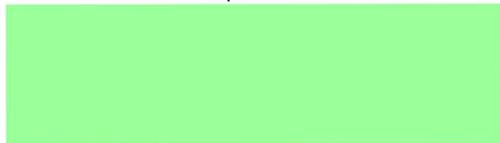




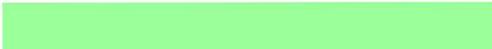
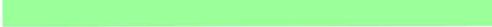
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



Date: **APR 05 2012** 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:

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 employment-based immigrant visa petition was denied by the Director, the Nebraska Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date in 2004 and continuing until the beneficiary obtained lawful permanent residence. The director analyzed regulatory-prescribed ability to pay evidence from 2004-2007. The AAO agrees with the director's analysis and conclusions about the petitioner's ability to pay based on the evidence covering those years.

On appeal, the petitioner merely stated that "taxes show assets & gross income to pay wage." With the appeal the petitioner supplied a copy of one W-2 form demonstrating wages paid to the beneficiary of \$10,150 in 2008. In addition, the petitioner checked the box which indicated that it would be submitting a brief and/or additional evidence to the AAO within 30 days.

The petitioner dated the appeal March 14, 2009. U.S. Citizenship and Immigration Services (USCIS) received the appeal on March 17, 2009. As of this date, more than 36 months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner here has not specifically addressed the reasons stated for denial and has not identified any erroneous conclusions of law or fact in the decision. It has not even expressed disagreement with the director's decision. The single piece of evidence submitted on appeal fails to overcome the director's decision because it does not cover the years 2004 through 2007 and does not show that the petitioner is already paying the beneficiary the full proffered wage of \$26,000 from the priority date onwards.<sup>1</sup> The appeal must therefore be summarily dismissed.

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<sup>1</sup> In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.<sup>1</sup> If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In the instant case, the petitioner claims to have employed the beneficiary since 2002 but provided evidence of wages paid for only 2008, those wages being considerably less than the proffered wage. Further, the petitioner's net income and net current assets were not equal to or

**ORDER:** The appeal is dismissed.

(b)(6)

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greater than the proffered wage for 2004 through 2007. Moreover, the petitioner failed to establish that factors similar to *Sonegawa* existed in the instant case, which would permit a conclusion that the petitioner had the ability to pay the proffered wage despite its shortfalls in wages paid to the beneficiary, net income and net current assets.

Accordingly, after considering the totality of the circumstances, the petitioner has also failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.