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

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FILE:



Office: TEXAS SERVICE CENTER

Date: **SEP 17 2008**

WAC 06 104 50896

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, 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 dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a chef. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it has the ability to pay the proffered wage for 2003 or 2005. The director denied the petition accordingly.

The petitioner submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, the petitioner inserted,

“On July 27, 2006, the USCIS incorrectly denied Petitioner’s I-140 because it found that Petitioner had not established the ability to pay the proffered wage on a continuous basis from the priority date to the present. However, Petitioner’s brief and evidence, including but not limited to complete tax returns and audited financial statements for 2003 and 2005, will establish its ability to pay the proffered wage on a continuous basis from the priority date to the present.”

On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days.

Counsel dated the appeal August 28, 2006. As of this date, more than 24 months later, the AAO has received nothing further. The AAO sent a fax to counsel on August 27, 2008 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he would send anything else in this matter, and as a courtesy, providing him with five days to respond. Counsel did not respond.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: “An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

The petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.