



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: APR 26 2012 Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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

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:  
[REDACTED]

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant which seeks to employ the beneficiary permanently in the United States as a cook. The petition requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).

The petition was filed on December 10, 2007 with a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor.

The director determined that the petitioner had not submitted any evidence of its ability to pay the proffered wage or of the beneficiary's qualifications for the offered position, and denied the petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii).

On appeal, counsel states:

[T]he petitioner did in fact submit documentary evidence relating to its ability to pay the prevailing wage and proof of the required experience was also submitted at the time the I-140 was filed. The [Director's] decision was factually incorrect and the Director also erred by denying the petition and not sending the petitioner a request for additional evidence.

Counsel dated the appeal September 18, 2008, and indicated on Form I-290B, Notice of Appeal or Motion, that a brief and/or additional evidence would be submitted to the AAO within 30 days. Regulations require that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii). To date, the AAO has received nothing further relating to this case.

The record does not contain any documents relating to the beneficiary's qualifications or of the petitioner's ability to pay the proffered wage. In addition, no evidence was provided on appeal. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

Further, the director did not err by not requesting additional evidence prior to denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states:

*Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The commentary to this rule, *Removal of Standardized Request for Evidence Processing Timeframe*, 72 Fed. Reg. 19100, 19102 (April 17, 2007), states that the rule provides for the discretion to deny "skeletal" petitions.

In the instant case, the record does not contain evidence relating to the petitioner's ability to pay the proffered wage or the beneficiary's qualifications. The record in this case is clearly deficient of the evidence required to be submitted with a petition for a skilled worker pursuant to 8 C.F.R. §§ 204.5(g)(2) and 204.5(l)(3)(ii). The director was not obligated to issue a Request for Additional Evidence for this required initial evidence.

The director did not err in denying the petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii). 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.