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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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FILE:



Office: TEXAS SERVICE CENTER

Date:

MAR 30 2011

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Beneficiary Worker as a Skilled Worker or Professional 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), 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 medical office. It seeks to permanently employ the beneficiary in the United States as a database administrator. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).<sup>1</sup>

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is September 27, 2004, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on August 30, 2007. The director's decision concludes that the petitioner failed to establish its ability to pay the proffered wage from the priority date. The decision also notes that the petitioner did not disclose to the DOL during the labor certification process that the beneficiary is related to the owner of the petitioner. The petitioner appealed the decision to the AAO on October 1, 2007.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. 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.<sup>2</sup>

On October 8, 2010, the AAO issued a Request for Evidence (RFE) instructing the petitioner to provide evidence that, given the relationship between the petitioner's owner and the beneficiary, a *bona fide job opportunity* exists. The RFE states that such evidence may include, but is not limited to, whether the beneficiary:

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

<sup>2</sup> 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).

- is in the position to control or influence hiring decisions regarding the job for which labor certification is sought;
- was an incorporator or founder of the company;
- has an ownership interest in the company;
- is involved in the management of the company;
- is one of a small number of employees;
- has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application; and
- is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue in operation without the alien.

In addition, although not noted by the director, the RFE states that the evidence in the record does not establish that the beneficiary possessed two years of experience in the job offered or in a related occupation as of the priority date. The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on the labor certification submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the labor certification was accepted on September 27, 2004.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states in pertinent part:

Any requirements for training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains an affidavit from the beneficiary stating that the beneficiary was employed by [REDACTED] as a hardware engineer from June, 2000 to December, 2002. The affidavit states "I am unable to obtain an employment verification letter from [REDACTED]." However, no explanation was provided as to why the beneficiary is unable to provide such a letter. According to the website of the Texas Comptroller of Public Accounts, [REDACTED] Inc. is currently in good standing in the state of Texas. Accordingly, the RFE therefore requested the petitioner to provide a letter from [REDACTED] Inc. which meets the requirements of 8 C.F.R. § 204.5(g)(1), or an explanation as to why such a letter was not obtainable.

Finally, according to the regulation at 8 C.F.R. § 204.5(g)(2), the petitioner must demonstrate the ability to pay the proffered wage until the beneficiary obtains lawful permanent residence. Since the beneficiary had not yet obtained lawful permanent residence, in order to establish ability to pay the proffered wage to the present, the RFE instructed the petitioner to provide W-2 forms for the years 2007 through 2009 and annual reports, federal tax returns or audited financial statements for the years 2006 through 2009.

The RFE afforded the petitioner 45 days to submit a response. See 8 C.F.R. § 103.2(b)(8)(iv). The RFE stated that if the petitioner 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 (1) there exists a *bona fide* job opportunity, (2) the beneficiary possesses the minimum experience required to perform the offered position, and (3) it has possessed the ability to pay the proffered wage from the priority date. 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)).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.