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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

FILE:  Office: NEBRASKA SERVICE CENTER Date: FEB 03 2011

IN RE: 

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a network and consulting service company based in Evansville, Indiana. It seeks to employ the beneficiary permanently in the United States as a software technician or computer programmer pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1153(b)(3)(A)(i) and (ii).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, finding that the petitioner did not have sufficient net income or net current assets to pay the proffered wage during the qualifying period, specifically in 2002 and 2003. The director also declined to accept the Forms W-2 issued to the beneficiary between 2002 and 2006 as evidence of the petitioner's ability to pay the proffered wage.

In adjudicating the appeal, we find that the record lacks conclusive evidence as to whether the Forms W-2 that the beneficiary received from [REDACTED] came from the petitioner.² In addition, we also find that the petitioner has changed its name to [REDACTED] in January 2009. The record lacks conclusive evidence as to whether the petitioner has merged with or has been purchased by another company and remains active to continue with the petition.

In a Request for Evidence (RFE) dated September 1, 2010, the AAO indicated that the petition could not be approved unless the petitioner submitted additional evidence showing that [REDACTED] is a payroll company that issued the Forms W-2 for the petitioner from 2002 to 2006. The AAO also advised the petitioner to explain the petitioner's name change to [REDACTED] in January 2009 and to demonstrate that [REDACTED] is the successor-in-interest to the petitioner.

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).

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. In addition, section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

² On appeal, the petitioner claims that [REDACTED] is a payroll company that processed the petitioner's payroll between 2002 and 2006.

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.