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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: TEXAS SERVICE CENTER

Date: OCT 04 2010

IN RE:

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)

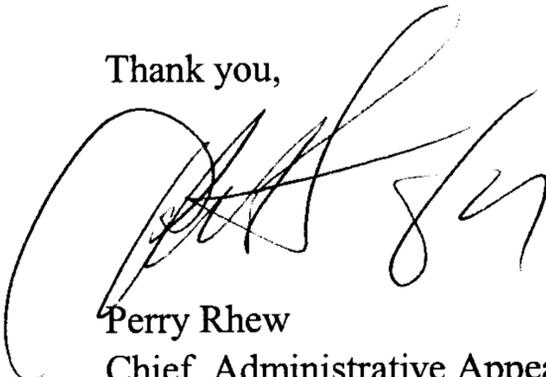
ON BEHALF OF PETITIONER:

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 our 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, Texas 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 describes itself as an “auto shop.” It seeks to employ the beneficiary permanently in the United States as a transmission mechanic pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director stated that although the petitioner stated on the Form ETA 750 that the beneficiary worked for it since 2002, the petitioner did not provide any evidence of wages paid to the beneficiary. The director then considered the petitioner’s net income and net current assets and determined that the petitioner had failed to establish its ability to pay the proffered wage from the September 23, 2002 priority date onward. On appeal, counsel asserted that the petitioner’s principals would reduce “the owners’ payroll by an amount needed to prove [the] ability to pay the proffered wage to the beneficiary,” and submitted a statement signed by the principals (Reuven Tiomkin, President and Ofer Itzhak, Vice President) to that effect. On July 28, 2010 the AAO sent to the petitioner a Request For Evidence (RFE) asking the petitioner to submit the following information:

- A sworn statement or affidavit from each officer of the company stating they are willing and able to pay the proffered wage from their officer compensation from the priority date until the beneficiary obtains lawful permanent residence;
- Proof that the officer can forego officer compensation;
  - Submit each officer’s Form 1040 or other supporting documentation illustrating the officer’s financial position from 2002 onward and that each officer was able to forgo the amount necessary to support the officer’s claim that it could pay the proffered wage for each year in question.
- Explain whether the officer compensation represents salary paid to each officer for duties performed, and what duties were encompassed; and
- A photocopy of the beneficiary’s W-2 forms or other proof of wages paid to the beneficiary from 2001 through 2007.

In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not 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).

As stated by the director, neither the petitioner’s net income nor its net current assets establish the petitioner’s ability to pay the proffered wage. No evidence was submitted to show the petitioner’s prior wage payment to the beneficiary on appeal or in response to the AAO’s RFE. Because the petitioner failed to respond to the RFE, 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.

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**ORDER:** The appeal is dismissed.