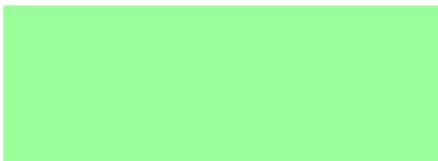


(b)(6)

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



DATE: OFFICE: NEBRASKA SERVICE CENTER FILE:

JUL 19 2012

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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is an automobile repair business. It seeks to employ the beneficiary permanently in the United States as an automobile body repairer 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). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of experience stated on the labor certification or that the petitioner had the ability to pay the beneficiary the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. The director denied the petition accordingly.

In the initial petition submission, the petitioner provided no letters substantiating the employment experience identified on Form ETA 750B. Rather, the petitioner provided one letter from a company which was not identified on Form ETA 750B. However, the director found the letter deficient for several reasons. The author failed to identify the dates of claimed employment, the actual location where the beneficiary worked and the specific duties performed by the beneficiary during the period of time mentioned in the letter. Further, the petitioner did not include the employment experience on Form ETA 750B.

In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by the DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

Because the petitioner did not identify this experience on Form ETA 750B, the director found that the claimed employment could not be used by substantiate the beneficiary's qualifications for the proffered position. Further, the petitioner provided no other objective evidence which could corroborate the claimed experience identified in the letter.

With respect to the petitioner's ability to pay the beneficiary the proffered wage beginning on the priority date, as required by 8 C.F.R. § 204.5(g)(2), the petitioner provided no documentary evidence of such ability.

On October 20, 2008, the petitioner filed a Motion to Reopen, in accordance with 8 C.F.R. § 103.5(a)(2). With the motion, the petitioner provided documentary evidence, in the form of a letter, attesting to the beneficiary's experience identified on Form ETA 750B as well as evidence meant to establish the petitioner's ability to pay the beneficiary the proffered wage. On motion, counsel for the petitioner also asserted that all of the required initial evidence had been submitted with the initial petition submission but that it must have been separated from the petition.

On December 2, 2008, the director dismissed the motion, finding counsel's arguments unconvincing, with respect to the claim that the required initial evidence had been included with the petition,

particularly because the initial petition submission included a list of exhibits which did not identify any of the required pieces of initial evidence.

The petitioner then filed an appeal which is now before the AAO. Though the AAO concurs with the director's findings that the petitioner did not demonstrate that it submitted the required initial evidence with the initial petition submission, we expressed willingness to consider the evidence submitted on appeal.

Having reviewed the evidence submitted on appeal, the AAO issued a request for evidence (RFE) on April 5, 2012, concerning the petitioner's continuing ability to pay the beneficiary the proffered wage.<sup>1</sup> The AAO explained that the record of proceeding contains the petitioner's corporate federal income tax returns for 2004, 2005, 2006 and 2007 and that these documents appear to demonstrate the petitioner's ability to pay the proffered wage of \$28,974.40 for those years. However, the AAO solicited additional evidence of the petitioner's continuing ability to pay the proffered wage, in one of the three forms prescribed in 8 C.F.R. § 204.5(g)(2), for 2008, 2009, 2010 and 2011.

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).

Because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal.

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.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).