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U.S. Citizenship
and Immigration
Services

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File:



EAC-05-242-52198

Office: VERMONT SERVICE CENTER

Date: **MAR 17 2008**

In re:

Petitioner:

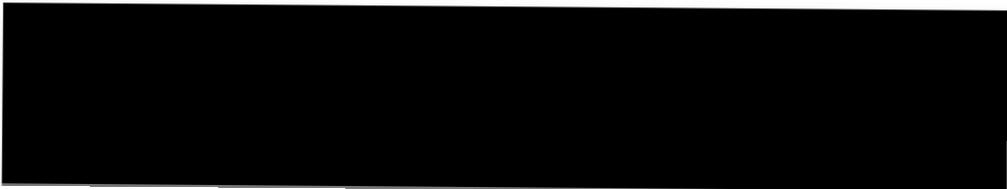
Beneficiary:



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 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 gas station and convenience deli. It seeks to employ the beneficiary permanently in the United States as a retail store manager (manager) 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. The instant petition is for a substituted beneficiary.¹ The petitioner submitted a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) on behalf of the original beneficiary with the petition. However, the petitioner did not submit a Form ETA 750B with information pertaining to the qualifications of the new beneficiary despite the director's express request in his request for evidence (RFE). The director determined that the petition failed to submit a complete DOL Form ETA 750 for the beneficiary and thus the record contains no evidence of labor certification by the Secretary of Labor or his designated representative. The director denied the petition accordingly.

On the Form I-290B, the petitioner indicated that it 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 August 14, 2006. Since the AAO has received nothing further, the AAO sent a fax to counsel on January 14, 2008 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 eight (8) 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, the Form I-290B was filed without a brief from counsel, or any supporting documents. 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 January 14, 2008 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.

¹ An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).