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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

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DATE: DEC 02 2011 OFFICE: TEXAS SERVICE CENTER

FILE: 

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:

SELF-REPRESENTED

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, Texas 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 is an air condition repair business. It seeks to employ the beneficiary permanently in the United States as a heating and air conditioning mechanic pursuant to section 203(b)(3)(A)(i) of the *Immigration and Nationality Act (the Act)*, 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that it had sufficient funds to pay the proffered wage to the beneficiary from the priority date and continuing until the beneficiary obtains lawful permanent residence. The director denied the petition accordingly.

The AAO issued a request for evidence (RFE) on October 5, 2011.¹ The AAO informed the petitioner of the deficiencies in the record of proceeding and requested additional information, including:

- Any Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, or Forms 1099-MISC, Miscellaneous Income, issued to the beneficiary from the June 28, 2002 priority date.
- Federal tax returns, annual reports or audited financial statements for 2008, 2009, and 2010.
- The most recent Form 941, Employer's Quarterly Federal Tax Return.
- Evidence pertaining to the established historical growth of the business, the occurrence of any uncharacteristic business expenditures or losses from which it has since recovered, its reputation within the industry, or any other evidence relevant to the ability to pay the proffered wage.
- Information pertaining to other I-140 and I-129 beneficiaries sponsored by the petitioner.
- A new employment experience letter that specifies the hours per week the beneficiary worked and that describes the duties performed by the beneficiary in detail.

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.

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