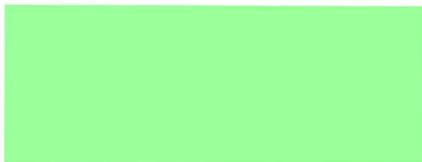


(b)(6)

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

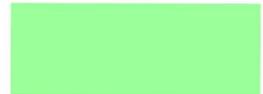


U.S. Citizenship  
and Immigration  
Services

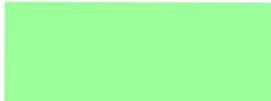


DATE: **SEP 19 2014** OFFICE: TEXAS SERVICE CENTER

FILE:

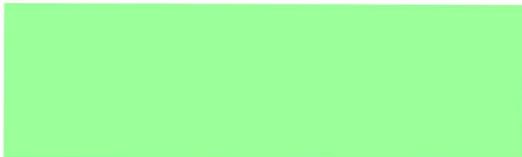


IN RE: Petitioner:  
Beneficiary:



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)(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. 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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

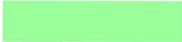
The petitioner describes itself as a wholesale and retail business. On November 12, 2010, it filed a Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as a market research analyst and to classify her as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the Department of Labor (DOL) by [REDACTED] on February 3, 2010, and certified by the DOL on May 19, 2010 (labor certification).

On October 10, 2012 the Director denied the immigrant petition on the ground that the petitioner was no longer conducting business in the same metropolitan statistical area indicated on the ETA Form 9089, thus nullifying the labor certification. The petitioner filed a timely appeal. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On May 20, 2014, the DOL, pursuant to its authority under 20 C.F.R. § 656.32, issued a *Notice of Intent to Revoke* the labor certification (NOIR), which was mailed to [REDACTED] with a copy to [REDACTED] attorney (who also represents the petitioner in the instant proceeding). The NOIR advised [REDACTED] that the certification of the ETA Form 9089 did not appear to be justified since a letter from the petitioner's accountant indicated that [REDACTED] ceased operations on December 31, 2007, more than two years before the labor certification application was filed, and that the petitioner is [REDACTED] successor-in-interest. Thus, [REDACTED] did not meet the definition of an "employer" on the date the ETA Form 9089 was filed and was therefore ineligible to file a labor certification application. The NOIR gave the petitioner 30 days to submit rebuttal evidence and advised that, in accordance with the regulation at 20 C.F.R. § 656.32(b)(2), if no such evidence was filed during that time period the NOIR would become the DOL's final decision. The record indicates that the petitioner did not respond to the NOIR. Accordingly, the NOIR became the DOL's final decision, and the previously approved labor certification has been revoked.

On August 12, 2014, we issued a Notice of Intent to Dismiss (NOID) the appeal, advising the petitioner that the Form I-140 petition that was filed on behalf of the beneficiary must be supported by an individual labor certification properly certified by the DOL. *See* 8 C.F.R. § 204.5(a)(2). If the petition is not supported by a properly certified ETA Form 9089, the petition cannot be approved and the issues raised on appeal to the AAO are moot. We granted the petitioner a period of thirty (30) days in which to submit a rebuttal or respond to the NOID.

The petitioner has not submitted a rebuttal or responded in any way to the NOID. If a petitioner fails to respond to a notice of intent to dismiss or request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.



*NON-PRECEDENT DECISION*

Since the petitioner has not responded to the NOID of August 12, 2014, the petition is denied under the regulatory provisions cited above. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.