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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:

APR 27 2011

Office: TEXAS SERVICE CENTER

FILE:



IN RE:

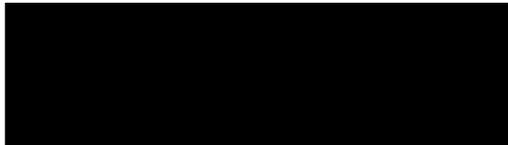
Petitioner:

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:



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,

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Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private individual. She seeks to employ the beneficiary permanently in the United States as a residential child care worker. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to establish that the beneficiary possessed one year of experience in the offered job and had not demonstrated that she had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The AAO issued a request for evidence on January 4, 2011, noting that the petitioner's spouse submitted a letter on appeal in which he asserts that the beneficiary has been employed by the petitioner's family as a child care provider since July of 1998.¹ However, the record is absent any corresponding documentation, such as Form W-2, Wage and Tax Statements, Forms 1099-MISC, or paycheck stubs, to corroborate this assertion. The AAO acknowledged that the record contained a copy of the petitioner's and her spouse's jointly filed Form 1040, U.S. Individual Income Tax Return, for 2007, but that this Form 1040 tax return was not complete. In addition, the AAO noted that the record did not contain the petitioner's and her spouse's Form 1040 tax returns or audited financial statements for 2001, 2002, 2003, 2004, 2005, and 2006, as well as statements of the petitioner's recurring monthly expenses and corresponding documentation reflecting such expenses for 2001, 2002, 2003, 2004, 2005, 2006, and 2007. Thus, the AAO requested that the petitioner provide the following additional evidence:

- Complete copies of the petitioner's Form 1040 tax returns or audited financial statements for 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009;
- Copies of any Forms 1099-MISC, Forms W-2, or paycheck stubs issued by the petitioner to the beneficiary in 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009; and,
- Statements of the petitioner's recurring monthly expenses that provide a breakdown detailing payments for mortgage, auto, installment loans, credit cards, household expenses, utility expenses and corresponding documentation reflecting such expenses for 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

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).

¹ The AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate appeals is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. The AAO's *de novo* authority has been long recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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The record shows that counsel responded to the RFE by requesting an extension of an additional fifteen days to allow the petitioner to gather the requested documentation and submit a meaningful response. However, as of the date of this decision, neither counsel nor the petitioner has submitted any further material. Therefore, the record must be considered complete.

Because the petitioner failed to provide the documentation requested in the RFE, 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.*