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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: TEXAS SERVICE CENTER Date:

FEB 23 2011

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 petitioner filed an immigrant petition for alien worker, Form I-140, on January 14, 2002. The employment-based immigrant visa petition was initially approved by the Director of the Vermont Service Center on February 26, 2002. The Director of the Texas Service Center, however, revoked the approval of the immigrant petition on May 12, 2009. The petitioner subsequently appealed the director's decision to revoke the approval of the petition. The director rejected the appeal on July 17, 2009, finding that the appeal was not filed timely, and it did not meet the requirements for either a motion to reopen or motion to reconsider under 8 C.F.R. § 103.5(a). On August 17, 2009, counsel filed a motion to reconsider with the director. On September 8, 2009, the director withdrew the July 17, 2009 rejection notice and forwarded the appeal to the AAO for review. The appeal is now before the AAO and will be dismissed.

The petitioner is a restaurant, seeking to permanently employ the beneficiary in the United States as a cook 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).¹ As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. The director revoked the approval of the visa petition based on the petitioner's noncompliance with the Department of Labor (DOL) procedures in obtaining the approval of the labor certification.

The record shows that the appeal was properly filed and timely and made a specific allegation of error in law or fact.² The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In adjudicating the appeal, the AAO found that the record lacks conclusive evidence as to whether the petitioner has the continuing ability to pay the proffered wage from the priority date. The AAO also observed that the beneficiary's signature on part B of the Form ETA 750, Application for Alien Employment Certification, appeared to be different from his signatures on the Application to Register Permanent Residence or Adjust Status (Form I-485) and Biographic Information (Form G-325). The beneficiary also failed to list his employment abroad on his Form G-325. The AAO issued a request for evidence and notice of derogatory information (RFE/NDI) to both the petitioner and beneficiary on November 9, 2010. In the RFE/NDI, the AAO specifically requested the petitioner and the beneficiary to provide an explanation for why the beneficiary's signatures on the Form ETA 750B and the Forms I-485 and G-325 were different, and why the beneficiary did not list his employment abroad on his Form G-325. The AAO gave both the petitioner and the beneficiary 30 days to respond. No response has been received from either the petitioner or the beneficiary.

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.

² The appeal was received by the director on Monday, June 1, 2009, within the 18 days required by the regulations.

In the RFE/NDI, the AAO specifically alerted both the petitioner and the beneficiary that failure to respond to the RFE/NDI would result in dismissal without further discussion 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 neither the petitioner nor the beneficiary responded to the AAO's RFE/NDI, the AAO is dismissing the appeal without further discussion.

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.