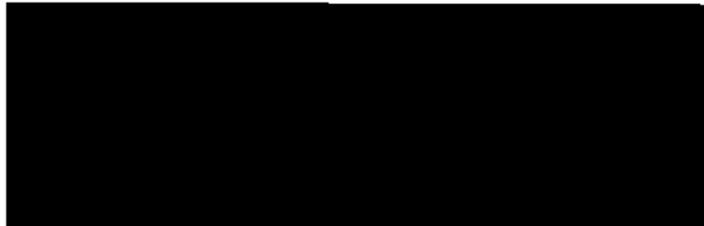


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



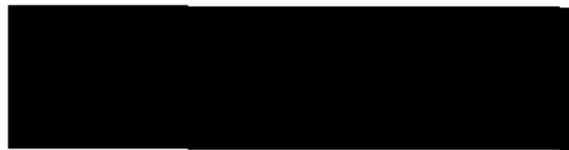
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Date: **AUG 02 2012** Office: NEBRASKA SERVICE CENTER

FILE:

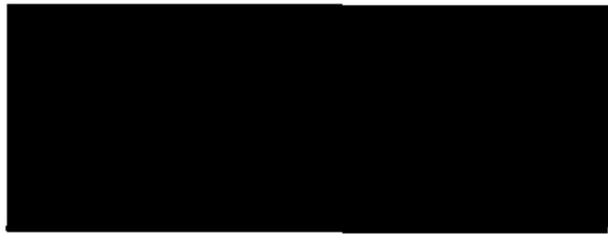


IN RE: Petitioner:  
Beneficiary:



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, *John Vaughan*  
*for*  
Perty Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition as well as a subsequent motion to reopen and reconsider. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner was a flight training school. It sought to employ the beneficiary permanently in the United States as a training and development specialist and to classify him as a professional pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary possesses either a United States baccalaureate degree or a foreign equivalent degree as required by the terms of the labor certification. The director denied the petition as well as the subsequent motion accordingly. The petitioner filed a timely appeal.

The AAO issued a Notice of Intent to Dismiss (NOID) to counsel and the petitioner on May 23, 2012, informing them that a review of the website for the Florida Department of State, Division of Corporations at <http://www.sunbiz.org> (accessed on May 15, 2012), indicated that the business was administratively dissolved for failure to file an annual report on September 23, 2011. Therefore, the AAO requested that the petitioner provide a current certificate of good standing or other evidence demonstrating that the petitioning business is not inactive and had current business activity.

Although not noted by the director in denying the petition, the record does not contain sufficient evidence demonstrating that the petitioner has the continuing ability to pay the proffered wage to the beneficiary since the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (AAO's *de novo* authority is well recognized by the federal courts).

The regulation at 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In the instant case, the ETA Form

9089 was accepted for processing on August 10, 2006. The proffered wage as stated on the ETA Form 9089 is \$32,000.00 per year.

The petitioner previously submitted its Forms 1120S, U.S. Income Tax Return for an S corporation, for 2006 and 2007. The record also contained Forms W-2, Wage and Tax Statement, which were issued by the petitioner to the beneficiary in 2006, 2007, and 2008. To supplement the record the AAO requested that the petitioner submit its complete federal income tax returns or audited financial statements for 2008, 2009, 2010, and 2011, as well as any Form W-2 statements or Forms 1099-MISC, Miscellaneous Income, issued by the petitioner to the beneficiary in 2009, 2010, and 2011.

The petitioner was given 30 days to respond to the NOID. The AAO specifically alerted the petitioner and counsel 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).

More than 30 days have passed since the NOID was issued, and the AAO has received no response from the petitioner. Therefore, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.