

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)

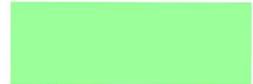


DATE:

APR 26 2013

OFFICE: NEBRASKA SERVICE CENTER

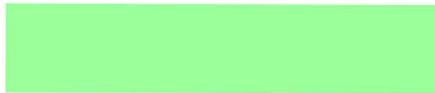
FILE:



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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed this decision to the Administrative Appeals Office (AAO). The AAO summarily dismissed the appeal on July 6, 2009. The petitioner filed a motion to reconsider the AAO's decision.¹ The motion to reconsider will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).² The petition will remain denied.

The petitioner is in the lodging/hospitality industry. It seeks to permanently employ the beneficiary in the United States as a hotel manager. 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 (DOL).³

The director's decision denying the petition concluded that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification and that the petitioner has not established that it had the ability to pay the beneficiary the proffered wage beginning on the priority date and continuing until the beneficiary obtains lawful permanent residence. The AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v) based on the petitioner's failure to specifically identify any erroneous conclusion of law or fact on appeal.

On January 31, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel of record. The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree and that the evidence in the record of proceeding 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 DOL during the labor certification process.

¹ The regulation at 8 C.F.R. § 103.5(a)(3) provides:

Requirements for a motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

² The regulation at 8 § C.F.R. 103.2(b)(13)(i) states that if the petitioner fails to respond to an RFE by the required date, the "benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons."

³ The petitioner's counsel has not signed the certified ETA Form 9089 submitted with the petition. USCIS will not approve a petition unless it is supported by an original certified ETA Form 9089 that has been signed by the employer, beneficiary, attorney and/or agent. See 20 C.F.R. § 656.17(a)(1).

The AAO also requested evidence to establish that the beneficiary was awarded a bachelor's degree and evidence of the petitioner's continuing ability to pay the proffered wage. The RFE allowed the petitioner 45 days in which to submit a response. The AAO informed the petitioner that failure to respond to the RFE would result in a dismissal of the motion.

As of the date of this decision, the petitioner has not responded to the AAO's 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). Since the petitioner failed to respond to the RFE, the motion to reconsider will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).⁴

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 motion to reconsider is summarily dismissed as abandoned. The petition remains denied.

⁴ Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.