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: NOV 0 5 2012 OFFICE: NEBRASKA 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,

Rachel Nimmo
for

Perry Rhew
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a hotel. It seeks to permanently employ the beneficiary in the United States as a staff accountant. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the petitioner did not demonstrate the continuing ability to pay the proffered wage to the beneficiary beginning on the priority date of June 30, 2004.

The record shows that the appeal is properly filed 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 June 20, 2012, the AAO sent the petitioner a notice of intent to dismiss the appeal (NOID) with a copy to counsel. The NOID stated that available databases indicated that the petitioner was no longer actively conducting business and that, if the petitioner's organization is no longer in business, then no bona fide job offer exists, and the petition and appeal are therefore moot. The NOID informed the petitioner that 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).

The petitioner responded to the AAO's NOID on August 17, 2012. However, the petitioner failed to provide probative evidence that the petitioner is still actively conducting business. Instead, counsel requested additional time in which to respond and submitted a letter from the trustee of the which states that the petitioner no longer exists and that the trust's hotel is the successor-in-interest to the petitioner. Since the petitioner failed to submit requested evidence, thus precluding a material line of inquiry, the petition will be denied pursuant to 8 C.F.R. § 103.2(b)(14). Further, the evidence in the record is not sufficient to establish the petitioner's continuing ability to pay the proffered wage to the beneficiary beginning on the

[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 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).

priority date of June 30, 2004. In addition, the evidence in the record is not sufficient to demonstrate that any other entity is the successor-in-interest to the petitioner.

The USCIS Adjudicator's Field Manual (AFM) at Chapter 10.3(f) states in pertinent part:

> A NOID must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond may result in a denial. The maximum time to submit a response to a NOID is 30 days. There are no extensions of time beyond the 30 day limit. 8 CFR 103.2(b)(8), (16).

The regulation at 8 C.F.R. § 103.2(b)(11) states in pertinent part:

> In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the application or petition. All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.

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 as moot.