

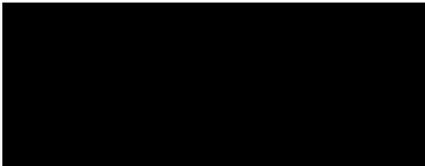
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



Bt

Date: **APR 27 2011**

Office:

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 preference visa petition was denied by the Director, [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a steel and metal fabricator. It seeks to employ the beneficiary permanently in the United States as a welder/cutter. 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 petitioner failed to establish that the beneficiary possessed one year of experience in the offered job and had not demonstrated that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The AAO issued a request for evidence on February 9, 2011, noting that the petitioner's owner submitted a letter on appeal in which he asserts that the beneficiary has been employed by the petitioner as a welder since March of 2003.¹ However, the record is absent any corresponding documentation, such as Form W-2, Wage and Tax Statements, Forms 1099-MISC, or paycheck stubs, to corroborate this assertion. Further, the AAO acknowledged that although the record contains copies of the petitioner's financial statements for 2004, 2005, 2006, and 2007, these financial statements are unaudited. In addition, the AAO noted that the record is absent any evidence required by the regulations such as federal tax returns or audited financial statements demonstrating the petitioner's ability to pay the proffered wage in 2003. It is imperative for the AAO to determine that all of the supporting documents are consistent with the claims made on the present petition. Thus, in order to meet the burden of proving by a preponderance of the evidence that the petitioner had the continuing ability to pay the proffered wage from the priority date, the AAO requested that the petitioner provide the following additional evidence:

- Copies of any Forms 1099-MISC, Form W-2 statements, or paycheck stubs issued by the petitioner to the beneficiary in 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010.
- Complete copies of the petitioner's federal tax returns or audited financial statements for 2003, 2004, 2005, 2006, 2007, 2008 and 2009.

The AAO further noted that required education, training, and experience for the offered position are set forth at item #14 of the Form ETA 750. In the instant case, the Form ETA 750 states that the position requires no education, one year of training, and one year of experience in a related occupation.

The Form ETA 750, signed by the beneficiary under penalty of perjury on February 6, 2003, states that he was employed by the petitioner since March 2001 as a welder/cutter and that he was previously employed by [REDACTED] as a welder/cutter from August of 2000 to March of 2001. However, as noted above, on appeal, the petitioner's owner submitted a letter dated

¹ The AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate appeals is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. The AAO's *de novo* authority has been long recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

November 21, 2008, in which he asserted that the beneficiary has been employed by the petitioner since March of 2003 and that the beneficiary was trained extensively for six months. Therefore, the petitioner was asked to provide an explanation regarding the discrepancy between the date, March 2001, the beneficiary began his employment with the petitioner as listed on the Form ETA 750, and the date, March of 2003, that the petitioner's owner claimed the beneficiary began his employment with the petitioner in the letter dated November 21, 2008. In addition, the AAO requested that the petitioner submit evidence demonstrating that the beneficiary possesses the required one year of training and one year of experience in a related occupation to perform the duties of the offered job as listed on the Form ETA 750. *See* 8 C.F.R. § 204.5(g)(1) and 8 C.F.R. § 204.5(l)(3)(ii)(A) (explaining requirements for evidence to establish the beneficiary's work and training experience).

In the RFE, 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. 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 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.