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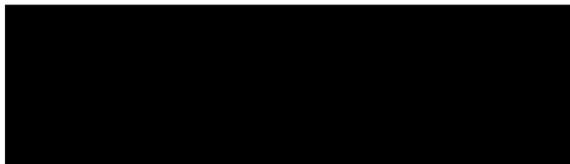
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

OCT 05 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, with a fee of \$630. 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to permanently employ the beneficiary in the United States as an architect. It requests classification of the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).¹

The record shows that the appeal is properly filed, 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.

The Occupational Outlook Handbook (OOH)² entry pertaining to architects states:³

Licensure. All States and the District of Columbia require individuals to be licensed (registered) before they may call themselves architects and contract to provide architectural services. During the time between graduation and becoming licensed, architecture school graduates generally work in the field under the supervision of a licensed architect who takes legal responsibility for all work. Licensing requirements include a professional degree in architecture, a period of practical training or internship, and a passing score on all divisions of the Architect Registration Examination. The examination is broken into nine divisions consisting of either multiple choice or graphical questions. The eligibility period for completion of all divisions of the exam varies by State.

Most States also require some form of continuing education to maintain a license, and many others are expected to adopt mandatory continuing education. Requirements vary by State but usually involve the completion of a certain number of credits annually or biennially through workshops, formal university classes, conferences, self-study courses, or other sources.

The offered position is for an architect, not for an intern architect or other lesser position. Since architects must be licensed in their state of employment,⁴ and since the beneficiary's proposed worksite is in [REDACTED], the AAO issued a Request for Evidence (RFE) on July 28, 2010, requesting that the petitioner submit evidence that the beneficiary is a licensed (registered) architect in [REDACTED].

¹ Section 203(b)(3)(A)(ii) of the Act also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² The OOH is a nationally recognized source of career information published by the DOL's Bureau of Labor Statistics. The OOH is accessible online at [REDACTED]

³ <http://www.bls.gov/oco/ocos056.htm> (accessed September 29, 2010).

⁴ See also the Career Stages section of the American Institute for Architects website at <http://www.aia.org/professionals/index.htm> (accessed July 23, 2010).

in order to establish that the beneficiary qualifies for the offered position. If the beneficiary does not have a license, the RFE instructs the petitioner to explain how she can qualify for employment as an architect.

The RFE also requests that the petitioner provide the following evidence of its ability to pay the proffered wage:⁵

- Tax returns, annual reports or audited financial statements for 2007, 2008 and 2009.
- Any Forms W-2, Wage and Tax Statement, issued by the petitioner to the beneficiary for 2006, 2007, 2008 and 2009.

The RFE also informed the petitioner that, according to U.S. Citizenship and Immigration Services records, the petitioner has filed immigrant petitions on behalf of the following additional beneficiaries:

Beneficiary Last Name	Petition Number	Petition Filing Date
		11/30/2006
		11/30/2006
		11/30/2006
		01/31/2003
		11/30/2006
		11/30/2006
		03/08/2004

Where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must establish that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wage to each beneficiary as of the priority date of each petition and continuing until each beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). Accordingly, the RFE requests that the petitioner provide the following information for each listed beneficiary:

- Exact dates employed by the petitioner.

⁵ The regulation 8 C.F.R. § 204.5(g)(2) states:

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.

- Whether the immigrant petition is inactive (meaning that the petition has been withdrawn, the petition has been denied but is not on appeal, or the beneficiary has obtained lawful permanent residence).
- The priority date of each petition, i.e., the date the labor certification underlying each petition was accepted for processing by the DOL.
- The proffered wage listed on the labor certification submitted with each petition.
- The salary paid to the each beneficiary from 2006 to the present.
- Forms W-2, Wage and Tax Statement, issued to each beneficiary from 2006 to the present.

The RFE afforded the petitioner 45 days to submit a response. *See* 8 C.F.R. § 103.2(b)(8)(iv). The RFE states that if the petitioner does not respond to the RFE, the AAO will dismiss the appeal without further discussion. 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).

To date the AAO has not received a response to the RFE. Thus, the petitioner has not established that the beneficiary possesses the qualifications required to perform the proffered position; and the petitioner has not established its ability to pay the proffered wage. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The appeal shall also be denied for the reason stated by the director, i.e., the petitioner has failed to establish that it is offering bona fide, full-time, permanent employment to the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.