(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: SEP 13 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 with the field office or service center that originally decided your case by filing a 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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as abandoned.

The petitioner describes itself as a software development and IT consulting company, and seeks to employ the beneficiary permanently in the United States as a programmer analyst pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). As required by statute, a labor certification accompanied the petition.

Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director determined that the beneficiary's three-year Indian degree could not be accepted as a foreign equivalent degree to a four-year U.S. bachelor's degree in science, engineering, or technology.

The AAO issued a request for evidence (RFE) on June 14, 2012 concerning the actual minimum educational requirements of the offered position.[1] The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree and the evidence in the record of proceeding as currently constituted did not support a determination that the petitioner intended the actual minimum requirements of the offered position to include alternatives to a bachelor degree such as the credentials held by the beneficiary. The AAO solicited additional evidence of the beneficiary's credentials and evidence of how the petitioner expressed its actual minimum educational requirements to the U.S. Department of Labor (DOL) during the labor certification process.

The AAO also requested evidence concerning the petitioner's ability to pay the proffered wage. The AAO solicited additional evidence of the petitioner's annual reports, federal tax returns, or audited financial statements, along with any Forms W-2 or 1099 issued to the beneficiary, and evidence of additional beneficiaries for which the petitioner had submitted petitions.

The AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested.

The RFE afforded the petitioner 45 days to submit a response. To date, the AAO has not received a response to its RFE. 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). Further, since the petitioner failed to respond to this office's request for additional evidence, the appeal will be dismissed as abandoned. *See* 8 C.F.R. § 103.2(b)(13)(i).

Because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal.

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.

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[1] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

ORDER: The appeal is dismissed as abandoned.