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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**

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**AUG 03 2010**

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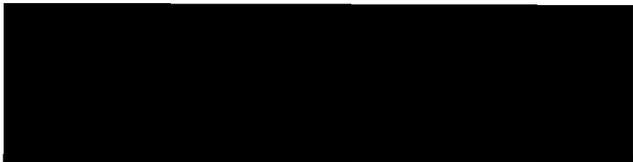
Office: NEBRASKA SERVICE CENTER

Date:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
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 claims to be a Japanese specialty restaurant. On October 11, 2006, the petitioner filed a petition seeking to permanently employ the beneficiary as a chef/head cook. The petitioner requests classification pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker.<sup>1</sup> As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the Department of Labor (DOL).

On August 16, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit additional documentation. In the RFE, the director specifically noted that United States Citizenship and Immigration Services (USCIS) records indicated that the petitioner had filed multiple Forms I-140, Immigrant Petitions for Alien Workers, and requested the petitioner to submit "documentation of each I-140 filed, the proffered wage for each I-140 petition, and evidence to show that the petitioner has the ability to pay the combined wages of all of the aliens named in the petitions filed."<sup>2</sup> In his response to the RFE, received by the director on September 21, 2007, counsel for the petitioner failed to submit all of the evidence requested.<sup>3</sup>

The director denied the petition on December 5, 2007, on the basis that the evidence submitted failed to establish the petitioner's ability to pay the proffered wage. The director specifically noted that the petitioner had failed to present any evidence regarding each I-140 it had filed, the proffered wage for each petition, and evidence that the petitioner had the ability to pay the proffered wages of all of the aliens name in those petitions.

Counsel filed the instant appeal on January 7, 2008. On appeal, counsel provided a brief statement stating, in part, that "[USCIS] failed to specify the multiple I-140 [sic] and beneficiaries." Counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days of filing the appeal. The AAO subsequently received additional documentation from counsel on February 1, 2008 and March 4, 2008.<sup>4</sup>

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

<sup>2</sup> The director also requested the petitioner to submit its 2006 federal tax return, evidence of the beneficiary's education, and further evidence of the beneficiary's work experience.

<sup>3</sup> Counsel submitted the petitioner's 2006 federal tax return documentation, evidence that the beneficiary had an elementary school education, and a certificate of employment from the beneficiary's prior employer.

<sup>4</sup> Counsel submitted documentation indicating that additional Forms I-140 had been filed, and were currently pending, on behalf of Deok W. Han (LIN 07 220 52273 relates) and Sang K. Kim (LIN 07

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "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." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has the education requirements stipulated on the labor certification. The Form ETA 750 requires that the beneficiary have six years of elementary education and six years of high school education. The record contains evidence of the beneficiary's elementary education, but no evidence regarding his high school education.<sup>5</sup>

It is further noted that even if the AAO were to assume that the wages paid to the additional aliens petitioned for were equivalent to the wage, as presented, to be paid to the current beneficiary, the petitioner has not conclusively established its ability to pay those wages based on the record of proceedings.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.

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269 57852 relates), and that a Form I-140 filed on behalf of Se E. Jang (SRC 07 109 59667 relates) had been approved. Counsel did not, however, provide any evidence of the proffered wage for each beneficiary.

<sup>5</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).