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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



B6

DATE: DEC 06 2011 OFFICE: TEXAS SERVICE CENTER

FILE:

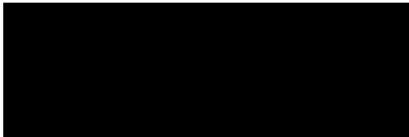


IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). The petitioner filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO). The AAO subsequently reopened the appeal on its own motion, and gave the petitioner the opportunity to submit additional evidence. The petitioner did not do so. Accordingly, the AAO will again dismiss the appeal.

The petitioner seeks to permanently employ the beneficiary in the United States as an auto bodywork and collision technician and to classify him as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). On April 26, 2008, the Director denied the petition on the ground that the evidence of record failed to establish the petitioner's continuing ability to pay the proffered wage to the beneficiary from the priority date (April 30, 2001) up to the present. A timely appeal was filed. Counsel submitted a brief, but no further documentation in support of the appeal. On October 27, 2010, the AAO dismissed the appeal on two grounds: (1) the evidence of record still failed to establish the petitioner's continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present, and (2) the evidence of record failed to establish that the beneficiary had two years of experience in the "job offered," as required on the labor certification (Form ETA 750) to qualify for the proffered position.

On May 13, 2011, the AAO issued a notice to the petitioner, with a copy to counsel, reopening the proceeding on its own motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii) for the purpose of entering a new decision. The AAO advised the petitioner that it had 30 days to submit a brief. No response was received from the petitioner or counsel to the AAO's notice.

On August 1, 2011, the AAO sent a Notice of Intent to Dismiss (NOID) to the petitioner, with a copy to counsel. The AAO thoroughly analyzed the documentation of record, explained how it failed to establish the petitioner's continuing ability to pay the proffered wage and the beneficiary's qualification for the proffered position, and gave the petitioner 30 days to respond. The petitioner was advised that if no response was received, the appeal would be dismissed without further discussion.

The petitioner did not respond within the 30-day period specified in the NOID (or any time since then). If a petitioner fails to respond to a 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). The AAO alerted the petitioner that failure to respond to the NOID would result in dismissal since the appeal could not be substantively adjudicated without the documentation requested. As 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.

In this case, the petitioner has not responded to the NOID of August 1, 2011, despite the AAO's warning that failure to respond would result in dismissal of the appeal without further discussion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.