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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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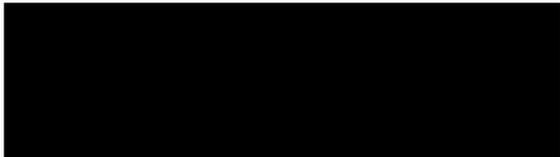
Date: **OCT 02 2009**

IN RE:           Petitioner:  
                    Beneficiary:



PETITION:   Immigrant Petition for Other Worker Pursuant to § 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.

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily 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 an other worker. The director determined that the petitioner failed to submit all of the required initial evidence.<sup>1</sup> The director denied the petition, accordingly.

On appeal, counsel stated:

The I-140 petition was denied on the erroneous belief that “the petition was submitted without all of the required initial evidence.” In fact, the petition that was submitted on July 16, 2007 via UPS contained the “Final Determination” approval of the U.S. Department of Labor ETA [750] and all the other requirements.

Counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. The AAO received the appeal on December 31, 2008. As of this date, more than 8 months later, the AAO has received nothing further.

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

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<sup>1</sup> The regulation at C.F.R. § 204.5(g) states in pertinent part:

*Initial evidence – (1) General.* Specific requirements for initial supporting documents for the various employment-based immigrant classifications are set forth in this section. . . . Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien’s experience or training will be considered.

*(2) Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . .

In the instant case, the labor certification did not require any training or prior experience. However, the petitioner failed to submit any evidence of its ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence.

*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.

Counsel, here, did not request any additional time beyond the 30 days listed on Form I-290B.

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 and has not provided any of the initial required evidence related to the ability to pay the proffered wage or any additional evidence on appeal. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.