



U.S. Citizenship
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Services

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FILE: [Redacted]
SRC 08 077 53527

Office: TEXAS SERVICE CENTER Date: NOV 02 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director determined that the petitioner failed to demonstrate its continuing ability to pay the proffered wage from the priority date of August 21, 2002. The director further determined that the petitioner had not established that the beneficiary met the two-year experience requirement in the job offered of foreign food specialty cook as required by the labor certification. The director denied the petition, accordingly.

On appeal, counsel stated:

The Service Center acted arbitrarily and capriciously in denying the I-140. The restaurant owns the building that houses the restaurant and it has substantial equitable value. The owner could have easily obtained monies for salary through this equity.

In addition, it totally ignored all evidence of September 11 assistance.

Inasmuch as the employer had the ability to pay and the beneficiary had the experience, the denial was beyond the discretion of the Service.

Counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. Counsel dated the appeal June 2, 2008, and it was received on June 3, 2008. As of this date, more than 16 months later, the AAO has received nothing further.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states in pertinent part:

Additional time to submit a brief. The affected party may make a written request to the AAO for additional time to submit a brief. The AAO may, for good cause shown, allow the affected party additional time to submit one.

The regulation at 8 C.F.R. § 103.3(a)(2)(viii) states in pertinent part:

Where to submit supporting brief if additional time is granted. If the AAO grants additional time, the affected party shall submit the brief directly to the AAO.

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. Counsel here has not specifically identified any erroneous conclusion of law or statement of fact.

The AAO notes that counsel stated that the petitioner could have easily obtained monies for salary through the equity in the building housing the restaurant. However, the equity in the building (no value was given) is considered to be a long term asset (having a life longer than one year), and its value is not considered to be readily available to pay the proffered wage to the beneficiary as it is not

easily converted into cash. In addition, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

Additionally, counsel failed to submit a brief or any additional evidence on appeal. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.