

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

[REDACTED]

DATE: **NOV 06 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]
[REDACTED]

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.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner describes itself as a general construction company. It seeks to permanently employ the beneficiary in the United States as a foreman. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's decision denying the petition concludes that the petitioner failed to establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition onwards.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, as representative for the beneficiary. The Form I-290B, Notice of Appeal or Motion, was signed by the beneficiary's representative on May 21, 2012. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Even if the appeal were not rejected, the appeal would be dismissed. The director concluded in his April 23, 2012 decision that the petitioner had not established that it has the ability to pay the beneficiary the proffered wage from the priority date of April 20, 2001. The director specifically noted that 2006 was the only year the petitioner showed the ability to pay the proffered wage of \$59,363.20 per year.

With the appeal, counsel submits checks demonstrating payments issued by [REDACTED] to the beneficiary in 2010, 2011 and 2012; the 2012 Forms 941, Quarterly Tax Returns, of [REDACTED] and; Form W-2 issued to the beneficiary in 2010 by [REDACTED]. Not only does this evidence fail to demonstrate the petitioner's ability to pay from the April 2001 priority date onward, the evidence fails to demonstrate that the petitioner [REDACTED] paid any wages to the beneficiary. The record does not demonstrate a relationship between [REDACTED]

¹ The record includes the tax returns (Form 1040) of [REDACTED] for 2001 through 2010. Schedule C was not included for all years. For those years that it was included, no business name or Employer Identification Number (EIN) is included on Schedule C. The petitioner did list an EIN on two previously filed immigrant visa petitions, however. The instant petition does not include any EIN on Form I-140.

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ORDER: The appeal is rejected.