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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

DATE: JUN 24 2011

OFFICE: NEBRASKA SERVICE CENTER

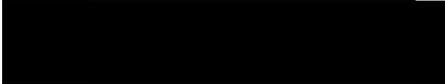
FILE:



IN RE:

Petitioner:

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:

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,

A handwritten signature in black ink, appearing to be "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a garment factory. It seeks to employ the beneficiary permanently in the United States as an industrial machinery mechanic 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 U.S. Department of Labor (DOL) accompanied the petition.

The director denied the petition on December 3, 2008. The decision concludes that the petitioner failed to submit all of the initial evidence in support of the petition, as required under 8 C.F.R. § 103.2. The petitioner appealed the decision to the AAO on January 5, 2009.

The record shows that the appeal is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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.¹

On April 7, 2011, the AAO issued a Request for Evidence (RFE), asking the petitioner to explain and document any changes in the petitioner's entity status from 2001 to the present; provide evidence to establish its successor-in interest relationship to the entity that filed the labor certification, if any; explain and document issues relating to its different addresses; explain discrepancies in the record concerning the beneficiary's Social Security Number; provide the petitioner's complete federal income tax returns with all schedules and attachments, annual reports or audited financial statements for the years 2002 through 2009, and, if available, 2010; provide any Forms W-2, Wage and Tax Statement, or Forms 1099, Miscellaneous Income, issued by the petitioner to the beneficiary for the years 2006 through 2010; provide the petitioner's Forms 941, Employer's Quarterly Federal Tax Return, for the third and fourth quarters of 2001 and the fourth quarter of 2010; provide a detailed list of the petitioner's personal monthly household expenses for all years in which it operated as a sole proprietorship; explain discrepancies in the record concerning the beneficiary's employment experience; provide evidence that the beneficiary possessed one year of experience in the same occupation as the offered position prior to working for the petitioner; and provide information for every other beneficiary for whom the petitioner has filed Forms I-140, Immigrant Petition for Alien Worker, and Forms I-129, Petition for Nonimmigrant Worker.

¹ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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).

The RFE afforded the petitioner 45 days in which to provide a response. *See* 8 C.F.R. § 103.2(b)(8)(iv). The RFE advised the petitioner that, if it did not respond, the AAO would dismiss the appeal without further discussion.

To date the AAO has not received a response to the RFE. 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 is unable to substantively adjudicate the appeal without a meaningful response to the line of inquiry set forth in the RFE.

Thus, the petitioner failed to establish that the beneficiary has the required education, training and experience and any other requirements of the labor certification; has failed to establish that it has possessed the continuing ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence; and has failed to establish that it is a successor-in-interest to the entity that filed the labor certification. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.