

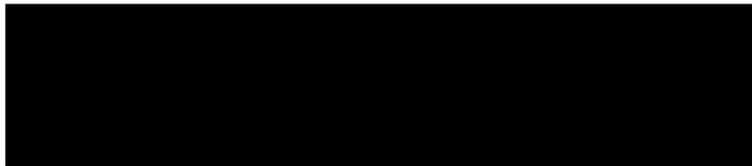
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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ARLINGTON, TX 76396

FILE:



Office: TEXAS SERVICE CENTER

Date:

NOV 22 2010

IN RE:

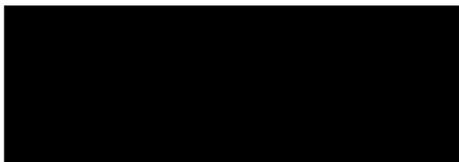
Petitioner:

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 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 seeks to employ the beneficiary permanently in the United States as a landscaping and grounds keeping worker as a substitute employee for a person petitioned for earlier. As required by statute, the Form I-140, Immigrant Petition for Alien Worker, is accompanied by a Form ETA 750, Parts A & B, Application for Alien Employment Certification, approved by the United States Department of Labor (USDOL). The director determined the petitioner had not established it had the continuing ability to pay the beneficiary the proffered wage in 2001 and 2002 and denied the petition accordingly.

The AAO issued a Notice of Derogatory Information and Request for Evidence (NDI & RFE) on September 16, 2010. The notice and request asked the petitioner to establish the extent to which a relationship between the petitioner and the beneficiary was disclosed to USDOL or United States Citizenship and Immigration Services (USCIS) during labor certification proceedings including a complete copy of the Form ETA 750 certified by USDOL, including copies of the petitioner's correspondence with USDOL during the labor certification process and any documentation that both reflects and summarizes the petitioner's recruitment efforts. The petitioner was also requested to provide all correspondence with USCIS relating to the company's substitution of the beneficiary on the labor certification application.

As the record was unclear, the petitioner was requested to establish whether the company is a sole proprietorship or a limited liability company. Additionally, if the company is a sole proprietorship, the owner was requested to provide specific information concerning his family expenses and to resolve apparently discrepant information located in the record. Also, the petitioner was requested to submit evidence to establish the beneficiary is qualified to perform the duties of the offered position as set forth on the Form ETA 750.¹

In the NDI & RFE, the AAO alerted the petitioner that failure to respond within thirty days 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 NDI & 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.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).