter to the director for further consideration of the petitioner's ability to pay the proffered wage and the beneficiary's qualifications.

The petitioner is a franchise baker and café. It seeks to employ the beneficiary permanently in the United States as a general manager. The director determined that as required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, did not accompany the petition. The director denied the petition accordingly.

On appeal, counsel submits a brief.

In her decision, the director advised the petitioner's counsel that no appeal was available based on the lack of a certified Form ETA 750. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).

While the appeal must be rejected, we note that an original Form ETA 750 certified as of April 30, 2001, and filed with a previous I-140 petition for the beneficiary, is in the record. *See* Part three of six file record. The matter is returned to the director for further consideration of the appeal as a motion. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is rejected. The matter is returned to the director for consideration as a motion.