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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B6

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JUL 21 2008**
SRC-04-081-50677

IN RE: Petitioner: [REDACTED]
Beneficiary: [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:



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, Chief
Administrative Appeals Office

DISCUSSION: The preference 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 summarily dismissed.

The petitioner¹ is a tour and transportation company. It seeks to employ the beneficiary permanently in the United States as an office manager (administrative manager). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by DOL with a priority date of April 26, 2001. The petition was submitted on January 27, 2004. The director determined that the petitioner failed to establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition because the petitioner's tax returns for 2001 through 2005 submitted in the record do not show that the petitioner had sufficient net income or net current assets to pay the proffered wage in these relevant years. Accordingly, the director denied the petition on April 21, 2006.

On May 23, 2006 an appeal was filed without a brief and/or additional evidence. On the Form I-290B, counsel indicated that he would send a brief and/or evidence to the AAO within 30 days. Since the AAO had received nothing further, the AAO sent a fax to counsel on August 17, 2007 informing counsel that no separate brief and/or evidence was received, inquiring whether or not he would send anything else in this matter, and as a courtesy, providing him with five (5) days to respond. On August 24, 2007, counsel responded to the AAO's fax requesting for an extension to send a brief along with the petitioner's 2006 tax return. Counsel stated in the response: "I have recently spoken with the petitioner's new accountant, and he informed our office that the company's 2006 Income Tax Return should be ready within 2 to 3 weeks, showing as positive financial outlook for the company. Therefore, we kindly ask for an extension so that we may send a brief along with this material." Counsel did not indicate that a brief and/or evidence has been submitted within the original 30 days period. To date, more than 10 months later, no brief or evidence has been received.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days and in response to the AAO's fax, he indicated again that he would submit a brief and the petitioner's 2006 tax return. The record, however, does not show that counsel for the petitioner has identified specifically any erroneous conclusion of law or statement of fact for this appeal. In addition, the AAO's August 17, 2007 fax expressly informed counsel that "regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. Therefore, this facsimile is not and should not be construed as requesting or permitting the petitioner and/or its counsel to submit a late brief and/or evidence in response to this request." Therefore, the appeal must be summarily dismissed.

¹ The record contains different addresses for the petitioner in the instant case: [REDACTED] Orlando, FL 32835, U.S.A. on the Form ETA 750 filed with the Department of Labor (DOL) on April 26, 2001; [REDACTED] Orlando, FL 32811 on the petitioner's Form 1120 U.S. Corporation Income Tax Return for 2001 filed on March 19, 2002; [REDACTED] Orlando, FL 32819 on the instant petition filed on January 27, 2004 and the petitioner's Forms 1120 for 2002 through 2005; and [REDACTED], Orlando, FL 32819 on the Form AR-11 Alien's Change of Address Card file don June 5, 2007. This office accessed the Florida Department of State Division of Corporations official website which indicates that the petitioner's principal address changed to [REDACTED] Orlando, FL 32819 on May 2, 2008. See http://www.sunbiz.org/corp_dir.html (accessed on June 2, 2008). Therefore, the AAO will send this decision to the petitioner at this address as the petitioner's last-known address.



ORDER: The appeal is summarily dismissed.