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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: 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:

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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The petitioner filed an immigrant petition for alien worker, Form I-140, on May 22, 2002. The employment-based immigrant visa petition was initially approved by the Director of the Vermont Service Center on November 11, 2002. The Director of the Texas Service Center, however, revoked the approval of the immigrant petition on February 18, 2009, and the petitioner subsequently appealed the director's decision. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant, seeking to permanently employ the beneficiary in the United States as a cook pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. As noted above, the petition was initially approved in November 2002, but the approval was revoked in February 2009. The director found that the beneficiary's prior employer in Brazil, [REDACTED] was not registered with the Brazilian government until February 29, 1996.² Based on this finding, the director concluded that the beneficiary could not have worked there from February 1994, and that the petitioner must have submitted false documentation regarding the beneficiary's prior work experience in Brazil.³ In reaching that conclusion, the director declined to accept the letter dated October 15, 2008 from the beneficiary's prior employer in Brazil which indicated that the business was open to the public for a long time although it was not registered with the government.

On appeal, counsel for the petitioner maintained that the beneficiary possessed the requisite work experience to qualify for the position offered. Counsel also stated that the letter dated March 9, 2001 from the beneficiary's prior employer in Brazil complied with the regulation at 8 C.F.R. §

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

² The director found this information by searching the CNPJ database (The CNPJ database can be accessed online at [REDACTED] [REDACTED] is a unique number given to every business registered with the Brazilian authority. In Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ. The Department of State has determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual's stated hire and working dates with a Brazilian-based company to that Brazilian company's registered creation date.

³ In support of the beneficiary's claim that he worked as a cook for at least two years prior to the priority date, the petitioner submitted a letter dated March 9, 2001 from [REDACTED] [REDACTED] in Brazil, stating that the beneficiary worked as a cook at [REDACTED] from February 1994 to April 1997.

204.5(l)(3)(ii)(A),⁴ in that it sufficiently describes the experience or training received by the beneficiary while he worked there.

The record shows that the appeal was properly filed and timely and made a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In adjudicating the appeal, the AAO found that the record lacks conclusive evidence as to whether the petitioner consented to be represented by counsel during the labor certification process and during the adjudication of the Form I-140 petition and casts doubt on the validity of the labor certification application. The AAO also found that the petitioning business located at [REDACTED] no longer existed and had been replaced by another business. In addition, the record contains insufficient evidence to demonstrate that the petitioner has the continuing ability to pay the proffered wage from the priority date and that the beneficiary has the requisite work experience in the job offered. On May 20, 2011 the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI) alerting the petitioner to the problems stated above. The AAO afforded the petitioner 30 days to respond. No response has been received from the petitioner.

In the RFE/NDI, the AAO specifically alerted the petitioner that failure to respond to the RFE/NDI would result in dismissal without further discussion 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 the petitioner failed to respond to the AAO's RFE/NDI, the AAO is dismissing the appeal without further discussion.

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.

⁴ The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) specifically states, "Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien."