

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**



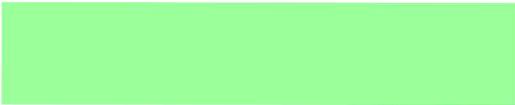
(b)(6)



Date: **APR 05 2012** Office: TEXAS SERVICE CENTER

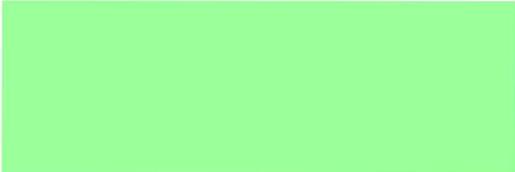
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other Worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A).

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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, and certified his decision to the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed.

The petitioner is a commercial painting company. It seeks to employ the beneficiary permanently in the United States as a painter, construction and maintenance worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality 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 it had the ability to pay the proffered wage from the priority date onward and denied the petition accordingly. The petitioner then filed an appeal. The AAO determined that the evidence submitted on appeal demonstrated the petitioner's ability to pay the proffered wage from the priority date onward, but remanded the petition to the director for a determination as to whether the beneficiary had the required experience as specified by the terms of the labor certification. The director then sent a Request for Evidence requesting that the petitioner submit evidence of the beneficiary's experience. The petitioner's response was not received within the time allotted, so the director denied the petition and certified the decision to the AAO.

On remand, the director requested that the petitioner submit evidence of the beneficiary's experience within 30 days of April 5, 2011, the date of the director's request for evidence (RFE). The director's decision indicated that the evidence was not received. In response to the notice of certification, the petitioner submitted evidence that its response was received at the Texas Service Center before the date it was due, May 2, 2011. Thus, the director erroneously concluded that the petitioner had not submitted a response to the RFE. Nevertheless, the petition may not be approved and must be dismissed for reasons stated below. Therefore, the AAO will not remand the case to the director for further consideration.

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 January 23, 2012, this office notified the petitioner that a discrepancy exists concerning the status of the business with which the petitioner claims that the beneficiary gained his experience, [REDACTED]. Specifically, New York State records did not list [REDACTED] as an incorporated entity and the address given for the business is a residential address. An internet search did not yield evidence that [REDACTED] is a currently operational business. The NDI requested evidence to demonstrate that [REDACTED] was an operational business at the time that the beneficiary claimed to work there and/or evidence to demonstrate that it is currently operational. The NDI also requested evidence of the

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).

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beneficiary's employment including contemporaneous evidence of payments made by [REDACTED] to the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I & N Dec. 582, 586 (BIA 1988).

The letter submitted to the director by [REDACTED] which was undated, did not address the issues included in the AAO's Notice of Derogatory Information including its incorporation status or other evidence to resolve the inconsistency reflecting that the address of the business appeared to be residential and not commercial, and did not submit any evidence to independently verify that [REDACTED] is or was an operational business and that it employed the beneficiary in the manner indicated. In light of the evidence indicating that [REDACTED] is not an operational business, the AAO finds that the letter from [REDACTED] is not reliable and does not verify the beneficiary's past experience. Thus, the petitioner has not established that the beneficiary is qualified for the position.

This office allowed the petitioner 30 days in which to provide evidence to resolve the discrepancy described above and to submit evidence addressing the above issues. More than 30 days have passed and the petitioner has failed to respond to this office's request for financial documents and evidence concerning the beneficiary's qualifications for the position. Thus, director's decision will be affirmed and the petition will remain denied.

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 director's decision is affirmed. The petition is denied.