identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

B6

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 03 2007

EAC-04-175-50069

In re: Petitioner:
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)

IN 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (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 fabric manufacturer. It seeks to employ the beneficiary permanently in the United States as a maintenance machinist (maintenance mechanic) 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. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director noted that the labor certification application was filed by and certified to VBF Trimming, Inc., and therefore, requested for evidence (RFE) to show that the petitioner and VBF Trimming, Inc. are the same entity, or the petitioner is a successor-in-interest to VBF Trimming, Inc. or to submit a new Form ETA 750 certified for the petitioner. Upon reviewing the response to the director's RFE dated March 9, 2005, the director determined that the petitioner had submitted a valid labor certification for the employer, location and position in this instance. On October 20, 2005, the director issued a notice of intent to deny (NOID) granting the petitioner 30 days to rebut the grounds of denial. On February 21, 2006, the director denied the petition because of the petitioner's failure to respond to the NOID.

On the Form I-290B, counsel indicated that he would be submitting a separate brief and/or evidence to the AAO within 60 days. The appeal was received by the Vermont Service Center on March 8, 2006. Since the AAO has received nothing further, the AAO sent faxes to counsel on June 27, 2007 and August 1, 2007 respectively 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 ten (10) 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. Although counsel claimed that the petitioner never received the request for additional evidence, he did not submit any evidence to support his assertions. Instead, the records show that the director sent the RFE dated March 9, 2005, NOID date October 20, 2005 and denial decision dated February 21, 2006 to counsel at his current address in the record, and counsel responded to the RFE and denial decision. The record does not support counsel's assertion on appeal. In addition, the AAO's June 27, 2007 and August 1, 2007 fax notices 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 notices, counsel has not specifically addressed the reasons stated for denial and has not provided any additional evidence. Therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).