

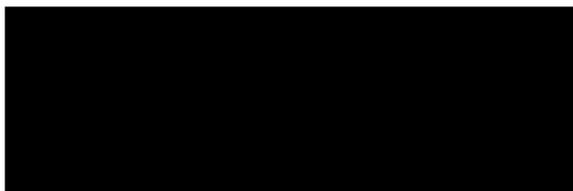
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

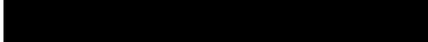


**U.S. Citizenship
and Immigration
Services**



B6

Date: **APR 27 2011** Office: NEBRASKA SERVICE CENTER FILE: 
LIN 07 055 52239

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 preference visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an information technology services provider and consultant. It seeks to employ the beneficiary permanently in the United States as a business data analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary possessed a U.S. bachelor's degree or foreign degree equivalent required by the terms of the labor certification application. The director denied the petition accordingly.

The AAO issued a Request for Evidence (RFE) on November 17, 2010, requesting that the petitioner submit evidence to establish that the beneficiary possessed a U.S. bachelor's degree or foreign degree equivalent as required by the terms of the labor certification application. The AAO noted that in Part H of the ETA Form 9089, the petitioner listed a requirement of a bachelor's degree in finance, accounting or business administration and did not indicate that it will accept a combination of education and experience as an alternative method to meet the requirements for the proffered position.

The AAO further noted that the evidence in the record of proceeding as currently constituted creates ambiguity concerning the actual minimum requirements of the proffered position. Therefore, the AAO requested that the petitioner submit evidence of its intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed to the DOL while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application. Specifically, the AAO requested that the petitioner provide correspondence with the DOL, results of recruitment, or other forms of evidence relevant and probative to illustrating the petitioner's intent about the actual minimum requirements of the proffered position and that those minimum requirements were clear to potential qualified candidates during the labor market test.

In addition, the AAO requested that the petitioner submit evidence that it prepared, *at the time it submitted to the DOL its ETA Form 9089 application and attachments*, the requisite "signed, detailed written report" of its reasonable good faith efforts to recruit U.S. workers prior to filing the application for certification. *See* 20 C.F.R. §§ 656.21(b) or 656.17(e) and (g). Specifically, the AAO asked the petitioner to provide a complete copy of its recruitment efforts, including the notice of the filing, job order, advertisements in newspapers or professional journals and additional recruitment efforts for a professional job, and the recruitment report to establish that the petitioner intended to delineate an equivalency to the bachelor degree requirement as set forth in Part H items 1-13 of the ETA Form 9089 to a combination of lesser degrees, certificates and/or other educational experiences as the actual educational minimum requirement in the instant labor certification application during the labor market test.

Furthermore, the AAO noted that the evidence in the record did not establish that the petitioner has the ability to pay the proffered wage.¹ The regulation at 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.

The AAO observed that the petitioner did not submit tax returns, annual reports or audited financial statements for the relevant period and, therefore, no determination could be made regarding whether the petitioner established its ability to pay the proffered wage of \$48,000 per year since the priority date of November 16, 2006. Accordingly, the AAO requested evidence demonstrating that the petitioner could pay the beneficiary the proffered wage in 2006 and onwards, including Forms W-2 for 2007, 2008 and 2009 and federal tax returns, audited financial statements, or annual reports for 2006, 2007, 2008, and 2009. Additionally, the AAO informed the petitioner that it had submitted other separate petitions pending for multiple beneficiaries and therefore, must establish the ability to pay the wages for all the petitions pending simultaneously. Specifically, with respect to each such petition, the AAO asked the petitioner to submit the following information:

1. The receipt number for the petition;
2. the beneficiary's name;
3. the proffered wage as listed on the labor certification accompanying the petition;
4. the priority date of the petition (i.e., the date on which the labor certification application was filed);
5. proof of employee compensation paid to date including a copy of each Form W-2 issued to the beneficiary;
6. whether any of the sponsored immigrant beneficiaries have adjusted status to legal permanent residence, and the date of adjustment; and
7. whether any of the beneficiaries were ever employed with the petitioner; and the length of time that the petitioner employed each beneficiary, including each start date and end date of employment.

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

¹ The AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate appeals is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. The AAO's *de novo* authority has been long recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.