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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 0 9 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:

SELF REPRESENTED

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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3).[1] As required by statute, the petition is submitted along with an approved ETA Form 9089 labor certification. Upon reviewing the petition, the director determined that the petitioner did not submit evidence of its ability to pay the proffered wage from the priority date onwards or that the beneficiary had the experience required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On June 20, 2013, the AAO sent the petitioner a Request for Evidence (RFE), requesting information concerning whether the petitioning entity is still in business and noting that, if not, the job offer would not be *bona fide* and the petition and appeal would be moot. This office allowed the petitioner 30 days in which to respond to the RFE. More than 30 days have passed and the petitioner has failed to respond to this office's request for evidence that the petitioner continues to be an operating entity and requesting an updated Form G-28. Thus, the appeal will be dismissed as abandoned.

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 as moot.

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[1] In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*