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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**

B6



FILE: [Redacted] Office: OFFICE: NEBRASKA SERVICE CENTER Date: **APR 07 2010**
Receipt number LIN 08 019 51490

IN RE: Petitioner: [Redacted]
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)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary 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. The director determined that the petitioner did not submit any required evidence to support the petitioner's ability to pay the proffered wage or to support that the beneficiary meets any educational, training, and experience stipulated on the ETA Form 750.¹

On appeal, counsel merely stated that the director should have exercised his discretion by sending the petitioner a Request for Evidence, thus giving the petitioner more time to submit the required evidence since the petitioner is a big restaurant and the priority date is 2001. Counsel submits the sole proprietorship's Forms 1040 for tax years 2001 to 2008,² and a letter of previous work verification dated August 5, 2009 from [REDACTED]

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. On appeal counsel provides no erroneous conclusion of law or statement of fact for the appeal.

The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that the petitioner only submitted the certified ETA Form 750 with the I-140 petition.

² The AAO also notes that the sole proprietor's tax returns are not sufficient evidence to establish that the petitioner can pay the proffered wage. The petitioner is a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). To establish its ability to both pay the entire proffered wage and its annual household expenses, the petitioner would have to also submit to the record an itemized list of monthly expenses, such as food, clothes, transportation, mortgage, schooling, among other items.