

(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: NOV 27 2012

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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 summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a food products company. It seeks to permanently employ the beneficiary in the United States as a food processing machine operator. 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.

As set forth in the director's March 20, 2009 denial, the petitioner failed to establish its ability to pay the proffered wage. The director also noted that according to the California's Secretary of State Website, as of March 9, 2009, [REDACTED] is either forfeited or surrendered, and the beneficiary's 2007 and 2008 Forms W-2 of record were issued by [REDACTED]

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 July 30, 2012, the AAO sent the petitioner a notice of intent to dismiss (NOID) and request for evidence (RFE) and notice of derogatory information (NDI) with a copy to counsel of record. The AAO requested additional evidence from [REDACTED] to establish it is a successor-in-interest to the petitioning company and that it possessed the ability to pay the proffered wage from the date the company acquired the predecessor's assets to the present. The AAO also requested additional evidence to establish the beneficiary's qualifications for the job offered, as well as information regarding multiple petitions filed by the company on behalf of other beneficiaries. The petitioner was provided with thirty (30) days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE/NDI would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID/RFE/NDI.² The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for

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).

² In response to the AAO's NOID/RFE/NDI, counsel for the beneficiary submitted a letter requesting an extension of time in which to provide additional evidence. No provision exists in the regulations for an extension; therefore, the request was denied. Further, the beneficiary is not an

denying the petition. See 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the NOID/RFE/NDI, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

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 summarily dismissed as abandoned.

affected party in these proceedings. The term "affected party" means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(1)(iii)(B). The party affected in visa petition cases is the petitioner, and the beneficiary does not have standing to move to reopen the proceedings. *Matter of Dabaase*, 16 I&N Dec. 720 (BIA 1979).