



U.S. Citizenship
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Services

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OCT 06 2009

FILE: LIN 08 056 50294 Office: NEBRASKA SERVICE CENTER Date:

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

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

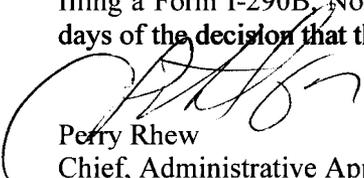
ON BEHALF OF PETITIONER:

[REDACTED]

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 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, unskilled worker. The director determined that the petitioner failed to demonstrate that it has the continuing financial ability to pay the proffered wage as of the priority date. The director also determined that the petitioner failed to submit a labor certification that supported the visa classification sought on the I-140.¹ The director additionally concluded that the petitioner had failed to provide evidence supporting the two years of training and two years of experience required by the labor certification and failed to provide evidence establishing that the special requirements described in Item 15 of the labor certification had been met.² Accordingly, the director denied the petition.

The appeal was filed on February 10, 2009. On Part 3 of the Form I-290B, Notice of Appeal or Motion, the petitioner stated that the appeal was filed because the petitioner never received any request for evidence from the director.³ On Part 3 and on Part 2, B, of the Form I-290B, counsel requested an additional 30 days in which to submit additional documentation and a brief.

Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party shall submit the brief directly to the AAO. Therefore the brief and any additional evidence was due on March 16, 2009.

As of this date, more than six months later, the AAO has received nothing further.

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.

¹ The experience requirements set forth on the labor certification are two years of experience in the job offered of direct support services and two years of training as a care provider. The petitioner designated paragraph "g" on the Immigrant Petition for Alien Worker (Form 140), which identifies the visa sought as any other worker (requiring less than two years of training or experience). Thus the requirements set forth on the labor certification exceeded the training and experience parameters of the visa classification sought as an other, unskilled worker.

² These requirements were fingerprint clearance through the Department of Justice; TB clearance as required; completion of American Red Cross first aid training; completion of 12 hours per year of ongoing education or in-service training; and at least six months of experience in the field of developmental disabilities.

³ The regulation(s) at 8 C.F.R. § 103.2(b)(1) and 8 C.F.R. § 103.2(b)(8)(ii) requires that a petitioner must establish eligibility at the time of filing the petition and all required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. USCIS in its discretion may deny the petition for lack of all required initial evidence or for ineligibility.

The petitioner here has not specifically addressed the reasons stated for denial and has not provided any additional argument or evidence to overcome the basis for denial. The appeal must therefore be summarily dismissed.⁴

ORDER: The appeal is dismissed.

⁴ Alternatively, the petitioner would be unable to overcome the issue related to visa classification and the appeal would be dismissible on this basis. It is noted that neither the law nor the regulations require the director to consider other classifications if the petitioner does not establish the beneficiary's eligibility for the classification requested. We cannot conclude that the director committed reversible error by adjudicating the petition under the classification requested by the petitioner. Further, there are no provisions permitting the petitioner to amend the petition on appeal in order to reflect a request under another classification. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). In this matter, the appropriate remedy would be to file another petition with the proper fee and required documentation to meet all the applicable regulatory requirements.