

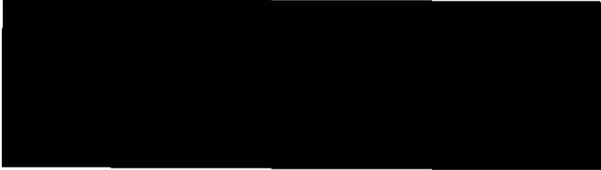
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



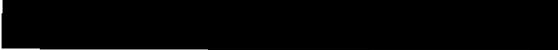
U.S. Citizenship and Immigration Services

**PUBLIC COPY**



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Date: NOV 07 2011 Office: TEXAS 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:

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 employment-based immigrant 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 summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a professional or skilled worker. The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date.

On June 18, 2008, the director issued a request for evidence (RFE), instructing the petitioner to provide documentation showing an ability to pay the proffered wage beginning on the priority date, April 30, 2001, to the date the RFE was issued. In response, the petitioner submitted a Form 1120X, Amended U.S. Corporation Tax Return for tax year 2006. This was signed and dated July 8, 2008. The petitioner also submitted a letter from an accountant discussing the 2006 tax year and net current assets. The accountant's letter was dated July 7, 2008. Thus, 2006 is the only year in the record for which any evidence existed when the director denied the petition.

On August 13, 2008, the petitioner submitted Form I-290B, appealing the denial, and in Part 3 stated:

The tax papers from the year 2001-2005 is [sic] enclosed. The [United States Citizenship and Immigration Service (USCIS)] already accepted 2006 tax paper. The tax paper for 2007 is not yet due. In the first RFE the USCIS asked tax papers from 2001-2006, in the second denial they asked 2001-2007. Anyways, we will send the tax paper 2007, it is due in the last week of October 2008.

The petitioner submitted with its appeal, Form 1120X, Amended U.S. Corporation Tax Returns for 2001, 2002, 2003, 2004, and 2005. All of these were signed and dated August 8, 2008. The petitioner also submitted a Form 1120X for 2008, dated December 4, 2008, and a Form 1120 for 2007 dated November 22, 2008. The petitioner did not provide any of the original tax returns, or proof the amended returns were filed with the IRS.

The petitioner did not submit a brief with his notice of appeal. As of this date, more than three years later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. As noted above, the petitioner did not identify any specific errors of law.

The petitioner on appeal for the first time provides new evidence which was requested by the director in a previous RFE. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to

respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.