

(b)(6)

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

DATE: MAY 20 2013

OFFICE: TEXAS 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:
[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), 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 a construction company. It seeks to permanently employ the beneficiary in the United States as a civil 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 denying the petition concluded that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage from the priority date onward.

The record shows that the appeal is properly filed, timely, 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 April 2, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel of record. The RFE requested that the petitioner submit evidence of its ability to pay the proffered wage from 2005 to the present and notified the petitioner that according to the Florida Secretary of State website the petitioner does not exist as an entity registered to do business in the state. The RFE allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the RFE would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's RFE.² The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying 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).

² We note that on April 16, 2013 the AAO received correspondence from [REDACTED] of the [REDACTED] stating that he now represented the petitioner in the instant case. [REDACTED] advised that the petitioner requested to withdraw the petition and application and to dismiss its appeal with the AAO. The correspondence did not include a properly executed Form G-28 authorizing [REDACTED] to represent the petitioner in this matter. Therefore, the AAO sent [REDACTED] a fax on May 2, 2013 requesting a properly executed Form G-28 signed by himself and an authorized representative of the petitioner. The AAO requested that [REDACTED] submit the Form G-28 within 10 days. As of the date of this letter, [REDACTED] has not responded. Therefore, the AAO cannot recognize [REDACTED] as the petitioner's counsel and the request to withdraw the petition and

petition. *See* 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the RFE 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.

appeal cannot be accepted as filed.