

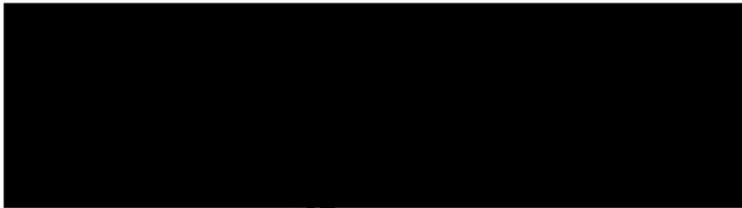
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



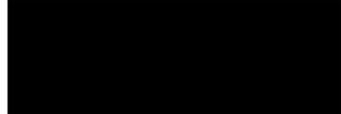
**U.S. Citizenship
and Immigration
Services**

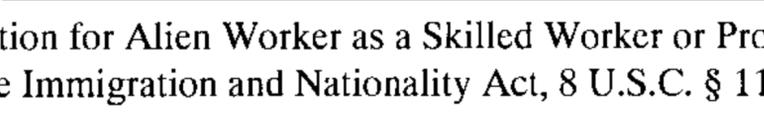


B6

DATE: FEB 01 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 Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The petitioner filed a motion to reopen and reconsider the AAO decision. The motion will be dismissed and the previous decision of the AAO will be affirmed.

The petitioner describes itself as an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as a cook 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).

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition is January 30, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

On November 14, 2007, the Director, Texas Service Center (director), issued a Request for Evidence (RFE), instructing the petitioner to submit additional evidence of its ability to pay the proffered wage for 2003, 2004 and 2006. After reviewing the submitted evidence, the director denied the petition on February 13, 2008, concluding that the petitioner did not possess the ability to pay the proffered wage in 2003 and 2004.

The petitioner appealed the decision to the AAO on March 17, 2008. On June 2, 2010, the AAO dismissed the appeal. The decision concluded that the petitioner failed to establish that it possessed the ability to pay the proffered wage. Beyond the decision of the director, the AAO also noted that the petition did not contain a translation of the beneficiary's employment experience letter and accordingly concluded that the petitioner also failed to establish that the beneficiary possessed the required experience for the offered position.

On July 6, 2010, the petitioner filed a motion to reopen and reconsider the decision. The motion contains new arguments and evidence relating to the petitioner's ability to pay the proffered wage and the beneficiary's prior experience. On September 2, 2011, the AAO issued an RFE instructing the petitioner to submit additional evidence of its ability to pay the proffered wage and of the petitioner's claimed acquisition of another restaurant in 2004.

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 motion 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 motion and affirming its prior decision to dismiss the appeal.

Finally, it is noted that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. 8 C.F.R. 103.5(a)(1)(iii). The

petitioner's motion does not contain this required statement. The motion must therefore also be dismissed for this reason.

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 motion is dismissed.