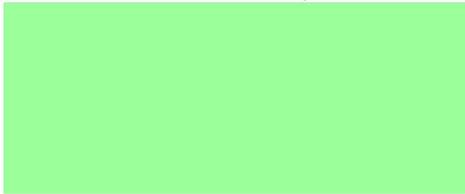
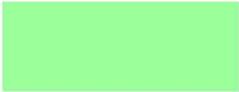


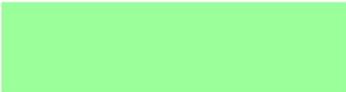
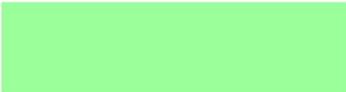
(b)(6)



U.S. Citizenship  
and Immigration  
Services

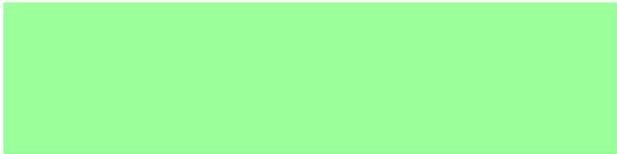


DATE: **MAR 27 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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 denied 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 an Indian restaurant and bar. It seeks to permanently employ the beneficiary in the United States as an Indian specialty cook. 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 denying the petition concludes that the petitioner failed to establish it had the ability to pay the proffered wage at the time the priority date was established and continuing to the present.

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.<sup>1</sup>

On January 16, 2013, the AAO issued a Notice of Intent to Dismiss and Derogatory Information (NOID) to the petitioner and counsel at their addresses of record. The AAO noted that according to the California Secretary of State, [REDACTED] status is "Suspended." The California Secretary of State also indicates that the status of [REDACTED] is "Suspended." See <http://kepler.sos.ca.gov/> (accessed December 19, 2012). A copy of the status report was attached to the notice.

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<sup>1</sup> 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).

<sup>2</sup> The labor certification lists the employer as [REDACTED] with an Employer Identification Number (EIN) of [REDACTED]. The Form I-140 petition lists the petitioner as [REDACTED] with an EIN of [REDACTED]. The 2004 and 2005 federal tax returns submitted with the petition list the company name as [REDACTED] with an EIN of [REDACTED].

<sup>3</sup> In response to the director's March 26, 2009 request for evidence (RFE), the petitioner submitted documentation that [REDACTED] is the successor in interest to [REDACTED]. The 2006, 2007, and 2008 federal tax returns submitted with the RFE response list the company name as [REDACTED].

As of the date of this decision, no response has been received from either the petitioner or 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). Since the petitioner failed to respond to the NOID, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. §103.2(b)(13)(i). The AAO will dismiss the appeal without further discussion. The instant appeal is therefore moot.

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.