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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

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MAR 30 2011

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

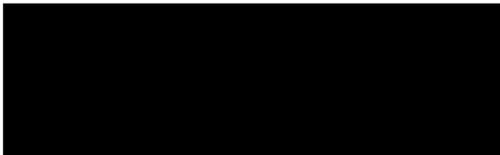
Petitioner:



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,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a home for the developmentally disabled. It seeks to employ the beneficiary permanently in the United States as a caregiver. 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 had not established that it was the same corporate entity listed on the Form ETA 750, had not established that the beneficiary had sufficient experience to perform the duties of the proffered position, and 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. The director denied the petition accordingly.

The AAO issued a request for evidence on January 11, 2011, requesting evidence establishing that the beneficiary's current employer was the same corporate entity that had filed the petition as well as evidence relating to the petitioner's continuing ability to pay the beneficiary the proffered wage since the priority date.¹ The AAO explained that the record of proceeding as currently constituted did not support a finding that the proffered position was the same as the certified job because the record was absent any evidence demonstrating that the petitioner which filed the Form I-140 on March 22, 2007 is the same entity which filed the labor certification having a March 2, 2001 priority date, or is a bona fide successor-in-interest. The AAO requested the petitioner provide evidence such as a bill of sale or similar document demonstrating that it is a valid successor to the employer listed on the Form ETA 750 or any other evidence explaining the relationship between the petitioner and [REDACTED]. Furthermore, the AAO requested that the petitioner submit evidence to establish the identities of parties constituting the owners of [REDACTED] and [REDACTED]. In addition, the AAO requested that the petitioner include copies of any license or permit issued to [REDACTED] owner/licensee, to operate the facility, as well as any licenses or permits issued to [REDACTED] to operate the facility, including evidence that the facility is currently licensed by the State of California.

Furthermore, the AAO acknowledged that the petitioner provided Forms 1099-MISC, Miscellaneous Income, reflecting nonemployee compensation paid by the petitioner to the beneficiary 2002 and 2003 and Forms W-2, Wage and Tax Statement, reflecting employee compensation paid by the petitioner to the beneficiary in 2002, 2003, 2004, 2005, 2006, and 2007. Consequently, in order to determine the petitioner's continuing ability to pay the proffered wage since the priority date, the AAO requested evidence to show that the nonemployee compensation listed on the Forms 1099-MISC and employee compensation listed on the Form W-2 statements was reported to the

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).

Internal Revenue Service and the Social Security Administration. The AAO requested that the petitioner also submit copies of the beneficiary's federal tax returns for 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009; copies of any Form 1099-MISC or Form W-2, Wage and Tax Statements, issued by the petitioner to the beneficiary in 2008, 2009, and if available, 2010; and, copies of the petitioner's federal tax returns or audited financial statements for 2006, 2007, 2008, and 2009.

Finally, the AAO noted that the petitioner filed another petition for another beneficiary in 2007 [REDACTED], and therefore, must establish that it could pay the proffered wage for both the instant petition and the other petition. The AAO requested that the petitioner indicate the priority date of [REDACTED], and evidence of any wages having been paid to the beneficiary of this other petition in 2006, 2007, 2008, 2009, and 2010.

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).

Because the petitioner failed to respond to 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.