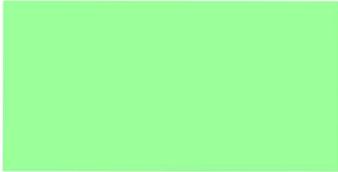




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

OFFICE: NEBRASKA SERVICE CENTER

FILE:

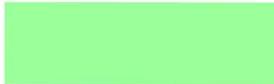


IN RE:

JUN 22 2012

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 with the field office or service center that originally decided your case by filing a 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a car dealership. On December 10, 2007, the petitioner filed a petition seeking to employ the beneficiary permanently in the United States as a mechanic. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the Department of Labor (DOL).

With its initial petition submission, the petitioner provided no documentary evidence of its ability to pay the proffered wage at any time. On March 2, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of its ability to pay the proffered wage beginning on the April 21, 2003 priority date, evidence which was to consist of copies of annual reports, federal income tax returns or audited financial statements for 2003, 2004, 2005, 2006 and 2007. Additionally, the director requested that the petitioner supply evidence of any wages paid to the beneficiary in the form of IRS Form W-2 for 2003, 2004, 2005, 2006 and 2007. In response, counsel submitted copies of the sole proprietor's bank account statements for January 2004, December 2005, January 2006 and December 2008.

The director denied the petition on May 4, 2009. The decision stated that the evidence submitted by the petitioner failed to establish its ability to pay the proffered wage.

Counsel filed the instant appeal on June 4, 2009. On Part 3 of Form I-290B, Notice of Appeal or Motion, counsel states the following as the basis for the appeal:

Attached please find additional documents.

Counsel submitted copies of the first page of the U.S. Individual Income Tax Return (Form 1040) for and , along with Schedule C for for 2003; Schedule C for for 2004; the first page of Form 1040 with Schedule C for 2005; and the first page of Form 1040 with Schedule C for 2006. Counsel also submitted a facsimile transmission cover page from to . On the cover letter, the petitioner states that he has enclosed "Pg. 1 of #1040 & Schedule 'C'" for 2003, 2005 and 2006 but that he has not been able to find 2004 and has not yet filed either 2007 or 2008.

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years of training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

On Part 2 of Form I-290B, counsel indicates that a brief and/or additional evidence is attached. However, the record of proceeding contains no brief. Further, as of the date of this decision, counsel has not submitted a brief or any other additional evidence.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO “shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.²

² Even if the evidence submitted on appeal was considered, the appeal would still have been dismissed. The petitioner must establish its ability to pay the proffered wage from the priority date to the present. According to the evidence submitted, the petitioner is a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner supplied the first page of its federal income tax return for only 2003, 2005 and 2006. Though the adjusted gross income reflected on these documents exceeds the proffered wage for these years, the sole proprietor must demonstrate not only the ability to pay the beneficiary the proffered wage from this sum but also the ability to support his household. In order to demonstrate that the sole proprietor has sufficient income to pay the beneficiary and support his household, the petitioner must supply evidence of his regular, monthly household expenses. The petitioner has provided no such evidence. Further, the petitioner failed to supply at least the first page of the federal income tax returns for 2004 and claims, in correspondence with [REDACTED], that the return

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.

for 2007 is not available.

Additionally, reliance on copies of individual bank statements is misplaced. The funds in the  Bank & Trust account are located in the sole proprietorship's business checking account. Therefore, these funds are likely shown on Schedule C of the sole proprietor's tax returns as gross receipts and expenses. USCIS will not consider gross income without also considering the expenses that were incurred to generate that income.