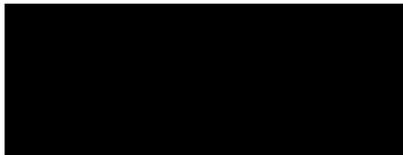




U.S. Citizenship
and Immigration
Services

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DATE: JUN 11 2012 OFFICE: TEXAS SERVICE CENTER

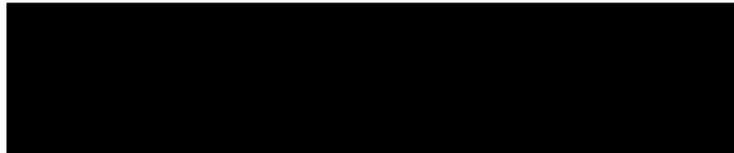


IN RE:



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 Director, Texas Service Center (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 describes itself as an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as an Italian cook pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate the ability to pay the proffered wage.

The AAO issued a notice of derogatory information (NDI) and request for evidence (RFE) on April 5, 2012, requesting evidence to establish that a *bona fide* job offer still existed, since it appeared that the petitioner's New Jersey business license had been revoked since 1997. The NDI/RFE also identified discrepancies between counsel's assertions on appeal regarding the company's legal formation and previous statements by the petitioner. The petitioner was provided the opportunity to explain these discrepancies and to document its true status as either a sole proprietorship, a partnership, or an incorporated business. Finally, the NDI/RFE advised the petitioner of its burden to establish its ability to pay not only the wage offered to this beneficiary, but also the wage offered to any other beneficiaries for whom it had petitioned. The NDI/RFE solicited specific information regarding other beneficiaries.

In the NDI/RFE, the AAO specifically alerted the petitioner that failure to respond to the NDI/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 NDI/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.