

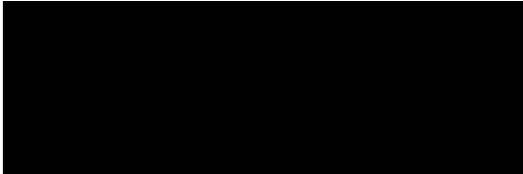
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:



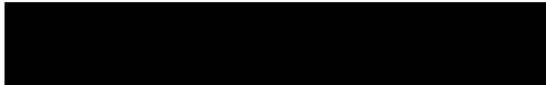
Office: TEXAS SERVICE CENTER

Date: APR 07 2009

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IN RE:

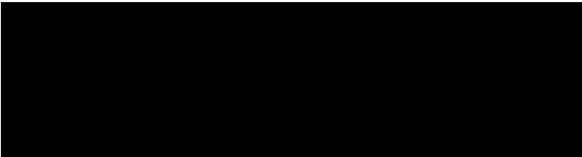
Petitioner:



Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is a motel. It seeks to employ the beneficiary permanently in the United States as a head housekeeper. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage for 2002 and 2003. The director denied the petition accordingly.

The petitioner submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, the petitioner inserted,

“Evidence that meets requirements established in AAO decisions demonstrates that the employer does meet the ‘ability to pay’ requirements of 8 C.F.R. 204.5(g)(2). *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The Decision does not question the ability to pay for years 2001, 2004 or 2005. Only 2002 and 2003 net income for the petitioning employer was cited as being insufficient. Both net current assets and employment of the beneficiary are accepted as appropriate documentation of the employer’s ‘ability to pay.’ See Yates, ‘Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2),’ 2004; see also Yates, ‘Requests for Evidence (RFE) and Notices of Intent to Deny (NOID),’ 2005. This serves as both a Motion to Reopen/Reconsider and/or Appeal of the above-referenced matter.”

On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days.

Counsel dated the appeal December 18, 2006. As of this date, more than 26 months later, the AAO has received nothing further.

The regulation at 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: “An 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.”

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

ORDER: The appeal is dismissed.