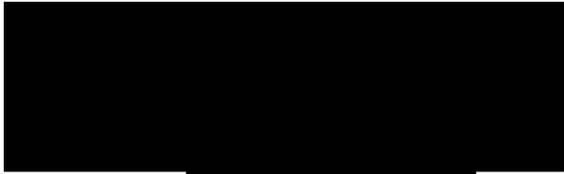




U.S. Citizenship
and Immigration
Services

B6



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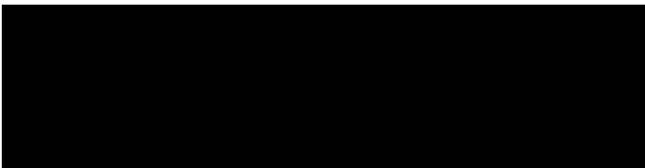
Office: TEXAS SERVICE CENTER Date:

DEC 09 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a wholesaler of cellular phones, services, and accessories. The director determined, *inter alia*, that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage in 2006.

On appeal, counsel stated that “My brief and or / additional evidence will be submitted to the [AAO] within 30 days.”

The regulation at 8 CFR §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO. Counsel dated the appeal on April 24, 2008. It was received by the director on April 25, 2009. Although counsel stated in the appeal statement that he would submit a brief and/or evidence within 30 days of the date of the appeal, as of this date, the AAO has received nothing further.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence.¹ Counsel failed to send a brief or any additional evidence to explain specifically how the director erred in his consideration of counsel’s assertion that, while the petitioner submitted a consolidated tax return showing a loss of <\$891,137.00> in 2006, it could demonstrate its ability to pay the proffered wage separately.² Counsel also failed to specifically explain or substantiate his assertion that, that even if “2006 is to be considered a losing year,” the court decision of *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967), should be applied to show the petitioner’s ability to pay the proffered wage in 2006. Counsel failed to submit the petitioner’s 2007 tax return, which he claimed in the I-290B would be submitted to the AAO and which he asserted would establish eligibility for the benefit sought. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.

¹ Additionally, beyond the decision of the director, the petitioner has filed other Immigrant Petitions for Alien Worker (Form I-140) for nine workers and 17 Petitions for Nonimmigrant Workers (Form I-129). Therefore, the petitioner must show that it had sufficient income to pay all the wages at the priority date. Additionally, as noted above, the petitioner has filed for other beneficiaries and it must establish that it can pay the respective proffered wage for each sponsored worker.

² The petitioner is the taxpayer on the 2006 tax return.