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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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**MAR 16 2010**

FILE: [REDACTED]  
LIN 07 089 50596

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) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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 preference 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 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 skilled worker. The director determined that the petitioner failed to demonstrate its continuing ability to pay the proffered wage from the priority date of April 30, 2001. The director further determined that the petitioner had not established that the beneficiary met the two-year experience requirement in the job offered of foreign food specialty cook as required by the labor certification. The director denied the petition, accordingly.

On appeal, counsel stated:

The Director of the Nebraska Service Center ignored substantial evidence indicating the sponsor's continued ability to pay the wages offered to the beneficiary of this I-140 from 2001-present. Specifically, the director ignored bank records indicating ongoing, continuously-existing bank reserves which could have more than covered the wages offered. The director further ignored evidence in the sponsor's tax returns that its yearly financial documents established that it had the financial ability to pay the wages offered. The director's decision violated 8 C.F.R. § 204.5(g)(2).

The director further ignored evidence of the beneficiary's possession of the experience required by the sponsor's approved labor certification.

Counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. Counsel dated the appeal July 12, 2007, and it was received on July 16, 2007. As of this date, more than 31 months later, the AAO has received nothing further.

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

*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.

The AAO notes that counsel stated that the director ignored substantial evidence of the petitioner's continuing ability to pay the proffered wage including the petitioner's bank records and evidence in the petitioner's tax returns. Counsel also stated that the director ignored evidence of the beneficiary's experience.

Counsel is mistaken. From the outset, the director informed the petitioner that it had not submitted complete copies of its tax returns. In his decision, the director specifically dealt with all issues raised by counsel including the petitioner's tax returns and bank statements. The director noted that first, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that is considered when determining the petitioner's net current assets. The director also informed the petitioner that it had not established its ability to pay the proffered wage either through its net income or its net current assets and explained why the petitioner had not met this criterion. Further, the director explained why the experience letter submitted as evidence of the beneficiary's experience was unacceptable. The experience letter was in a foreign language, and the regulation at 8 C.F.R. § 103.2(b)(3) states, "Any document containing foreign language submitted to [U.S. Citizenship and Immigration Service (USCIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

Additionally, counsel failed to submit a brief or any additional evidence on appeal. The appeal must therefore be summarily dismissed.<sup>1</sup>

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<sup>1</sup> During the adjudication of the appeal, evidence has come to light that the instant petitioning business: [REDACTED] has been dissolved. See attached print-outs (accessed on February 18, 2010) for the petitioning business from the website at [REDACTED]. If the petitioning business is no longer an active business, the petition and its appeal to this office have become moot. Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.



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**ORDER:** The appeal is dismissed.