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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

**PUBLIC COPY**

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Date:

Office: TEXAS SERVICE CENTER

FILE:



JAN 06 2012

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 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 private individual. This individual seeks to employ the beneficiary permanently in the United States as a domestic child care provider. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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 AAO issued a Notice of Intent to Dismiss (NOID) to counsel and the petitioner on November 16, 2011, informing counsel and the petitioner that the AAO intended to deny the petition because the petitioner no longer resided at the address, [REDACTED] listed on the Form ETA 750 as the area of intended employment for the offered job as certified by the DOL. A review of public records in the state of Connecticut reveals that the petitioner currently resides in Wethersfield, Connecticut, and the location of the job opportunity has been sold.

The regulation at 20 C.F.R. § 656.30(c)(2) states in pertinent part:

A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and for the area of intended employment stated on the Application for Alien Employment Certification (Form ETA 750)....

Area of intended employment is limited by definition in 20 C.F.R. § 656.3 as "the area within normal commuting distance of the place (address) of intended employment." *See Matter of Sunoco Energy Development Company*, 17 I&N Dec. 283 (Reg'l Comm'r 1979) (change of area of intended employment).

In the instant case, the area of intended employment as certified by the DOL is Southport, Connecticut, not Wethersfield, Connecticut. Wethersfield, Connecticut is not within the same Metropolitan Statistical Area (MSA) as Southport, Connecticut, and therefore, cannot be considered to within the normal commuting distance of the place (address) of intended employment. Consequently, the labor certification is no longer valid for the job opportunity, and the visa petition may not be approved. Thus, the AAO requested that the petitioner provide proof that she currently resides within the normal commuting distance of the place (address) of intended employment, Southport, Connecticut, as certified by the DOL.

In 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).

Because counsel and the petitioner failed to respond to the NOID, 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.