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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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

JAN 19 2011

IN RE:

Petitioner:

[Redacted]

Beneficiary:

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:

[Redacted]

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 home health provider. It seeks to employ the beneficiary permanently in the United States as a caregiver pursuant to sections 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). 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 continuing ability to pay the proffered wage beginning on the priority date of the visa petition. The director denied the petitioner accordingly.

The AAO issued a Notice of Intent to Deny (NOID) on December 3, 2010 relevant to the worksite address of the beneficiary and the *bona fides* of the petitioner as the actual employer offering a full-time, permanent job.¹ The petitioner was informed that the petition would be denied based on a lack of evidence supporting the corporate petitioner's *bona fide* job offer.

The AAO also explained that the evidence submitted in support of the corporate employer's continuing ability to pay the proffered wage of \$17,992 per year was pertinent to the individual holdings of the principal shareholder of the corporation and not to the corporation itself. The AAO further noted that the petitioner had sponsored a number of other Form I-140 beneficiaries and that it was obliged to cover the beneficiary's proposed wage offer, as well as all of the respective wages as of the priority date of each sponsored beneficiary. The petitioner was requested to provide additional probative evidence of its continuing ability to pay the proffered wage, pursuant to 8 C.F.R. § 204.5(g)(2), in view of the multiple petitions filed by the petitioner.²

The petitioner was afforded 30 days to respond to the NOID. In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID might 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 NOID, 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. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² The AAO's NOID contained sixteen items requested from the beneficiary relevant to its continuing ability to pay the proffered wage. The AAO also informed the petitioner of derogatory information appearing in public records related to tax liens and judgment liens affecting the corporate petitioner and its principal shareholder.