



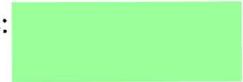
U.S. Citizenship  
and Immigration  
Services

(b)(6)

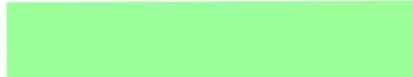


DATE: AUG 20 2012 OFFICE: NEBRASKA SERVICE CENTER

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 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

(b)(6)

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as abandoned.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).<sup>1</sup>

The petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition is July 12, 2007.<sup>2</sup>

The director's decision concluded that the petitioner failed to submit sufficient initial evidence to warrant a decision based on the evidence and denied the petition pursuant to 8 C.F.R. § 103.2(b)(1).

The appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>3</sup>

On appeal, the petitioner submitted an employment experience letter signed by [redacted] of [redacted]. The letter states that the restaurant employed the beneficiary as a cook from December 20, 2003 to January 10, 2006. The petitioner also provided its 2008 federal income tax return as evidence of its ability to pay the proffered wage. However, the petitioner's federal income tax return for 2007 is absent from the record.<sup>4</sup>

<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

<sup>2</sup> The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

<sup>3</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>4</sup> The petitioner's failure to provide complete annual reports, federal tax returns, or audited financial statements for each year from the priority date is sufficient cause to dismiss this appeal. See 8

The AAO issued a Request for Evidence (RFE) on May 8, 2012. The RFE instructed the petitioner to submit its federal income tax returns for 2007, 2009, 2010 and 2011. The RFE also instructed the petitioner to provide evidence of its ability to pay the beneficiaries of its other I-140 petitions, and to resolve an inconsistency in the record pertaining to the beneficiary's claimed qualifying employment.

As of the date of this notice, the petitioner has not responded to the AAO 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). Further, since the petitioner failed to respond to this office's request for additional evidence, the appeal will be dismissed as abandoned. *See* 8 C.F.R. § 103.2(b)(13)(i).

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 as abandoned.

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C.F.R. § 204.5(g)(2). While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation. *Id.* If all required initial evidence is not submitted with the application or petition, or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) in its discretion, may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii).