

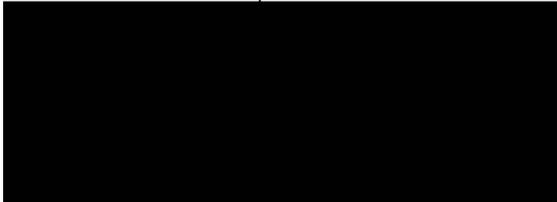
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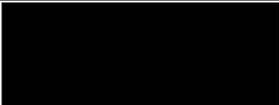
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: OCT 01 2007

LIN-04-011-51667

IN RE:

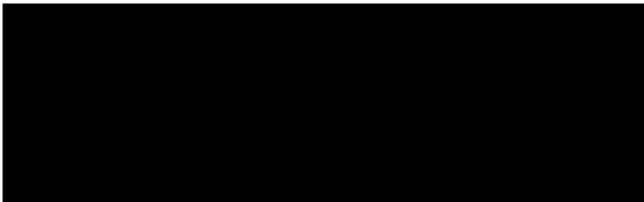
Petitioner:

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)

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Nebraska Service Center. The subsequent appeal was remanded to the director by the Administrative Appeals Office (AAO). The matter is before the AAO for review. The director's new decision will be affirmed and the petition will be denied.

The petitioner is an IT consulting firm. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the beneficiary did not have the foreign equivalent of a United States bachelor's degree, and therefore, the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, counsel argued that the beneficiary's degrees of Bachelor of Science in Physics from Shivaji University and Master of Computer Management from the University of Pune met the minimum educational requirements set forth on the Form ETA 750 in the instant case and submitted additional evidence pertinent to the beneficiary's qualifications. The AAO concurred with counsel's assertion and withdrew that ground of the director's denial. However, the AAO remanded the petition to the director for further action on the issue of the petitioner's continuing ability to pay the proffered wage from the priority date to the present, with instruction that if the new decision was adverse to the petitioner, it should be certified to the AAO for review. The director made a new decision on August 27, 2007.

The record shows that the director issued a request for evidence (RFE) on April 30, 2007. The RFE was mailed to the attorney of record for the instant case at his address in the record and granted the petitioner 30 days to response to the RFE. In the RFE, the director clearly requested the petitioner to submit its annual reports, U.S. tax returns, or audited financial statements for 2002 through 2006, the beneficiary's Form W-2 or 1099 for 2002 through 2006 and current paystubs for 2007. However, the record does not contain any response to the director's RFE from the petitioner or counsel. Accordingly, the director denied the petition on August 27, 2007 because the petitioner failed to respond to the RFE dated April 30, 2007, the petitioner failed to submit any evidence of the petitioner's ability to pay for 2003 through the present, and the evidence in the record did not establish that the petitioner had the financial ability to pay the proffered wage in 2002, the priority date in the instant case.

After a complete review of the record of proceeding, the AAO finds that the director properly issued the RFE and determined that the petitioner failed to demonstrate its continuing ability to pay the proffered wage for 2002 through the present. The director's August 27, 2007 decision must be affirmed.

ORDER: The director's August 27, 2007 decision is affirmed and the petition is denied.