

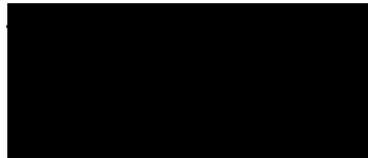
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B6



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date:

IN RE:



FEB 07 2011

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 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 a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. 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 determined that the petitioner had not established that it was the same corporate entity listed on the Form ETA 750, had not established that the beneficiary had sufficient experience to perform the duties of the proffered position, and had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The AAO issued a request for evidence on November 26, 2010 requesting evidence establishing that the beneficiary's current employer was the same corporate entity that had filed the petition as well as evidence relating to the petitioner's continuing ability to pay the beneficiary the proffered wage since the priority date.<sup>1</sup> The AAO explained that the record of proceeding as currently constituted did not support a finding that proffered position was the same as the certified job because the record was absent any evidence demonstrating that the petitioner which filed the Form I-140 on August 15, 2007 is the same entity which filed the labor certification having a June 27, 2002 priority date, or is a bona fide successor-in-interest. The AAO requested a copy of the document filed in Wisconsin establishing that Bluemound Gardens is a fictitious name of Cosmo, Inc., and a copy of any business license or restaurant license issued to Bluemound Gardens which identifies the true owner and operator of the restaurant.

Furthermore, the AAO noted the petitioner had listed a "Note Receivable – Hestia" as a "current asset" on Line 6 of the Schedule L of its IRS Forms 1120, U.S. Corporation Income Tax Return, in 2002, 2003, 2004, 2005, 2006, and 2007. Consequently, the AAO solicited a copy of this "Note Receivable – Hestia" and an explanation as to why it is being characterized as a "current asset" on the petitioner's tax returns.

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.

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<sup>1</sup> 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).



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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.