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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**



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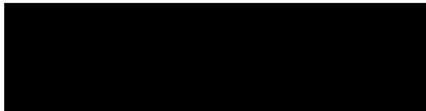


Date: **APR 17 2012** Office: TEXAS SERVICE CENTER FILE:

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

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a Chinese specialty cook. 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 had failed to establish that the beneficiary had two years of experience in the proffered position as required by the Form ETA 750. The director denied the petition accordingly.

The AAO issued a Request For Evidence (RFE) on January 24, 2012 seeking information necessary for adjudication of the petitioner's claim on the issues of the beneficiary's qualifications to perform the duties of the proffered position as required by the Form ETA 750, the petitioner's continuing ability to pay the proffered wage from the priority date onward and whether the petitioner is an active business entity in the State of New York.

The petitioner was informed that it had 45 days to respond to the RFE and that if it did not respond the appeal would be dismissed without further discussion. The petitioner was further informed that a failure to respond would preclude a material line of inquiry and would be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). To date, more than 45 days after the RFE was issued, no response to the RFE has been received. The appeal shall be dismissed.

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 and has failed to respond to a request for evidence which precludes a material line of inquiry concerning the merits of the petition.

ORDER: The appeal is dismissed.