

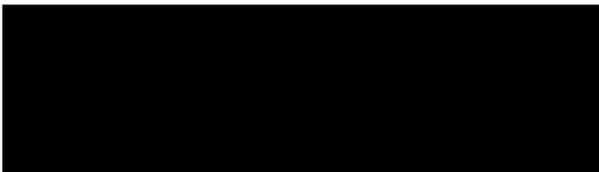
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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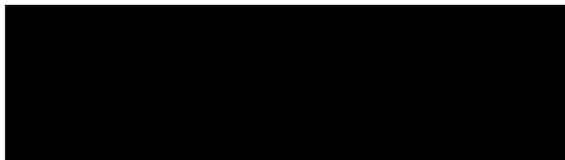
FILE:  Office: NEBRASKA SERVICE CENTER

Date: MAR 30 2011

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 restaurant. It seeks to employ the beneficiary permanently in the United States as a kitchen manager. 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 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 Notice on January 12, 2011, requesting evidence establishing that the beneficiary's current employer was the same corporate entity that had filed the Form ETA 750, as well as evidence relating to the petitioner's continuing ability to pay the beneficiary the proffered wage.¹ The AAO noted the following pertinent facts:

- The Form ETA 750,² contained in the record listed the beneficiary's employer as [REDACTED] and is signed by [REDACTED] who [REDACTED]. The Form ETA 750 was accepted for processing by the Department of Labor (DOL) on April 30, 2001. On the Form ETA 750B, signed by the beneficiary on April 23, 2001, the beneficiary claimed to have worked for the petitioner since May 2000.
- The Form I-140 petition filed on October 4, 2007 is signed by [REDACTED] and listed the beneficiary's employer as [REDACTED] with Federal Employer Identification [REDACTED] and an establishment date of June 1, 1996.
- The petitioner submitted Form 1065, U.S. Returns of Partnership Income, for [REDACTED] for 2001, 2002, 2003, 2004, and for that portion of 2005 from January 1, 2005 to June 30, 2005.

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).

² After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089, Application for Permanent Employment Certification. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

- The petitioner provided Form 1120S, U.S. Income Tax Returns, for an S Corporation, [REDACTED] for that portion of 2005 from July 1, 2005 to December 31, 2005, 2006, and 2007.
- The petitioner included Form W-2, Wage and Tax Statements, issued to the beneficiary in 2001, 2002, 2003, 2004, 2005, and 2006 that listed the beneficiary's employer as [REDACTED]
- A review of the electronic record reveals that [REDACTED] with [REDACTED] filed another separate petition [REDACTED] on behalf of a different beneficiary on February 2, 2010, and that petition was subsequently approved by United States Citizenship and Immigration Services (USCIS) on April 1, 2010. The electronic record indicates that the petition [REDACTED] was accompanied by an ETA Form 9089 that was accepted for processing by the DOL on February 7, 2009.
- A review of the website at <http://www.kepler.sos.ca.gov/cbs.aspx> reflects that the limited liability company, [REDACTED] is currently active, but that the [REDACTED] is suspended.
- The Form W-2 statements contained in the record reflecting employee compensation paid by [REDACTED] to the beneficiary in 2001, 2002, 2003, 2004, 2005, and 2006 list the beneficiary's social security number as [REDACTED] but the petitioner indicated that the beneficiary does not have a social security number on the Form I-140.

Accordingly, the AAO requested that the petitioner submit evidence resolving the discrepancies, inconsistencies, and conflicts noted above. Specifically, the petitioner was asked to provide evidence to resolve whether the S corporation, [REDACTED] became a successor in interest to the limited liability company, [REDACTED] in 2005, and to demonstrate that the [REDACTED] was an active corporate entity in good standing. In addition, the AAO requested that the petitioner include evidence of its continuing ability to pay the proffered wage for both the instant petition and the other petition [REDACTED] from its priority date of February 7, 2009 until the date the beneficiary of that petition adjusted to permanent resident status. Furthermore, the petitioner was asked to submit its federal tax returns for 2008 and 2009 and any Form W-2 statements reflecting employee compensation paid by the petitioner to the beneficiary in 2007, 2008, 2009, and 2010. Finally, the AAO requested that the petitioner provide an explanation as to why it had represented that the beneficiary does not have a social security number on the Form I-140 in light of the fact the Form W-2 statements contained in the record list the beneficiary's social security number as 643-64-5463.

As the petitioner has not responded to the AAO's January 12, 2011 Notice, it cannot substantively adjudicate the appeal. 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 Notice, 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.