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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 08 2011 Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 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 business conference management company. It seeks to employ the beneficiary permanently in the United States as a business coordinator. 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 record did not contain sufficient credible evidence establishing that the beneficiary possessed the required education as listed on the labor certification. The director determined that the beneficiary's academic credentials could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in business administration or economics because she had only completed three years of full-time post-secondary study rather than four years of post-secondary study. The director denied the petition accordingly.

The AAO issued a Notice of Derogatory Information/Request for Evidence (NDI/RFE) to counsel and the petitioner on August 10, 2011<sup>1</sup>, informing counsel and the petitioner that the Form ETA 750 contained in the record reflected that the proffered position of business coordinator required a U.S. bachelor's degree in either business administration or economics. The AAO noted that although the clearly stated requirements of the position on the certified labor certification application do not include alternatives to a U.S. bachelor's degree, it appears that, on appeal, counsel claimed that the beneficiary's education in Poland meets the actual minimum requirements of the position.

The AAO acknowledged that the record contained copies of transcripts and a three page document reflecting that the beneficiary was issued "dyplom ukonczenia studiow wyzszych" number [REDACTED] in the Economic Social Field by Warsaw University, Warsaw, Poland, on June [REDACTED]. The transcripts from Warsaw University reflect that the beneficiary's corresponding academic program consisted of the completion of twenty-four separate courses from [REDACTED]. The AAO noted that it had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO) to determine whether the 1988 bachelor's degree from Warsaw University is a foreign equivalent degree to a U.S. bachelor's degree.

EDGE notes that a *dyplom ukonczenia studiow wyzszych* (diploma of completion of higher studies) represents three years of full-time post-secondary study and that this particular type of diploma was awarded until 2004, and that a *dyplom ukonczenia wyzszych studiow zawodowych* (diploma of completion of higher professional studies) represents four to five years of full-time post-secondary study and that this particular type of diploma has been awarded since 2005. Consequently, it appears that the beneficiary's completion of an academic program consisting of twenty-four courses and corresponding degree awarded to her by Warsaw University [REDACTED] is the equivalent to three years of post-secondary education at an accredited institution in the United States, and it is not

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

a foreign equivalent degree to a U.S. bachelor's degree. The petitioner was also asked to demonstrate that U.S. workers without four years of college and without bachelor's degrees were in fact put on notice that they were eligible to apply for the proffered position, despite the stated requirements of the Form ETA 750, and that the petitioner did not in fact exclude U.S. workers with qualifications similar to those of the beneficiary from applying for and filling the position.

Thus, the AAO requested a complete copy of the Form ETA 750 as certified by the DOL including any documentation that both reflected and summarized the petitioner's recruitment efforts. *See* section 203(b)(3)(C) of the Act; *see also* 8 C.F.R. § 204.5(a)(2) (which mandates that the Form I-140 be accompanied by the individual labor certification *as certified by the DOL*) (emphasis added). Further, the AAO requested evidence of the petitioner's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed to the DOL while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application.

While not noted by the director in the notice of denial, the AAO also informed the parties that upon further review, the record does not contain sufficient evidence demonstrating that the petitioner has the continuing ability to pay the proffered wage to the beneficiary since the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises*, 229 F. Supp. 2d at 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The priority date in the instant case is September 4, 2003, and therefore, the petitioner must establish the ability to pay the beneficiary the proffered wage of \$30,000.00 from that date until the beneficiary obtains lawful permanent residence. The AAO noted that the petitioner had only submitted the first page of its Forms 1120, U.S. Corporation Income Tax Return, for 2003, 2004, 2005, and 2006 and requested that the petitioner provide its complete federal tax returns or audited financial statements for 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010. The AAO also requested that the petitioner submit all Forms W-2, Wage and Tax Statement, or Forms 1099-MISC issued to the beneficiary in 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010.

In the NDI/RFE, the AAO specifically alerted the petitioner and counsel that failure to respond to the NDI/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 counsel and the petitioner failed to respond to the NDI/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.