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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

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JAN 12 2011

IN RE:

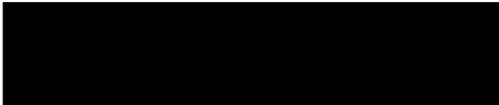
Petitioner:



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, 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 is a software consultant firm. It seeks to employ the beneficiary permanently in the United States as a project/computer engineer pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). 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 had the foreign equivalent of a U.S. bachelor's degree as required by the terms of the labor certification application.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On September 29, 2010, the AAO issued a request for evidence concerning the petitioner's intent regarding the actual minimum educational requirements of the proffered position.² The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree and the evidence in the record of proceeding as currently constituted did not 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. 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.

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).

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.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

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ORDER: The appeal is dismissed.