

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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Date: JUN 15 2012

Office: TEXAS SERVICE CENTER

IN RE: [REDACTED]

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a full service hotel. It seeks to employ the beneficiary permanently in the United States as a Controller pursuant to section 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. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

The AAO issued a request for evidence and notice of derogatory information (RFE) on March 30, 2012 concerning the actual minimum educational requirements of the offered position. The AAO solicited additional evidence of the beneficiary's credentials and evidence of how the petitioner expressed its actual minimum educational requirements to the U.S. Department of Labor (DOL) during the labor certification process. The AAO also requested evidence demonstrating the petitioner's continuing ability to pay the proffered wage beginning on the priority date until the beneficiary obtains lawful permanent residence.¹

This office allowed the petitioner 45 days in which to respond to the RFE. In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE could result in dismissal of the appeal. 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). More than 45 days have passed and the petitioner has failed to respond with proof that the beneficiary possessed the required education for the offered position and that it has the ability to pay the beneficiary the proffered wage.

Thus, the appeal will be dismissed as abandoned. See also 8 C.F.R. § 103.2(b)(13).

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. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).