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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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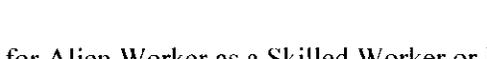


U.S. Citizenship
and Immigration
Services

B6



FILE:  Office: NEBRASKA SERVICE CENTER Date: **SEP 01 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 \$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 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 summarily dismissed.

The petitioner claims to be a travel agency. On August 15, 2007, the petitioner filed a petition seeking to permanently employ the beneficiary as a promotion specialist. The petitioner requests classification of the beneficiary as a skilled worker pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the Department of Labor (DOL).

On January 9, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence of its ability to pay the proffered wage starting from the April 30, 2001 priority date, including the petitioner's tax returns for 2001 through 2004 and 2006; and evidence that the petitioner had employed the beneficiary, if applicable. In response, counsel submitted copies of the beneficiaries W-2 forms for the 2000, 2001, 2002, and 2007 tax years. Counsel requested an extension of time in which to submit the petitioner's tax returns for the above noted years.

The director denied the petition on April 12, 2008. The decision states that the submitted evidence failed to establish the petitioner's ability to pay the proffered wage.

Counsel filed the instant appeal on May 14, 2008. On appeal, the petitioner submits copies of its 1120 tax forms for 2001, 2002, 2003, 2004, and 2006.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Furthermore, review of the director's decision reveals that the director accurately set forth a legitimate basis for denial of the Form I-140 petition. On appeal, counsel has not addressed the grounds stated for the denial.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.