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U.S. Citizenship
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BE

FILE: [REDACTED]
LIN 06 272 53450

Office: NEBRASKA SERVICE CENTER

Date: OCT 17 2008

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

The petitioner is a landscaping firm. It seeks to employ the beneficiary permanently in the United States as a landscape gardener. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had failed to establish that it had the continuing financial ability to pay the proffered wage.

On appeal, filed on December 29, 2007, the petitioner, through counsel, merely stated that it has the ability to pay the proffered wage. Counsel also indicated that a brief and/or additional evidence would be provided within 30 days. By fax, on June 23, 2008, this office identified this case by the alien number and by receipt number and advised counsel that no brief and/or additional evidence had been received by this office. Counsel was advised that a response was requested within five days. On July 11, 2008, counsel's office faxed a response to this office, stating that a brief was filed with the AAO on June 8, 2008, and that a copy is attached. The attached copy of the brief also included a copy of the proof of service. It is noted that the brief submitted with counsel's faxed response relates to an altogether different case as is shown by the identifying receipt numbers (SRC 07-234-51268, SRC 08- 191-53019) and by the contradictory information referenced in the brief.¹

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.

A statement that the petitioner has the ability to pay the proffered wage with no additional evidence or grounds for appeal provided within the time specified does not sufficiently identify a specific conclusion of law or statement of fact upon which a substantive appeal may be filed. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.

¹ Additionally, the filing date of the brief was over five months past the 30-day deadline.