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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: **SEP 02 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 is a restaurant. It seeks to employ the beneficiary permanently in the United States as an Indian non-vegetarian chef pursuant to sections 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 approved by the Department of Labor (DOL) accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish that there was a bona fide job offer from the petitioner to the beneficiary and thus, failed to establish that he is eligible for the benefit sought. Accordingly, the petition was denied.

The AAO issued a request for evidence and notice of intent to dismiss (RFE & NOID) on June 30, 2011. The AAO requested that the petitioner submit verifiable evidence of the relationship between the beneficiary and the petitioner's owner and verifiable evidence that DOL was cognizant of the familial relationship when it certified the instant labor certification.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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, Inc. v. United States*, 229 F. Supp. 2d 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Beyond the decision of the director, the AAO finds additional grounds of ineligibility. The evidence in the record does not demonstrate that the petitioner had the continuing ability to pay the proffered wage from the priority date to the present. Therefore, the AAO requested that the petitioner establish its ability to pay the proffered wage for 2006 through 2010 with regulatory-prescribed evidence, such as annual reports, federal tax returns or audited financial statements. 8 C.F.R. § 204.5(g)(2).

In the RFE & NOID, the AAO also notified the petitioner that the AAO cannot accept the undated experience letter from [REDACTED] as primary evidence to establish the beneficiary's requisite two years of experience in the job offered as describe on the labor certification and thus, the evidence in the record does not establish the beneficiary's qualifications. Therefore, the AAO requested the petitioner provide regulatory-prescribed evidence to establish that the beneficiary possessed at least two years of experience as a full-time India non-vegetarian chef prior to the priority date with independent objective evidence in support.

The AAO granted 45 days to respond to its request for evidence. However, as of this date, more than 60 days later, this office has not received any correspondence from the petitioner. Therefore, the petitioner failed to demonstrate that the job offer extended to the beneficiary was realistic and *bona fide* as of the priority date and has been continuing a bona fide one until the present, the

petitioner failed to establish its ability to pay the proffered wage from the priority date to the present, and the petitioner also failed to demonstrate that the beneficiary possessed the requisite two years of experience for the proffered position prior to the priority date. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied “[i]f there is evidence of ineligibility in the record.” Accordingly, the instant petition must be denied.

The regulation at 8 C.F.R. § 204.5(g)(2) states that USCIS may request additional evidence in appropriate cases. In the RFE&NOID, 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. Although specifically and clearly requested by this office, the petitioner declined to provide verifiable evidence of the relationship between the beneficiary and the petitioner’s owner, continuing ability to pay the proffered wage from the priority date to the present, and the beneficiary’s qualifying experience. The petitioner’s failure to submit these documents cannot be excused. 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).

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.