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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

B5



Date: **JUL 26 2012** Office: NEBRASKA SERVICE CENTER

FILE:

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 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.

for John Vaughan
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner filed an appeal, which was dismissed by the Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner was a software development company. It sought to employ the beneficiary permanently in the United States as a senior programmer analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

In a Notice of Intent to Dismiss (NOID) dated June 7, 2012, the AAO requested evidence to establish that the petitioning business in this matter, Power Com Technologies, Inc., was still an active business in Texas.

This office allowed the petitioner 30 days in which to respond to the NOID. In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID 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 30 days have passed and the petitioner has failed to respond with proof that Power Com Technologies, Inc. was an active business in Texas.

Accordingly, the motion will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

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 dismissed.