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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B6



DATE: DEC 02 2014 OFFICE: NEBRASKA SERVICE CENTER

FILE:

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 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 \$630. 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 describes itself as a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty foreign food cook 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 determined that the petitioner failed to demonstrate that it had sufficient funds to pay the proffered wage to the beneficiary from the priority date and continuing until the beneficiary obtains lawful permanent residence. The director denied the petition accordingly.

The AAO issued a notice of derogatory information and a request for evidence (NDI/RFE) on September 23, 2011.¹ The AAO informed the petitioner of the deficiencies in the record of proceeding and requested additional information, including:

- Detailed explanation of the circumstances behind the beneficiary's multiple misrepresentations about his experience with the Indo-Tibetan Border Police.
- Evidence of how and when the beneficiary engaged prior counsel and how counsel instructed him to misrepresent his employment history.
- Evidence that [REDACTED] owns [REDACTED] and was also an owner of the business during the beneficiary's claimed employment.
- Statement describing any familial relationship between [REDACTED] and the beneficiary.
- Independent, objective evidence of the beneficiary's former employment.
- The Petitioner's Certificate of Incorporation.
- A list of the names of all of its owners and officers.
- A statement regarding whether there is any familial relationship between the beneficiary and any owners or officers of the petitioner.
- Current address(es) of the petitioner and the address of intended employment for the beneficiary.
- Information relating to any other Form I-140 beneficiaries sponsored by the petitioner.

In the NDI/RFE, the AAO specifically alerted the petitioner that failure to respond to the NDI/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).

Because the petitioner failed to respond to the NDI/RFE, the AAO is dismissing the appeal.

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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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.