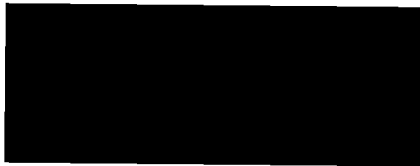U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

Date: DEC 1 3 2011   Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
              Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced
Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and
Nationality Act, 8 U.S.C. § 1153(b)(2)

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 law was inappropriately applied by us in reaching our decision, or you have additional
information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The
specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be
submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion,
with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed
within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

www.uscis.gov

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a digital manufacturer. It seeks to employ the beneficiary permanently in the United States as a Software Engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

In a request for evidence (RFE) dated September 28, 2011, the AAO requested evidence to establish that the petitioner has the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing up to the present.[1] Specifically, the petitioner was instructed to submit ███████████████ federal tax returns or audited financial statements for 2007, 2008, and 2009 as well as any Forms W-2 or 1099 issued to the beneficiary by █████████████████ 2008, 2009, and 2010. This office also requested ██████████████████ federal tax returns or audited financial statements for 2009 and 2010 as well as any Forms W-2 or 1099 issued to the beneficiary by ███████████████████ for 2009 and 2010.

This office allowed the petitioner 45 days in which to respond to the RFE. In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE could result in dismissal of the appeal. 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). More than 45 days have passed and the petitioner has failed to respond with proof that it has the ability to pay the beneficiary the proffered wage. 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.

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[1] The AAO conducts appellate review on a *de novo* basis. The AAO's de novo authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).