U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: WAC 03 266 53577 Office: CALIFORNIA SERVICE CENTER Date: MAR 14 2007

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Other Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

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 employment-based immigrant visa petition was denied by the Director, California 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 fast food manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the beneficiary met the experience requirements of the labor certification as of the priority date, January 14, 1998.

On appeal, counsel indicates that he would submit a brief and/or evidence to the AAO within 30 days. Counsel dated the appeal April 13, 2005. On May 10, 2005, counsel then asked for an additional sixty-day extension to file the brief and/or evidence. As of this date and after the AAO notified counsel by fax that the brief had not been received, more than 19 months later, the AAO has received nothing further.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

In this case, counsel stated, "we will be presenting evidence to establish that notwithstanding the 'apparent' statements made by the prior employer, he did in fact employ the beneficiary and did in fact sign the letters presented in support of this contention. Whatever the reason, we will demonstrate that the prior employer was either mistaken or simply ignoring the facts. Given that the denial rested upon outside evidence, petitioner should have been afforded an opportunity to rebut the findings and failure to do so constitutes a violation of rule."

The regulation at 8 C.F.R. § 103.2(b)(16)(i) states in pertinent part:

> *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [Citizenship and Immigration Services (CIS)] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

As noted in *Matter of Obaigbena,* 19 I&N Dec. 533 (BIA 1988), the petitioner must be afforded a reasonable opportunity to rebut the derogatory evidence cited in a notice of intention to deny his visa petition and to present evidence in his behalf before the director's decision is rendered. In the instant case, the director failed to provide the petitioner with an intent to deny or allow the petitioner an opportunity to rebut the derogatory evidence in the record.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS,* 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal[1]. However, in the instant case,

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case

the petitioner has chosen not to provide a brief or evidence regarding the director's denial or violation of rule. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has not overcome the director's reason for denial.

As the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.

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provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).