

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

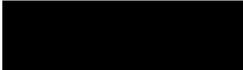


U.S. Citizenship  
and Immigration  
Services

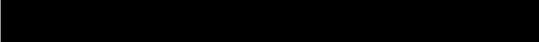
**PUBLIC COPY**



Bd

FILE:  Office: TEXAS SERVICE CENTER Date:

JAN 03 2011

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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,  
*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. The AAO issued a request for evidence and notice of intent to dismiss (RFE/NOID), and afforded the petitioner an opportunity to provide evidence in further support of the petition. The petitioner failed to respond. The appeal will be dismissed.

The petitioner is a day spa. It seeks to employ the beneficiary permanently in the United States as a manicurist pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner 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. Therefore, the director denied the petition.

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.<sup>1</sup>

On October 20, 2010, this office notified the petitioner that additional evidence and information was necessary before the AAO could render a decision. Evidence in the record of proceeding showed that the petitioner is structured as a [REDACTED]. The AAO noted that the petitioner was listed in the State of Connecticut Commercial Recording Division as a limited liability corporation, and as such, its shareholder's liability was limited to her initial investment. Thus, the shareholder's personal income and assets could not be utilized to demonstrate the petitioner's ability to pay the proffered wage. The AAO requested the petitioner show the ability to pay the proffered wage out of the business entity's own funds.

The AAO requested that if the petitioner employed the beneficiary, to submit the beneficiary's Forms W-2, Wage and Tax Statements and Tax Statements or 1099-MISC tax documents for 2004, 2005, 2006, and 2007. The AAO also requested that the petitioner submit a copy of its Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return for the 2007 tax year, and complete certified copies of its IRS Income Tax Return, complete with all pages and all schedules and attachments for 2004, 2005, and 2006.

The petitioner was informed in the RFE/NOID that if it chose not to respond, the AAO would dismiss the appeal without further discussion. 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). The AAO further stated that it would be unable to substantively adjudicate the appeal without a meaningful response to the line of inquiry set forth in the request for evidence.

---

<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

This office allowed the petitioner 30 days in which to provide the requested evidence. More than 30 days have passed and the petitioner has failed to respond to this office's request for evidence. Thus, the appeal will be dismissed as abandoned.

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.