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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



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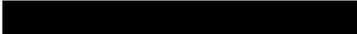


FILE: 

Office: NEBRASKA SERVICE CENTER

Date:

NOV 09 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:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 [REDACTED] seeks to employ the beneficiary permanently in the United States as a specialty chef pursuant to sections 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary met the requirements for the proffered position as stated on application for labor certification as of the priority date.

The AAO issued a request for evidence on August 20, 2010 of the petitioner's intent concerning the actual minimum requirements of the proffered position.<sup>1</sup> Specifically, the AAO requested evidence to establish that the petitioner intended to delineate an equivalency to the Associate's degree requirement as set forth in Part H items 1-13 of the ETA Form 9089 to a specified period of work experience as the actual educational minimum requirement. The AAO also requested evidence that the beneficiary had completed 24 months of training as required by the ETA Form 9089, or documentation to demonstrate the unavailability of such evidence.

In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in 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).

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.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).