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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**



[Redacted]

B6

Date: **AUG 16 2012**

Office: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner:
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 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 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 software development and consulting company. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, the petition is accompanied by an Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree and that the labor certification did not specify that an alternative level of education or experience was acceptable for the position. The director also determined that "you failed to establish that the address where the alien will work listed on the Form I-140 and on the Form ETA-750, are located within the same metropolitan statistical area," and the director was, therefore, unable to determine the validity of the labor certification. The director denied the petition accordingly.

The AAO issued a Request For Evidence (RFE) on June 22, 2012 seeking information necessary for adjudication of the petitioner's claim on the issue of the petitioner's ability to pay the proffered wage, for this beneficiary and multiple workers, evidence related to the beneficiary's education, as well as issues related to the certified work location compared to the work address listed on Form I-140.

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.