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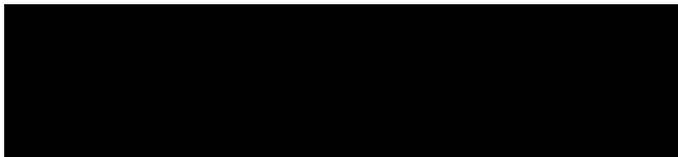
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
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FILE: [REDACTED]
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Office: TEXAS SERVICE CENTER

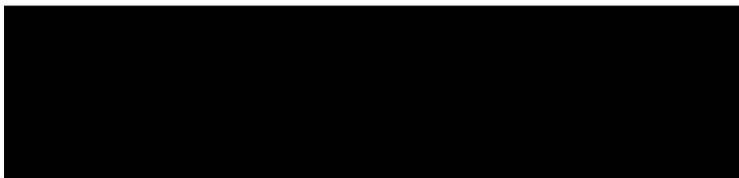
Date: FEB 18 2010

IN RE: Petitioner:
Beneficiary:



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, 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 is a restaurant. It seeks to employ the beneficiary permanently in the United States as a catering manager. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that a valid employment relationship exists and that a bona fide job opportunity is available to U.S. workers. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's September 27, 2007 denial, the single issue in this case is whether or not the petitioner has demonstrated that it has made a bona fide job offer to the beneficiary.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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 nature, for which qualified workers are not available in the United States.

Under 20 C.F.R. § 656.10(c)(8) and § 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000).

In the instant case, the evidence in the record shows that the petitioner, a sole proprietorship, is owned by [REDACTED], and the beneficiary is [REDACTED], his niece. As such, the proprietor and the beneficiary appear to be related. Therefore, the petitioner cannot establish that it has made a *bona fide* job offer to the beneficiary.

Counsel asserts that the regulations do not specifically state what degree of relationship should be disclosed and that the familial relationships that the regulations require are the same that would allow a person to petition for a relative. Counsel further concludes that an uncle cannot petition for a niece, therefore the petitioner's failure to disclose his familial relationship with his niece does not violate the regulations. While the AAO acknowledges counsel's statements, it notes that counsel fails to provide legal support for her assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988);

Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further notes that the petitioner followed all of the requirements of advertising the position and no one responded to the advertisement. As such, counsel states that the failure to disclose the familial relationship did not affect the advertisement of the position. The AAO observes that the record fails to demonstrate that no one responded to the advertisement. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, regardless of the response to the advertisement, the petitioner has not demonstrated that a valid employment relationship exists as he is related to the beneficiary. The AAO finds that the petitioner has not established that a valid employment relationship exists and that a bona fide job opportunity is available to U.S. workers.

Beyond the decision of the director, the petitioner has not established that the beneficiary is admissible to the United States.¹ 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 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The AAO notes that USCIS records include information showing that the beneficiary was arrested on May 12, 1996 for larceny theft from a building.

Section 212(a)(2)(A) of the Immigration and Nationality Act (the "Act") states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record does not contain information regarding the beneficiary's criminal history, specifically whether she has any convictions or has made any admissions to the commission of a crime that would render her inadmissible to the United States. As such, the AAO is unable to determine whether the beneficiary has committed a crime involving moral turpitude that would render her inadmissible to the United States under section 212(a)(2)(A) of the Act. As it is the applicant's burden to show that he or she is not inadmissible to the United States, the AAO finds that the petitioner in this case has not met the burden of showing the beneficiary to be admissible to the United States.

¹ The director did not note this issue in his decision, nor did the petitioner address this issue on appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.