



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 21 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied, on each of two independent grounds, that is: for abandonment and also because the petitioner's failure to provide requested evidence precluded a material to a line of inquiry.

On the Form I-129 visa petition, the petitioner describes itself as a 20-employee shredder manufacturer and wholesaler established in 2005. In order to employ the beneficiary in what it designates as a graphic designer position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The petitioner filed the instant appeal on February 9, 2012. While conducting a preliminary review of the record of proceeding, the AAO discovered discrepancies between several claims made by the petitioner and publicly-available information contained on the website of the U.S. Patent and Trademark Office. The AAO issued a request for additional evidence (RFE) with regard to this matter on May 1, 2013. The RFE also requested a more detailed description of the duties of the proffered position, additional information regarding the beneficiary's period of OPT employment with the petitioner, and clarification and resolution of several evidentiary deficiencies pertaining to the petitioner's business operations. The petitioner was afforded a period of thirty days during which to respond. The AAO has received no response.

A petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons if a petitioner fails to respond to a request for evidence or a notice of intent to deny by the required date. 8 C.F.R. § 103.2(b)(13)(i). Additionally, 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).

In the RFE, the AAO specifically notified the petitioner that failure to respond to the RFE could result in summary denial of the petition as abandoned. The AAO also observes that this particular RFE expressly alerted the petitioner as to why the AAO considers some of the specifically requested evidence to be material to, and necessary for, establishing the credibility of the petition as a whole. Thus, the petitioner was also put on notice that failure to provide evidence requested in the RFE would preclude the AAO's pursuit of a material line of inquiry relevant to the appeal.

Thus, because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal on each of two separate and independent grounds. The appeal is dismissed because the petition must be summarily denied as abandoned. Also, the AAO is dismissing the appeal for the additional reason that the petition must also be denied on the separate and independent basis that the petitioner's failure to respond to the RFE precluded the AAO from pursuing a material line of inquiry. Each and both of these factors render the appeal moot.

ORDER: The appeal is dismissed.