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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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DATE: NOV 07 2011 OFFICE: NEBRASKA SERVICE CENTER

FILE

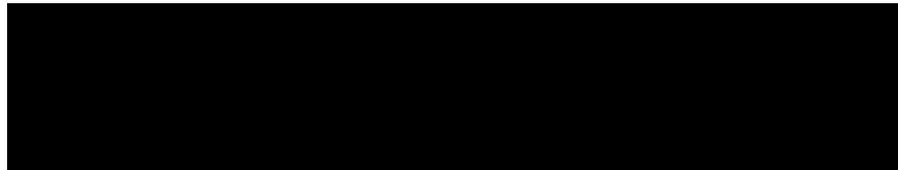


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien 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:



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

The petitioner describes itself as a software development and computer consulting services business. It seeks to employ the beneficiary permanently in the United States as a programmer analyst pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date of January 10, 2005. The director denied the petition accordingly.

The AAO issued a request for evidence (RFE) on August 26, 2011 seeking additional evidence of the petitioner's ability to pay the proffered wage. The RFE noted that the record of proceeding contained the following documents relating to ability to pay:

- The petitioner's 2004 through 2006 Forms 1120, U.S. Corporation Income Tax Return
- 2005 through 2007 Forms W-2, Wage and Tax Statement, issued by the petitioner on behalf of the beneficiary
- 2005 and 2006 Forms W-2c, Corrected Wage and Tax Statement, issued by the petitioner on behalf of the beneficiary

The RFE instructed the petitioner to submit the following additional evidence:

- An explanation of why the beneficiary was issued Forms W-2c in 2005 and 2006.
- IRS certified Forms W-2 issued to the beneficiary for the years 2005 through 2010.
- IRS certified Forms W-2c issued to the beneficiary for the years 2005 and 2006.
- IRS certified copies of the beneficiary's 2005 and 2006 Forms 1040 and Forms 1040X.
- IRS certified copies of the petitioner's federal tax returns for the years 2004 through 2009.
- Copies of the beneficiary's year-end pay stubs for 2005 and 2006 showing the revised wages reflected on the Forms W-2c.
- Evidence that the petitioner is in active corporate status with the State of New York.

In addition, the RFE noted that the petitioner has filed multiple petitions for multiple beneficiaries, and therefore the petitioner must establish that it has the ability to pay the proffered wage to each beneficiary. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). The RFE instructed the petitioner to provide the following information for each beneficiary for whom it has filed a Form I-140:

- Full name.

- Receipt number and priority date of each petition.
- Exact dates employed.
- Whether the petition(s) are pending or inactive.
- The proffered wage listed on the labor certification submitted with each petition.
- The wage paid to each beneficiary from the priority date of the instant petition to the present.
- Forms W-2 or 1099 issued to each beneficiary from the priority date of the instant petition to the present.

The RFE also instructed the petitioner to provide the following information for every H-1B worker it has employed since the priority date of the petition:

- Full name.
- The receipt number for each Form I-129, Petition for a Nonimmigrant Worker, and a copy of the associated Labor Condition Application.
- Exact dates employed.
- Title and required H-1B wage.
- The actual wage paid.
- Forms W-2 issued to each H-1B worker from the priority date of the instant petition to the present.

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 within the allotted 45 days, 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.