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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



U.S. Citizenship
and Immigration
Services

B6

FILE:

[REDACTED]
SRC 08 163 52031

Office: TEXAS SERVICE CENTER

Date: APR 19 2010

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

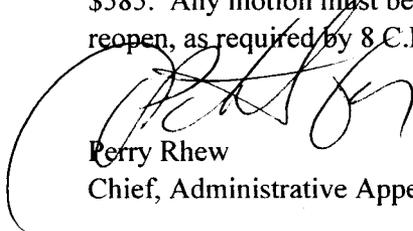
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

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, Texas 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 a professional. The director denied the petition on January 28, 2009 determining that:

The United States Department of Labor, in accordance with Title 20 Code of Federal Regulations 655.855,¹ has informed the U.S. Citizenship and Immigration Services (USCIS) that [the petitioner] has been found to have engaged in certain actions rendering them subject to mandatory debarment under section 212(n)(2)(C)(i) and (ii) of the Immigration and Nationality Act, as amended. Accordingly, no immigrant visa petitions and no H (excluding H-1B1), L, O, or P-1 nonimmigrant visa petitions filed with respect to [the petitioner] shall be approved by the USCIS for the period of time beginning on June 1, 2008, and

¹ The regulation at 20 C.F.R. 655.855(c) states: “The DHS, upon receipt of notification from the Administrator pursuant to paragraph(a) of this section, shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S. C. 1154 and 1184(c)) for nonimmigrants to be employed by the employer, for the period of time provided by the Act and described in § 655.810(f).” It is noted that certain statutes that preclude USCIS from approving applications effectively require that USCIS deny the application. For instance, the language of Sections 204(c), (d), and (g) of the Act all similarly provide that “notwithstanding [the relevant applicable subsections] . . . no petition shall be approved if [the following facts are present].” Further, on October 21, 1998, President Clinton signed into law the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which incorporated several immigration-related provisions, including the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). ACWIA mandated new requirements for petitioners filing for H-1B beneficiaries. Pursuant to ACWIA, penalties were established for H-1B violations on a three tier system: (1) the first tier would encompass non-willful conduct, or less substantial violations such as failure to meet strike, lockout or layoff attestations; failure to meet notice or recruitment attestations; or misrepresentation of a material fact on a labor condition application, and would result in fines of not more than \$1,000 per violation and result in the mandatory debarment of at least one year. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(i) of the Act; (2) willful violations, such as willful failure to meet any attestation condition; willful misrepresentation; or actions taken in retaliation against whistleblowers, which would result in a fine of not more than \$5,000 per violation, and mandatory debarment of two years. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(ii) of the Act; and (3) willful violations that result in layoffs, such as a violation of the attestation, or misrepresentation of a material fact in the course where an employer displaces a U.S. worker, which would result in a fine not to exceed \$35,000 per violation, and mandatory debarment of at least three years. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(iii) of the Act.

ending on May 31, 2009.

The appeal was filed on February 19, 2009. On Part 2, B, of the Form I-290B, Notice of Appeal or Motion, counsel requested an additional 30 days to submit a brief and/or additional evidence.

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 was due on Tuesday, March 24, 2009.

As of this date, more than thirteen 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.

In this matter, counsel has provided no statement on appeal that addresses any erroneous conclusion of law or fact in the decision being appealed. Counsel merely states on the notice of appeal that a brief and additional supporting documents will be submitted in 30 days. Counsel has not specifically addressed the reasons stated for denial and has not provided any additional evidence to overcome the basis for denial. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.