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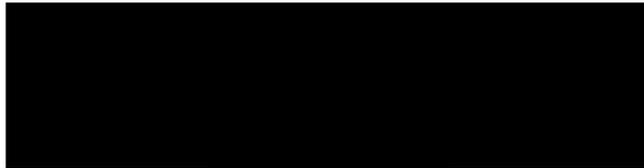
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B-6



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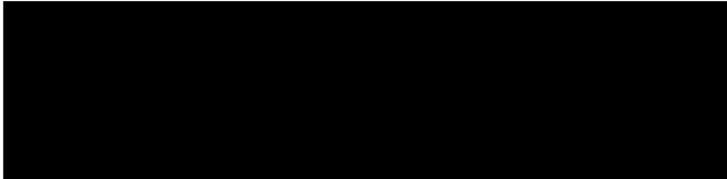
Office: NEBRASKA SERVICE CENTER

Date: **MAY 21 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:

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner's business is reputed to be advertising services. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The Director determined that the beneficiary's credentials could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in computer science or an equivalent field because the beneficiary does not possess a four-year college degree or its foreign equivalent. The director denied the petition on January 22, 2008.

Notwithstanding the above, information received by the AAO from the Arizona Corporation Commission's website and other Internet sources, raised concerns about the viability and solvency of the petitioner. Therefore, there are substantial and material questions requiring a response from the petitioner before the case can progress to a decision. That is, it is unclear if the petitioner is the actual intending employer of the beneficiary and, it is equally unclear whether there is a permanent, full-time offer of employment under the circumstances of this case.

The AAO issued a Request for Evidence (RFE) on March 8, 2010. The AAO informed the petitioner that according to the Arizona Corporation Commission, State of Arizona Public Access System, [REDACTED], accessed on February 25, 2010, the petitioner is not in good standing. Further, according to the petitioner's web site accessed on February 25, 2010, at [REDACTED] the petitioner is in the process of a business reorganization.

Additionally, according to the website [REDACTED], accessed on February 25, 2010, the petitioner has filed for Chapter 11, federal bankruptcy protection on November 14, 2008.

Chief among issues raised by this information is whether the petitioner has demonstrated it has made a permanent, full time job offer to the beneficiary. Another issue is whether the petitioner has the continuing ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

The regulation at 20 C.F.R. § 656.3 states, in part:

Employer means:

(1) A person, association, firm, or a corporation that currently has a location within the United States to which U.S. workers may be referred for employment and that proposes to employ a full-time employee at a place within the United States, or the

authorized representative of such a person, association, firm, or corporation. An employer must possess a valid Federal Employer Identification Number (FEIN). For purposes of this definition, an “authorized representative” means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters. A labor certification can not be granted for an Application for Permanent Employment Certification filed on behalf of an independent contractor.

The regulation at 20 C.F.R. § 656.3 further states, in part:

Employment means:

(1) Permanent, full-time work by an employee for an employer other than oneself. For purposes of this definition, an investor is not an employee. In the event of an audit, the employer must be prepared to document the permanent and full-time nature of the position by furnishing position descriptions and payroll records for the job opportunity involved in the Application for Permanent Employment Certification.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The AAO solicited evidence of how the petitioner would meet the requirements of the labor certification and the regulations. The AAO requested the petitioner to submit a letter from a corporate officer detailing the proposed employment relationship between it and the beneficiary and informed the petitioner, that if it is no longer an active business, the petition and its appeal to the AAO have become moot.

The AAO instructed the petitioner to detail who will directly pay the beneficiary’s salary; who will provide benefits; who will make contributions to the beneficiary’s social security, worker’s compensation, and unemployment insurance programs; who will withhold federal and state income taxes; and who will provide other benefits such as group insurance. Additionally, the AAO requested Wage and Tax Statements (Forms W-2) issued to the beneficiary by the petitioner for 2007, 2008 and 2009; and copies of the petitioner’s federal corporate income tax returns, audited financial statements, or annual reports from 2002 through 2008.

In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in the petition's dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The petitioner was afforded 45 days to respond to the RFE. As of this date, no evidence has been submitted.

Because the petitioner failed to respond to the RFE, the AAO is dismissing the 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.