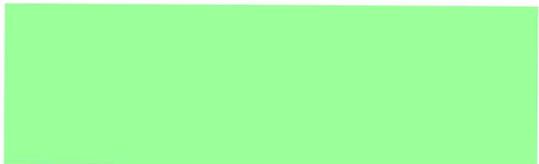


(b)(6)

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



DATE: **AUG 02 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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 an automotive shop. It seeks to employ the beneficiary permanently in the United States as a welder setter resistance machine operator pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate the continuous ability to pay the proffered wage from the priority date.

The AAO issued a notice of intent to dismiss and request for evidence (NOID) on May 1, 2012, concerning the petitioner's ability to pay the proffered wage beginning on the priority date.¹ The AAO explained that as the petitioner submitted evidence of wages paid to the beneficiary in 2004, 2005, 2006, 2007, and 2008, the petitioner must demonstrate the ability to pay the difference between wages actually paid to the beneficiary and the proffered wage in those years. In addition, the AAO explained that: 1) the bank records submitted are of limited probative value; 2) reliance on the value of an apartment is misplaced; 3) providing an apartment for the beneficiary and his family was not a benefit set forth on the labor certification application as notice to potential job applicants as an additional form of compensation which may have induced more job applications, and thus, it may not be considered as such at this point in the proceedings; 4) the unsubstantiated claim to provide housing is not one of the three forms of evidence that the petitioner may use to establish the ability to pay; and 5) fringe benefits such as accident insurance for the beneficiary is a form of pay for the performance of services and is taxable to the recipient employee, and the beneficiary's pay information in the record of proceeding did not demonstrate the inclusion of fringe benefits.

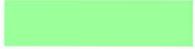
It is imperative for the AAO to determine that all of the supporting documents in the record of proceeding are consistent with claims made on the present petition. The AAO solicited additional evidence of the petitioner's ability to pay the proffered wage including annual reports, federal tax returns, or audited financial statements for 2008, 2009, 2010, and 2011.

The AAO specifically alerted the petitioner that failure to respond to the NOID 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.

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).



ORDER: The appeal is dismissed.