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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



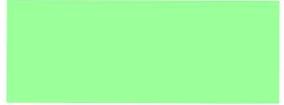
U.S. Citizenship
and Immigration
Services



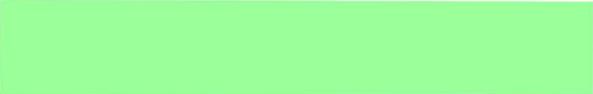
DATE: JUN 17 2014

OFFICE: TEXAS 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)(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 (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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On August 12, 2002, United States Citizenship and Immigration Services (USCIS) approved the visa petition. On June 5, 2009, the Director, Texas Service Center (director) revoked that approval with a finding of fraud and invalidated the underlying labor certification. On November 18, 2009, he again revoked the petition's approval after considering the petitioner's appeal as a Motion to Reopen. On December 21, 2009, the petitioner filed a Motion to Reopen, which the director forwarded to the Administrative Appeals Office (AAO) as an appeal. On August 18, 2011, we withdrew the director's revocation of the petition's approval and his invalidation of the labor certification, remanding the matter for further consideration and the issuance of a new decision, which if adverse to the petitioner was to be certified to us for review. On February 5, 2014, the director issued a new decision again revoking the approval of the petition, which he certified to the AAO. The appeal will be dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i). The revocation of the petition's approval will be affirmed.

The petitioner describes itself as a furniture business. It seeks to employ the beneficiary permanently in the United States as an apprentice furniture finisher pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).

The director determined that USCIS had initially approved the visa petition in error as the record failed to demonstrate that the petitioner had the ability to pay the beneficiary the proffered wage or that the beneficiary met the requirements of the labor certification. Accordingly, he revoked the petition's approval pursuant to the regulation at 8 C.F.R. § 205.2(a),

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 April 29, 2014, we sent the petitioner a Notice of Derogatory Information and a Request for Evidence (NDI/RFE). In the NDI/RFE, we informed the petitioner that our review of business records maintained by the Secretary of the Commonwealth for Massachusetts indicated that the company might no longer be in business and requested evidence that would establish its continuing operations. The notice gave the petitioner 30 days in which to submit a response, indicating that failure to respond or to submit the requested evidence would result in the dismissal of the appeal without further discussion.

As of the date of this decision, the petitioner has not responded to the NDI/RFE. Accordingly, we will dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i). The revocation of the visa petition's approval will be affirmed.

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 the regulation at 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).

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.

ORDER: The appeal is dismissed as abandoned. The revocation of the petition's approval is affirmed.