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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:

Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

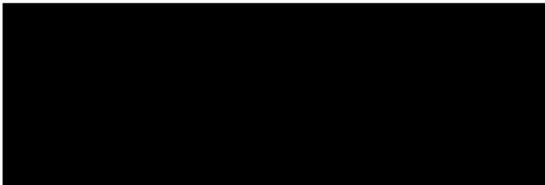
NOV 07 2011

Petitioner: 

Beneficiary:

PETITION: Immigrant Petition for Skilled Worker or Professional Pursuant to § 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 J-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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a farm and horse training facility. It seeks to employ the beneficiary permanently in the United States as a horse trainer. The director determined that the petitioner had not complied with the instructions for electronic filing by submitting supporting documentation. The director denied the petition accordingly.

On appeal, counsel suggests that the director should have issued a request for evidence pursuant to 8 C.F.R. § 103.2(b)(8), which provides in pertinent part:

*(ii)* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

Counsel also suggests that the petitioner will be prejudiced because the beneficiary would not be able to be sponsored<sup>1</sup> as a substitution for the original beneficiary specified on the ETA Form 750, Application for Alien Employment Certification, which was submitted with the electronically filed Form I-140 on July 16, 2007.

It is noted that seven business days after the July 16, 2007 filing date is July 25, 2007. The petition was denied on January 2, 2008. Counsel only submitted all the documentation on appeal, which was filed on February 1, 2008, more than six months after the initial filing.<sup>2</sup>

As stated above, the regulation at 8 C.F.R. § 103.2(b)(8) does not oblige the director to issue a request for evidence. He has discretion to deny approval if the petition lacks initial evidence or for ineligibility. While counsel is correct that the regulation relevant to the substitution of beneficiaries prohibits the use of the ETA 750 in a new filing, the petitioner is not prohibited from filing additional employment-based petitions as long as they are supported by the appropriate labor certifications and other supporting documentation. Further, and as stated by the director, the regulation at 8 C.F.R. § 103.2(a)(1) provides that the instructions for filing applications and petitions are “incorporated into the particular section of the regulations in this chapter requiring its submission.” The instructions for electronic filing a Form I-140 and the general electronic filing instructions regarding the submission of supporting documentation are available at [www.uscis.gov](http://www.uscis.gov). The instructions for electronic filing provide that if the petitioner does

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<sup>1</sup> 20 C.F.R. § 656.11(a) provides:

Substitution or change to the identity of an alien beneficiary on any application for permanent labor certification, whether filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, and on any resulting certification, is prohibited for any request to substitute submitted after July 16, 2007.

<sup>2</sup> Additional documentation was received on March 4, 2008 with counsel’s brief.

not submit the required initial evidence in the requisite time period,<sup>3</sup> the petitioner “will not establish a basis for eligibility and we may deny your petition or application.” The petitioner did not submit the required initial evidence within seven business days<sup>4</sup> from the date of electronic filing. Thus, the petitioner did not establish a basis for eligibility and the director did not err in denying the petition.

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met its burden.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> Seven business days.

<sup>4</sup>As stated above, the supporting documentation including the original certified labor certification, any evidence of the ability to pay, or of the beneficiary’s experience, was not submitted until the appeal was filed on February 1, 2008 with additional documentation accompanying the filing of counsel’s brief, which was received on March 4, 2008. This was more than six months after the petition was electronically filed.