

**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**

(b)(6)

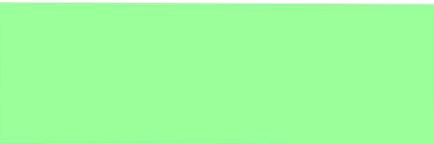
DATE: **JUN 26 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:  
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,

*Elizabeth McCormack*

Ron Rosenberg  
Acting Chief, Administrative Appeals Offic

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO). The AAO subsequently dismissed the appeal. The petitioner has now filed a motion to reopen/reconsider the AAO's decision in accordance with 8 C.F.R. §103.5. The motion is granted. The appeal will be dismissed.

The petitioner is a pizza restaurant. It seeks to employ the beneficiary permanently in the United States as a food service supervisor. As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish that it had the continuing ability to pay the proffered wage. The AAO subsequently made the same determination.

The petitioner filed a motion to reopen and reconsider. The AAO found sufficient grounds to approve the motion to reopen based on new evidence pursuant to 8 C.F.R. §103.5(a)(2), and reopened the appeal.

The AAO issued a Request for Evidence on March 5, 2013, requesting that the petitioner provide evidence to demonstrate its ability to pay the proffered wage in 2008, 2009, 2010, 2011, and 2012 by providing copies of its income tax returns and Forms W-2 or 1099-MISC for those years. The AAO also requested that the petitioner provide further evidence to establish the beneficiary's qualifications as of the priority date.

This office allowed the petitioner 12 weeks in which to provide the evidence requested. It is noted that the notice was sent to the petitioner's and to counsel's last known address. To date, there has been no response from the petitioner or petitioner's counsel.

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 RFE and failed to provide the evidence requested, the AAO is dismissing the appeal. The AAO affirms its decision dated June 2, 2010 that the petitioner does not have the ability to pay the proffered wage.

In the RFE, the AAO raised an issue not previously addressed in its decision dated June 2, 2010. The AAO noted inconsistencies in the record with respect to the beneficiary's qualifying employment, and requested the petitioner to submit independent, objective evidence resolving the inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner failed to submit any evidence to resolve these inconsistencies, thus leaving in doubt whether the beneficiary is qualified to perform the services of the occupation. As such, the AAO finds that the beneficiary is not qualified to perform the duties of the proffered position as of the priority date. For this additional reason, the appeal will be dismissed.

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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.