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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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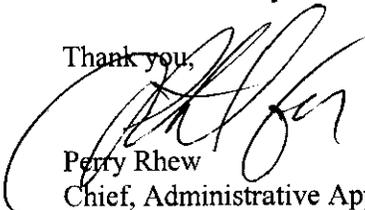
FILE:  Office: NEBRASKA SERVICE CENTER FEB 28 2011
Date:

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant petition for Alien Worker as an Other Worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A).

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 Director, Nebraska 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 a supermarket. It seeks to employ the beneficiary permanently in the United States as a produce manager/ merchandise receiver pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A). 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 the ability to pay the proffered wage from the priority date onwards. The director also noted that the petitioner submitted no evidence regarding the beneficiary's qualifications for the position as set forth on the labor certification and that the requirements of the labor certification did not support the visa classification under which the petition was filed.

The AAO issued a request for evidence on January 4, 2011 concerning the relationship of the petitioner to other business entities in relation to the beneficiary's earnings and W-2 statements submitted.¹ The AAO explained that the evidence previously submitted, the beneficiary's Form W-2s, establish the beneficiary's employment with business entities other than the petitioner's business. The petitioner previously avowed that those business entities were related to the petitioner, but submitted no evidence documenting any relationship on appeal or in response to the AAO's RFE. The AAO's RFE also requested further verification of the beneficiary's earnings.

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 in the specified 30 day time period, 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.