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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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Be

FILE: EAC 05 003 52072 Office: VERMONT SERVICE CENTER

Date: OCT 27 2008

IN RE: Petitioner:  
Beneficiary:

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:

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. A subsequent appeal to the Administrative Appeals Office (AAO) was remanded to the director for further consideration and entry of a new decision. The visa petition is now before the AAO on certification. The director's decision will be affirmed, and the petition will remain denied.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.<sup>1</sup> The director determined that the petitioner had not established that it had the continuing ability to pay the proffered wage from the priority date. The director denied the petition accordingly.

The petitioner provides no additional evidence on certification.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

On October 25, 2006, after the visa petition was remanded to the director for further consideration and entry of a new decision, the director informed the petitioner of the remand and requested additional evidence of the petitioner's continuing ability to pay the proffered wage from the priority date of the visa petition. The director specifically requested the petitioner's 2005 federal tax returns with all schedules and attachments, an itemized list of the owner's personal monthly recurring expenses for 2004 through 2006, and evidence of the owner's bank accounts, CDs, etc. in 2004 through 2006. The petitioner was afforded twelve weeks to submit the requested evidence and any additional evidence relevant to the petitioner's ability to pay the proffered wage. The petitioner failed to respond to the director's request for evidence, and on April 26, 2007, the director denied the visa petition again and certified his decision to the AAO.

The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide an itemized list of the owner's personal monthly recurring expenses for 2004 through 2006, evidence of the owner's bank accounts, CDs, etc. for 2004 through 2006, or a copy of the petitioner's 2005 federal tax return. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

For the reasons discussed above, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director's decision of April 26, 2007 is affirmed, and the petition is denied.

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<sup>1</sup> It is noted that the current beneficiary is a substitute for a previous beneficiary whose visa petition was withdrawn.