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FILE:



Office: CALIFORNIA SERVICE CENTER

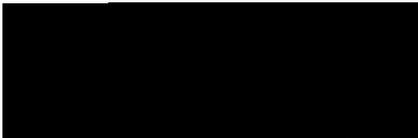
Date:

SEP 20 2007

WAC 02 064 55812

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. On appeal, the Administrative Appeals Office (AAO) remanded the case for further investigation and entry of a new decision. The director denied the case due to abandonment and certified her decision to the AAO for review. The director's decision will be affirmed.

The petitioner is an optical office. It sought to employ the beneficiary permanently in the United States as an optometric assistant. As required by statute, Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had failed to establish that the beneficiary possessed the requisite work experience specified on the labor certification, and denied the petition accordingly.

On appeal, the AAO concluded that the petitioner had established the beneficiary's requisite qualifying work experience as set forth on the ETA 750, however the petitioner's continuing financial ability had not been sufficiently demonstrated. On February 15, 2006, the AAO remanded the case to the director to make a specific finding relating to the petitioner's continuing ability to pay the proffered wage pursuant to the requirements of 8 C.F.R. § 204.5 (g)(2).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

On certification for review, the director noted that she had issued a request for additional evidence on April 21, 2006, advising the petitioner that further documentation supporting its continuing ability to pay the certified wage of \$31,200 was required. Consistent with the requirements of the regulation at 8 C.F.R. § 204.5(g)(2), the director requested that the petitioner provide copies of annual reports, federal tax returns or audited financial statements for the years 1999 through 2005. The director also instructed the petitioner to provide copies of its state quarterly wage reports for all employees for the last four quarters filed in the state of California.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that an application is deemed abandoned if all requested evidence and requested additional evidence is not submitted by the required date. Here, the petitioner was afforded until July 14, 2006 to provide the requested material. On August 3, 2007, the director denied the petition due to abandonment, concluding that the petitioner had failed to respond to the request for additional evidence in the 12 weeks allotted for the response.

Based on a review of the record, the AAO concurs with the director's decision to deny the petition due to abandonment.

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 AAO affirms the director's decision to deny the petition.