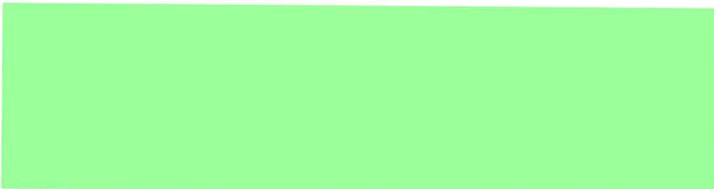


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

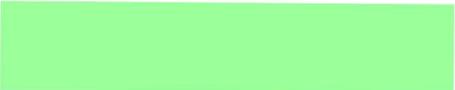


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 25 2014** OFFICE: TEXAS SERVICE CENTER

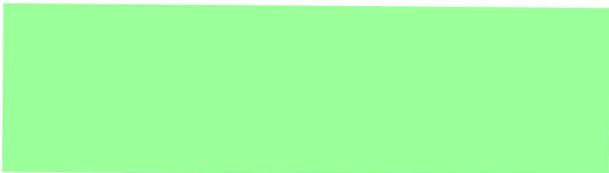


IN RE: Petitioner:  
Beneficiary:



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 (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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a senior systems analyst. As required by statute, a labor certification approved by the Department of Labor 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. Therefore, the director denied the petition.

On January 22, 2014, this office sent a Request for Evidence and Notice of Intent to Deny the petition to the petitioner. The AAO noted that USCIS records indicate that the petitioner has filed over 460 immigrant and nonimmigrant petitions since its establishment in 1998; and that therefore, the petitioner must demonstrate its ability to pay the proffered wage for each I-140 beneficiary from the priority date until the beneficiary obtains permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The AAO further indicated that although the director found that the beneficiary was qualified for the position, the evidence in the record was insufficient to demonstrate that the beneficiary met the job qualifications as stated on the labor certification, with sixty months of progressive work experience performing the duties of the proffered position as of the priority date.

The AAO also indicated that the labor certification was not valid for the offered position; specifically, the labor certification states that the primary worksite is in [REDACTED] New Jersey and the evidence of record demonstrates that the beneficiary works and resides in California. In addition, the ETA Form 9089 at Part H.1-2 states that the primary worksite is [REDACTED] and indicates at Part H.14 "Extensive travel on assignments to various unanticipated client sites within the U.S." The Form I-140 at Part 6.9, however, does not indicate that the address where the beneficiary will work is different from the petitioner's [REDACTED] address as stated at Part 1.6 of the I-140.

This office allowed the petitioner 45 days in which to provide the evidence requested as noted above. To date, there has been no response from the petitioner. The notice was sent to the petitioner's and to counsel's last known address.

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). Because the petitioner failed to respond to the RFE/NOID, failed to provide the evidence requested, and because the petition is not approvable for reasons set forth in the RFE and NOID, the AAO is dismissing the appeal.

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). The petitioner has not been met that burden.

**ORDER:** The appeal is dismissed and the petition remains denied.