

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

(b)(6)

DATE: **AUG 22 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Rachel Ni Tjui
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), revoked approval of 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 business providing information technology services and consulting. It seeks to permanently employ the beneficiary in the United States as a senior software engineer. The petitioner requests classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL). The priority date of the petition, the date DOL accepted the ETA Form 9089 for processing, is May 11, 2011. See 8 C.F.R. § 204.5(d).

The director revoked the approval of the petition after concluding that the record did not establish that the beneficiary was qualified for the offered position and that the labor certification was gained through fraud or willful misrepresentation of a material fact.

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 June 27, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss and a Request for Evidence (NOID/RFE), with a copy to counsel of record. The NOID/RFE allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE would result in the dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the NOID/RFE. Accordingly, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i). Further, 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).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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).

(b)(6)

NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.