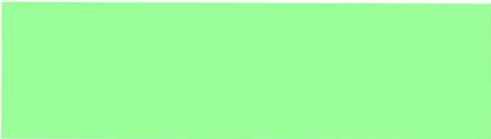


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



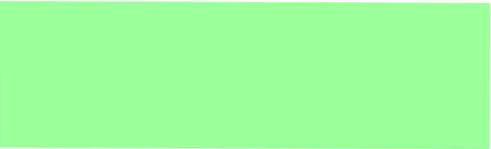
DATE: **MAY 02 2013** OFFICE: TEXAS SERVICE CENTER

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, Texas Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) rejected a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion to reopen and reconsider will be summarily dismissed as abandoned.

The petitioner describes itself as a construction company. It seeks to permanently employ the beneficiary in the United States as a mason. 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 concluded that the petitioner did not establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

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 motion.

On February 27, 2013, the AAO sent the petitioner a notice of intent to dismiss (NOID) and notice of derogatory information (NDI) with a copy to counsel of record. The AAO stated that according to evidence from the State of New Jersey Division of Revenue the petitioning organization was not in good standing in the State of New Jersey; and if the petitioner was no longer in business, there would not be a *bona fide* job offer, and the petition and motion would be moot. The AAO also stated that even if the motion could be granted, the approval of the petition would be subject to automatic revocation due to the termination of the organization's business; and the AAO requested evidence to establish the continued existence, operation and good standing of the organization. The NOID and NDI allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID and NDI would result in a dismissal of the motion.

As of the date of this decision, the petitioner has not responded to the AAO's NOID and 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 and NDI, the motion will be dismissed pursuant to 8 C.F.R. § 103.2(b)(13)(i). Alternatively, the motion could be dismissed as moot as the petitioner has failed to establish its ongoing continued existence, operation and good standing.

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 motion is summarily dismissed as abandoned.