



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **APR 26 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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)

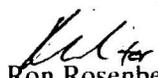
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 in accordance with the instructions on 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), revoked approval of the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a software development services company. It seeks to employ the beneficiary permanently in the United States as a software engineer. The petitioner requests classification of the beneficiary as a professional or 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 petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision revoking approval of the petition concluded that the petitioner fraudulently or willfully represented a material fact involving the labor certification application. The director noted that the labor certification states that the beneficiary would work in Chatham, Illinois and various unanticipated client states throughout the United States. However, the director stated that the beneficiary submitted a Form I-140 petition, and the beneficiary failed to list any Illinois residence from October 2000 to November 2004. The director also noted that the petitioner did not register to be able to conduct business in Illinois until after the beneficiary's start date, that the petitioner's corporate status was revoked in that state, and that the position's worksite address was at a park or residence, rather than at a place of employment.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On January 29, 2013, the AAO sent the petitioner a notice of intent to dismiss/notice of derogatory information (NOID/NDI) with a copy to counsel of record. The NOID/NDI stated that the website for the Illinois Secretary of State listed the business status of the petitioner's organization as being revoked since June 8, 2012. The AAO notified the petitioner that, if its organization were no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot. The NOID/NDI allowed the petitioner 45 days in which to submit a response.

The AAO also noted that, on October 3, 2012, it had sent the petitioner a request for evidence (RFE), asking the petitioner to submit evidence that it continued to be in business and allowing the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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petitioner 30 days in which to do so. The AAO noted in its January 29, 2013 NOID/NDI that, pursuant to the guidelines issued regarding areas impacted by Hurricane Sandy, it was reissuing the RFE previously sent on October 3, 2012, allowing the petitioner an additional 45 days from the date of the NOID/NDI in which to respond. The AAO informed the petitioner that failure to respond would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's January 29, 2013 NOID/NDI. 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). Since the petitioner failed to respond to the NOID/NDI, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

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 summarily dismissed as abandoned.