

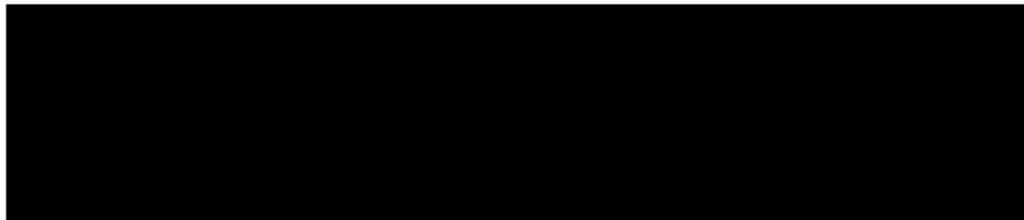
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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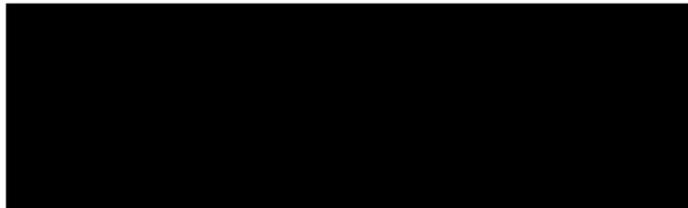
Date: **JUL 12 2012** Office: NEBRASKA SERVICE CENTER



IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On May 17, 2012, this office provided the petitioner with notice of adverse information outside the record and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a computer project services and software consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst 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, a labor certification accompanied the petition. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

In a Notice of Intent to Dismiss and Request for Evidence (NOID) dated May 17, 2012, the AAO requested evidence to establish that the petitioning business in this matter, [REDACTED] was still an active business in California and that the petitioner has the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing up to the present.¹ Specifically, the petitioner was instructed to submit tax returns or audited financial statements for 2005, 2006, 2007, 2008, 2009, 2010, and 2011 and Forms W-2 or 1099 (if any) for the beneficiary for 2005, 2007, 2008, 2009, 2010, and 2011. The AAO also requested evidence that the beneficiary satisfied the minimum level of education stated on the labor certification.

This office allowed the petitioner 30 days in which to respond to the NOID. In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID could result in dismissal of the appeal. 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). More than 30 days have passed and the petitioner has failed to respond with proof that [REDACTED] was an active business in California; that it has the ability to pay the beneficiary the proffered wage; and that the beneficiary satisfied the minimum level of education stated on the labor certification.

Thus, the appeal will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

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.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).