(b)(5)

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: AUG 2 9 2012 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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 bakery. It seeks to employ the beneficiary permanently in the United States as a baker. 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 the petitioner had not established that the beneficiary possessed the minimum experience required to perform the offered position by the priority date. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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 May 3, 2012, this office issued the beneficiary a Notice of Intent to Dismiss and Notice of Derogatory Information, notifying the beneficiary of derogatory information and the AAO's intention to enter a finding of willful misrepresentation. This office allowed the beneficiary 30 days in which to provide evidence to overcome the derogatory information. More than 30 days have passed and the beneficiary has failed to respond.

On May 3, 2012, this office also issued the petitioner a Notice of Intent to Dismiss and Notice of Derogatory Information and Request for Evidence (Notice of Intent), notifying the petitioner of derogatory information, the AAO's intention to dismiss the appeal, the AAO's intention to enter a finding of willful misrepresentation, and requesting additional evidence.[2] This office allowed the petitioner 30 days in which to provide evidence to overcome the derogatory information and to provide the requested evidence. More than 30 days have passed and the petitioner has failed to respond to this office's Notice of Intent.

The AAO specifically alerted the petitioner that failure to respond to the Notice of Intent would result in dismissal since the AAO could not substantively adjudicate the appeal without the information

---

[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).

[2]This office sent a copy of the Notice of Intent to the petitioner's attorney of record, which was returned to this office as undeliverable. This office is sending a courtesy copy of this decision to the petitioner's attorney of record at his most current address, although it is noted that his appearance was filed in his capacity as attorney for Mision Hispana, which is now a defunct entity.

requested. 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 Notice of Intent, the AAO is dismissing the appeal. Findings of willful misrepresentation against the petitioner and the beneficiary will not be entered in the instant case.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.