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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**

[REDACTED]

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DATE: **NOV 15 2011**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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

PETITION: Immigrant Petition for 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 Director, Texas 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 is a concrete construction firm. It seeks to employ the beneficiary permanently in the United States as a laborer/finisher pursuant to sections 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. U.S.C. § 1153(b)(3)(A). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to submit any evidence to demonstrate that the beneficiary satisfied the minimum level of employment experience stated on the labor certification and had not submitted evidence to demonstrate its continuing ability to pay the proffered wage.

The AAO issued a Notice of Intent to Deny (NOID) on September 19, 2011.<sup>1</sup> The AAO explained that upon review of the evidence, the record of proceeding as currently constituted did not support a determination that the beneficiary's experience met the requirements of the approved labor certification as of the May 2, 2001, priority date. Those requirements are two years of on-the-job training and ten years of experience in the job offered. The AAO also explained that the evidence supporting the petitioner's continuing ability to pay the proffered wage<sup>2</sup> year was not sufficient.

The petitioner was afforded 30 days to respond to the AAO's notice.

In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID could result in dismissal since the AAO could not substantively adjudicate the appeal without a meaningful response from the petitioner. Because the petitioner failed to respond to the NOID, 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.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> The correct proffered wage of \$9.42 per hour as set forth on the labor certification calculates to an annual proffered wage of \$19,593.60. The proffered wage stated by the AAO in its NOID was an error. The deficiencies of the evidence, however, remain applicable to this issue, as set forth in the AAO's NOID.