

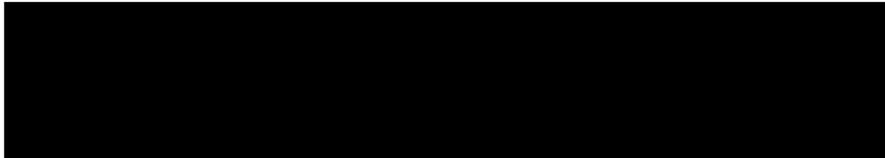
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



B6

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUL 12 2010

IN RE:

Petitioner:

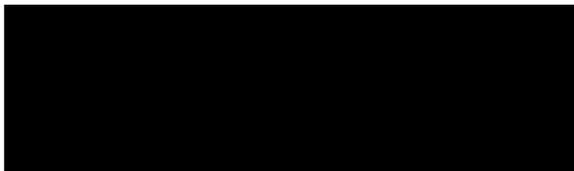
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a cancer radiation therapy clinic. It seeks to employ the beneficiary permanently in the United States as a computer systems engineer pursuant to sections 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director determined that the beneficiary's educational credentials could not be accepted as a four-year U.S. bachelor's degree in electrical engineering (or foreign degree equivalent to a U.S. bachelor's degree in electrical engineering).

The AAO issued a notice of intent to deny (NOID) on April 21, 2010 of the petitioner's intent concerning the actual minimum educational requirements of the proffered position.¹ The AAO explained that as the record did not currently support a determination that the petitioner intended the actual minimum requirements of the proffered position to include alternatives to a bachelor degree such as the credentials held by the beneficiary, additional documentation was required. The AAO solicited evidence of how the petitioner expressed its actual minimum educational requirements to the Department of Labor (DOL) during the labor certification process, as well as clarification of information appearing on the ETA 750, certified English translation(s) of pertinent grade transcripts, evidence of the beneficiary's required work experience, successor-in-interest relationship, and its continuing ability to pay the proffered wage.

In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID may result in dismissal since the AAO cannot substantively adjudicate the appeal without the information requested. 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).

Because the petitioner failed to respond to the NOID, the AAO is dismissing the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).